

IN RE DISQUALIFICATION OF MCMONAGLE.

**THE STATE EX REL. MAYNARD v. MEDINA COUNTY FACILITIES TASKFORCE
SUBCOMMITTEE**

AND

**THE STATE EX REL. MAYNARD v. MEDINA COURTHOUSE STEERING
COMMITTEE.**

**[Cite as *In re Disqualification of McMonagle*, 165 Ohio St.3d 1246,
2021-Ohio-2833.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to
demonstrate bias, prejudice, or appearance of impropriety—An affidavit of
disqualification is not appropriate mechanism to determine whether a judge
has complied with Rules of Professional Conduct—Disqualification denied.*

(Nos. 21-AP-072 and 21-AP-073—Decided June 29, 2021.)

ON AFFIDAVITS OF DISQUALIFICATION in Medina County Court of Common Pleas,
General Division, Case Nos. 19CIV0741 and 19CIV0729.

O’CONNOR, C.J.

{¶ 1} Patricia F. Lowery, counsel for the plaintiff, has filed two affidavits seeking to disqualify Judge Richard J. McMonagle, a retired judge sitting by assignment, from the above-referenced cases.

{¶ 2} Ms. Lowery alleges that Judge McMonagle has demonstrated bias by prejudging the facts in the underlying matters and potentially violating the Rules of Professional Conduct. Judge McMonagle filed responses to the affidavits and does not believe he has demonstrated any bias. For the reasons explained below, Ms. Lowery has not established that Judge McMonagle’s disqualification is warranted.

{¶ 3} First, Ms. Lowery asserts that Judge McMonagle has prejudged the cases because he initially dismissed the matters based on misrepresentations in the defendants’ pleadings, leading to the court of appeals reversing the judge, and later made comments indicating that he has decided factual issues even though he has not yet heard any evidence. For example, Ms. Lowery asserts that Judge McMonagle stated that the court of appeals had incorrectly described the nature of one of the defendants and that during settlement discussions, the judge stated that the plaintiff’s cases were not a “slam dunk.”

{¶ 4} The fact that the court of appeals reversed Judge McMonagle’s decisions, however, does not automatically require his disqualification or suggest that he cannot continue to fairly preside over the underlying matters. *See In re Disqualification of Hurley*, 113 Ohio St.3d 1228, 2006-Ohio-7229, 863 N.E.2d 630, ¶ 6; *In re Disqualification of Kimmel*, 36 Ohio St.3d 602, 522 N.E.2d 456 (1987). To the extent that Judge McMonagle expressed disagreement with the reasoning of the court of appeals, such comments “can regrettably cause one party or another to believe that a judge who says them will not follow a higher court’s rulings on remand, and judges should therefore think carefully before sharing their views so openly with the parties in ongoing litigation.” *Hurley* at ¶ 5. Nonetheless, there is no indication here—either in the record or in the decisions of the court of appeals—that Judge McMonagle’s previous rulings were the product of bias. In disqualification requests, “[a] judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. The judge’s first alleged comment is insufficient to overcome the presumption that he is fair and impartial.

{¶ 5} Nor does the “slam dunk” comment require Judge McMonagle’s removal. The judge states that he made the comment during settlement discussions

to suggest to Ms. Lowery that her client was not guaranteed to succeed. As previously explained,

[a] judge rarely hears preliminary aspects of a case without forming conditional opinions of the facts or law. These conditional opinions often assist the parties and their counsel in identifying and narrowing the issues in controversy and facilitate the settlement of cases prior to trial. However, the formation of these conditional opinions is not sufficient to counter the presumption of the judge's ability to render a fair decision based upon the evidence later presented at trial.

In re Disqualification of Brown, 74 Ohio St.3d 1250, 1251, 657 N.E.2d 1353 (1993). Judge McMonagle's preliminary assessment about the strength of the plaintiff's cases—made during settlement negotiations—is not sufficient to counter the presumption that he will fairly decide the cases based on the evidence later presented at trial.

{¶ 6} Second, Ms. Lowery argues that during settlement negotiations, Judge McMonagle presented her with a settlement offer that potentially violated Prof.Cond.R. 5.6(b), which prohibits a lawyer from participating in offering or making “an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a claim or controversy.” This rule prohibits an attorney's agreeing not to represent other persons in connection with settling a case. *See* Prof.Cond.R. 5.6, Comment 2. An affidavit of disqualification, however, is not the appropriate mechanism to determine whether a judge has complied with the Rules of Professional Conduct. *See In re Disqualification of Burge*, 142 Ohio St.3d 57, 2014-Ohio-5871, 28 N.E.3d 48, ¶ 4. Rather, the issue here is narrow: “[t]he constitutional and statutory responsibility of the Chief Justice in ruling on an

affidavit of disqualification is limited to determining whether a judge in a pending case has a bias, prejudice, or other disqualifying interest that mandates the judge's disqualification from that case." *In re Disqualification Kate*, 88 Ohio St.3d 1208, 1209-1210, 723 N.E.2d 1098 (1999).

{¶ 7} In disqualification requests, "[t]he term 'bias or prejudice' 'implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.' " *In re Disqualification of O'Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). "The proper test for determining whether a judge's participation in a case presents an appearance of impropriety is * * * an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8. Ms. Lowery has not established that the judge's alleged presentment of an improper settlement term means that he has hostility toward her client or that he has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has Ms. Lowery set forth a compelling argument for disqualifying Judge McMonagle to avoid an appearance of bias.

{¶ 8} The affidavits of disqualification are denied. The cases may proceed before Judge McMonagle.