

IN RE DISQUALIFICATION OF BRANNON.

IN RE GUARDIANSHIP OF MUST

AND

IN RE ESTATE OF MUST.

**[Cite as *In re Disqualification of Brannon*, 165 Ohio St.3d 1219,
2021-Ohio-3270.]**

Judges—Affidavits of disqualification—R.C. 2701.03 and 2101.39—Affiant failed to set forth sufficiently compelling evidence to overcome presumption that judge is fair and impartial—Disqualification denied.

(No. 21-AP-079—Decided July 20, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common Pleas, Probate Division, Case Nos. 2015 GRD 00059 and 2021 EST 00131.

O’CONNOR, C.J.

{¶ 1} Konrad Kuczak, attorney for the guardian of the estate and other parties, has filed an affidavit and a supplemental affidavit pursuant to R.C. 2701.03 and 2101.39 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge David D. Brannon from the above-referenced guardianship and estate matters.

{¶ 2} Mr. Kuczak avers that Judge Brannon should be removed for several reasons. First, Mr. Kuczak alleges that at a June 3, 2021 teleconference, the judge exhibited a lack of decorum, disparaged Mr. Kuczak’s professionalism, and expressed skepticism about the legality of an order issued by the judge’s predecessor. Second, Mr. Kuczak claims that by freezing the guardianship funds and taking other actions, Judge Brannon has already decided certain legal issues—before holding the required evidentiary hearing. Third, Mr. Kuczak avers that

Judge Brannon has an interest in the underlying matters because as clerk of the probate court, the judge is responsible for the unexplained disappearance of the decedent's will.

{¶ 3} Judge Brannon filed a response and denies any bias against Mr. Kuczak or his clients. Although the judge acknowledges that he directed several questions to Mr. Kuczak at the June 3 teleconference, the judge denies that he lacked the appropriate judicial decorum or that he was discourteous toward Mr. Kuczak. The judge also states that he has not yet decided any of the pending legal issues but froze the guardianship funds and took similar actions in order to preserve the status quo until he could hold a hearing. Finally, Judge Brannon denies having any personal interest in or knowledge about the underlying cases and notes that he was not yet a judge when the probate court allegedly lost the decedent's will.

{¶ 4} 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. Mr. Kuczak has not established that Judge Brannon has hostile feelings toward him or his clients or that the judge has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has Mr. Kuczak set forth a compelling argument for disqualifying Judge Brannon to avoid an appearance of bias.

{¶ 5} A “presumption of impartiality” is accorded all judges in affidavit-of-disqualification proceedings. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. And the burden falls on the affiant to submit specific evidence demonstrating that disqualification is warranted. *In re Disqualification of Singer*, 160 Ohio St.3d 1238, 2020-Ohio-4054, 155 N.E.3d 958, ¶ 5; see R.C. 2701.03(B)(1). Here, Mr. Kuczak vaguely alleges that at the June 3 teleconference, Judge Brannon lacked decorum and disparaged Mr. Kuczak, but Mr. Kuczak has not specifically explained his argument or substantiated it with other evidence. For his part, Judge Brannon has denied acting discourteously toward Mr. Kuczak. Given the conflicting accounts in the record, Mr. Kuczak has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Brannon is fair and impartial. See, e.g., *In re Disqualification of Baronzzi*, 135 Ohio St.3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 8 (affiant’s “vague and unsubstantiated allegations—especially in the face of clear denials by Judge Baronzzi—are insufficient to overcome the presumption that Judge Baronzzi is fair and impartial”); *In re Disqualification of Harwood*, 137 Ohio St.3d 1221, 2013-Ohio-5256, 999 N.E.2d 681, ¶ 6-7 (affiant failed to set forth compelling evidence to overcome presumption of impartiality when judge had denied affiant’s allegations and affiant had failed to substantiate her allegations with third-party affidavits or other evidence).

{¶ 6} Further, whether Judge Brannon has authority to vacate one of his predecessor’s orders is not an issue that can be decided in a disqualification request, and regardless, the judge’s legal opinion is not evidence of bias. See *In re Disqualification of Hunter*, 36 Ohio St.3d 607, 522 N.E.2d 461 (1988) (“The mere fact that a party disagrees with a judge’s opinions of law is not grounds for the judge’s disqualification”).

{¶ 7} Nor has Mr. Kuczak established that by merely freezing the guardianship funds, Judge Brannon has predetermined pending legal issues.

According to Judge Brannon, he was merely keeping the status quo until those issues could be heard. Similarly, Mr. Kuczak has failed to sufficiently explain why Judge Brannon has a disqualifying interest in the underlying matters merely because the probate court allegedly lost a will prior to the commencement of Judge Brannon's term of judicial office.

{¶ 8} Finally, in Mr. Kuczak's supplemental affidavit, he criticizes and replies to statements made in Judge Brannon's response to the original affidavit of disqualification. S.Ct.Prac.R. 21.02(C), however, provides that "[n]o reply to a response from the judge shall be permitted." Mr. Kuczak cannot circumvent this rule by labeling his filing a "supplemental" affidavit. *See In re Disqualification of Gill*, 157 Ohio St.3d 1205, 2019-Ohio-3743, 131 N.E.3d 983, ¶ 2.

{¶ 9} The affidavits of disqualification are denied. The cases may proceed before Judge Brannon.
