

IN RE DISQUALIFICATION OF COOPERRIDER.

IN RE CHANGE OF NAME OF A.B.

**[Cite as *In re Disqualification of Cooperrider*, 165 Ohio St.3d 1280,
2021-Ohio-3569.]**

Judges—Affidavits of disqualification—R.C. 2101.39 and 2701.03—Affiant failed to demonstrate appearance of impropriety—Whether affiant was properly served with name-change application cannot be determined in a disqualification matter—Disqualification denied.

(No. 21-AP-080—Decided July 21, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Perry County Court of Common Pleas,
Probate and Juvenile Division, Case No. 20209010.

O’CONNOR, C.J.

{¶ 1} Gregory Biggerstaff, the father of the minor child, has filed an affidavit pursuant to R.C. 2101.39 and 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Luann Cooperrider from the above-referenced name-change proceeding.

{¶ 2} In March 2021, the court of appeals reversed Judge Cooperrider’s decision granting the minor child’s name change, because Mr. Biggerstaff had not been properly served with the application. The court remanded the matter for further proceedings. *In re Change of Name of A.B.*, 5th Dist. Perry No. 20 CA 00012, 2021-Ohio-591.

{¶ 3} Mr. Biggerstaff avers that Judge Cooperrider should be disqualified because she failed to properly serve him with the initial application, summarily granted the mother’s application without an evidentiary hearing, and on remand, blamed the error on a post-office policy. Mr. Biggerstaff also claims that although

Judge Cooperrider has scheduled a hearing on remand, he has not yet been properly served with the application. In addition, Mr. Biggerstaff notes that the applicant resides on a road that bears the last name of the judge.

{¶ 4} Judge Cooperrider filed a response to the affidavit and believes that she is impartial and has no conflict of interest. The judge further states that on remand, the hearing date was cleared by Mr. Biggerstaff's attorney and that Mr. Biggerstaff was properly served. The judge also states that she does not know the applicant, has no idea where the applicant lives, and is not related to anyone living on Cooperriders Road.

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

{¶ 6} It is well established that "a judge may preside over the retrial of a case even if that judge's rulings of law were reversed on appeal." *In re Disqualification of Kimmel*, 36 Ohio St.3d 602, 522 N.E.2d 456 (1987); *see also In*

re Disqualification of Hurley, 113 Ohio St.3d 1228, 2006-Ohio-7229, 863 N.E.2d 630, ¶ 6 (“a judge may remain on a case that has been remanded from the court of appeals”). Here, there is no indication in the appellate court’s decision that the initial failure to serve Mr. Biggerstaff was the product of judicial bias. Further, whether Mr. Biggerstaff has been properly served on remand is not an issue that can be decided in a disqualification matter. *See In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4 (“An affidavit of disqualification addresses the narrow issue of the possible bias or prejudice of a judge” and “is not a vehicle to contest matters of substantive or procedural law”). Finally, no objective observer would question Judge Cooperrider’s impartiality merely because a party happens to live on a road that bears the judge’s last name—especially considering that Judge Cooperrider has affirmed that she does not personally know the applicant.

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Cooperrider.
