

IN RE DISQUALIFICATION OF MALLORY.

THE STATE OF OHIO v. BLASSINGAME.

**[Cite as *In re Disqualification of Mallory*, 165 Ohio St.3d 1282,
2021-Ohio-3572.]**

Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety and failed to substantiate claim that judge engaged in improper ex parte communication—Whether a judge has complied with court pandemic policies cannot be decided in a disqualification matter—Disqualification denied.

(No. 21-AP-091—Decided July 22, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Municipal Court Case
No. 20/CRB/21198.

O’CONNOR, C.J.

{¶ 1} Defendant Derrick D. Blassingame has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge William L. Mallory from the above-referenced case. This is Mr. Blassingame’s second affidavit of disqualification against Judge Mallory. The prior affidavit was denied in an entry dated June 15, 2021. *See* Supreme Court case No. 21-AP-070.

{¶ 2} Mr. Blassingame seeks Judge Mallory’s removal for various reasons. As explained below, Mr. Blassingame has not established that the judge’s disqualification is warranted.

{¶ 3} First, Mr. Blassingame alleges that he named Judge Mallory as a defendant in a separate civil lawsuit. It is well settled, however, that “a judge will

not be disqualified solely because a litigant in a case pending before the judge has filed a lawsuit against that judge. To hold otherwise would invite parties to file lawsuits solely to obtain a judge’s disqualification, which would severely hamper the orderly administration of judicial proceedings.” *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 4.

{¶ 4} Second, Mr. Blassingame asserts that Judge Mallory lied in his response to the first affidavit of disqualification. For example, Mr. Blassingame states that although Judge Mallory indicated in his response that trial was scheduled for June 16, the trial did not go forward. But Judge Mallory did not make any sort of misleading or false statement merely by indicating that trial was initially scheduled for June 16; it appears that the judge rescheduled the trial *after* submitting his response to the affidavit of disqualification.

{¶ 5} Third, Mr. Blassingame contends that Judge Mallory improperly continued the trial based on the request of the city prosecutor’s office, that the prosecutor’s office has requested numerous continuances, resulting in a violation of Mr. Blassingame’s constitutional rights, and that Judge Mallory is partial toward the prosecutor’s office because he is a former city employee. It is well established that “[a] judge’s decision to grant or deny a party’s request for a continuance is within the sound discretion of the judge and is not, by itself, evidence of bias or prejudice.” *In re Disqualification of Pontious*, 94 Ohio St.3d 1235, 1236, 763 N.E.2d 603 (2001). It is also well settled that “an affidavit of disqualification is not the mechanism for determining whether a judge has violated a party’s constitutional rights.” *In re Disqualification of Giesler*, 135 Ohio St.3d 1201, 2011-Ohio-7083, 985 N.E.2d 486, ¶ 10. And Mr. Blassingame’s claim that Judge Mallory is biased in favor of the prosecutor’s office because he is a former city employee was addressed—and rejected—in Mr. Blassingame’s prior disqualification request. *See* June 15, 2021 entry in Supreme Court case No. 21-AP-070 (“No objective observer

would question Judge Mallory’s impartiality merely because he worked for the city prosecutor over 30 years ago”).

{¶ 6} Fourth, Mr. Blassingame alleges that Judge Mallory discriminated against him based on his race by requiring him to wear a facial covering after he refused to disclose his vaccination status. Mr. Blassingame also contends that Judge Mallory interrupted him repeatedly, had him escorted out of the courtroom, and demonstrated hostility toward him. In affidavit-of-disqualification proceedings, “the burden falls on the affiant to submit specific evidence demonstrating that disqualification is warranted.” *In re Disqualification of Jamison*, 146 Ohio St.3d 1252, 2015-Ohio-5683, 55 N.E.3d 1116, ¶ 5, citing R.C. 2701.03(B)(1). “When necessary, an affiant should submit evidence beyond the affidavit to support the allegations contained therein.” *In re Disqualification of Trimmer*, 164 Ohio St.3d 1212, 2021-Ohio-2320, 172 N.E.3d 192, ¶ 5. This is especially true when an affidavit includes allegations of racial bias, which are “among the most serious and damaging claims that can be directed at a judge” and “if true, would not only constitute a violation of the judge’s oath of office and the Code of Judicial Conduct * * * but also would strike at the very heart of the integrity of the judiciary,” *In re Disqualification of Cunningham*, 100 Ohio St.3d 1216, 1216-1217, 798 N.E.2d 4 (2002). Here, Mr. Blassingame offered only his affidavit to support these allegations, even though most of the claims, if true, could have been substantiated by a transcript or other evidence.¹ A “ ‘presumption of impartiality’ ” is accorded all judges in affidavit-of-disqualification proceedings. *Trimmer* at ¶ 4, quoting *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. Based on this record, Mr. Blassingame has

1. Mr. Blassingame requests that the chief justice withhold a decision on his second affidavit until he has had an opportunity to gather transcripts. But he also avers that his trial has been rescheduled for August 6, 2021. This matter will not be kept open—potentially resulting in another trial delay—for Mr. Blassingame to gather additional evidence.

failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Mallory is fair and impartial.

{¶ 7} Fifth, Mr. Blassingame asserts that Judge Mallory engaged in an ex parte communication with an assistant city prosecutor and another attorney, although Mr. Blassingame also alleges that he was present for—but excluded from—the communication. “An alleged ex parte communication constitutes grounds for disqualification when there is ‘proof that the communication * * * addressed substantive matters in the pending case.’ ” (Ellipsis sic.) *In re Disqualification of Forsthoefel*, 135 Ohio St.3d 1316, 2013-Ohio-2292, 989 N.E.2d 62, ¶ 7, quoting *In re Disqualification of Calabrese*, 100 Ohio St.3d 1224, 2002-Ohio-7475, 798 N.E.2d 10, ¶ 2. “The allegations must be substantiated and consist of something more than hearsay or speculation.” *Id.* Mr. Blassingame failed to submit any additional information about the alleged communication. He has therefore failed to substantiate his claim that Judge Mallory engaged in an improper ex parte communication, especially considering that Mr. Blassingame claims that he was present for it.

{¶ 8} Finally, Mr. Blassingame claims that despite the statements made in Judge Mallory’s response to the first affidavit of disqualification, the judge does not comply with his court’s COVID-19 protocols. According to Mr. Blassingame, Judge Mallory does not wear a facial covering but requires only defendants to do so. An affidavit of disqualification, however, is not a tool to determine whether a judge has complied with the pandemic policies of his or her courthouse; nor is it a mechanism for punishing judges who allegedly fail to comply with those policies. Mr. Blassingame has not established that Judge Mallory has disregarded a party’s welfare or endangered the health of those who enter the courthouse to the extent that the judge must be disqualified from future proceedings. *See In re Disqualification of Fleegle*, 161 Ohio St.3d 1263, 2020-Ohio-5636, 163 N.E.3d 609, ¶ 6-9 (disqualifying a judge from presiding over two jury trials scheduled for

December 2020; the judge had no written COVID-19 protocols and had failed to sufficiently explain the urgency of going forward with the jury trials at that particular stage of the COVID-19 pandemic).

{¶ 9} The affidavit of disqualification is denied.

{¶ 10} It must be noted that over the last two months, Mr. Blassingame has filed four affidavits of disqualification against three different judges in two separate matters. *See* Supreme Court case Nos. 21-AP-065, 21-AP-070, and 21-AP-091; *In re Disqualification of Triggs*, 165 Ohio St.3d 1233, 2021-Ohio-2731, 177 N.E.3d 1012. Two of the prior affidavits were also denied on the merits; in case No. 21-AP-065, the judge voluntarily recused herself, resulting in dismissal of the affidavit as moot. Mr. Blassingame is cautioned that the filing of frivolous, repeated, or unsubstantiated affidavits is contrary to the purpose of R.C. 2701.03 and a waste of judicial resources. *See In re Disqualification of Browne*, 136 Ohio St.3d 1279, 2013-Ohio-4468, 996 N.E.2d 944, ¶ 8 (imposing a sanction on a litigant for filing frivolous, unsubstantiated, and repeated affidavits of disqualification).
