

IN RE DISQUALIFICATION OF HALLIDAY.

THE STATE OF OHIO v. SMITH.

**[Cite as *In re Disqualification of Halliday*, 166 Ohio St.3d 1201,
2021-Ohio-3911.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to present
sufficient evidence to overcome the presumption of impartiality or to show
that judge had formed a biased opinion of affiant—Disqualification denied.*

(No. 21-AP-113—Decided September 9, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Washington County Court of Common
Pleas, General and Domestic Relations Division, Case No. 19-CR-522.

O’CONNOR, C.J.

{¶ 1} Defendant Edward T. Smith has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge John M. Halliday from the above-referenced case.

{¶ 2} Mr. Smith believes that Judge Halliday has an unfavorable opinion of him and therefore cannot fairly and impartially preside over the underlying trial. Judge Halliday filed a response to the affidavit in which he thoroughly detailed his handling of the case. The judge denies having any bias against Mr. Smith.

{¶ 3} 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, 132 N.E.2d 191 (1956), paragraph four of the

syllabus. “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. In addition, 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.

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

{¶ 5} Mr. Smith first alleges that one of his former attorneys, George Cosenza, showed Judge Halliday confidential text messages during a hearing on Mr. Cosenza’s motion to withdraw as Mr. Smith’s attorney. Mr. Smith believes that those text messages caused Judge Halliday to form a biased opinion of him. In response, Judge Halliday states that Mr. Cosenza and Mr. Smith *both* submitted copies of text messages at the hearing. The judge further states that he considered the messages under seal and that none of the messages were germane to Mr. Smith’s criminal case, other than showing the deterioration of the attorney-client relationship. Judge Halliday denies forming any biased opinion of Mr. Smith based on the text messages.

{¶ 6} It is well established that “a judge is presumed to be capable of separating what may properly be considered from what may not be considered.” *In re Disqualification of Basinger*, 135 Ohio St.3d 1293, 2013-Ohio-1613, 987 N.E.2d 687, ¶ 5. Absent a showing of substantial prejudice, judicial disqualification is not necessary merely because a judge hears inadmissible or potentially unflattering information about a defendant during the course of a proceeding. The text

messages here do not appear to be so prejudicial that Judge Halliday would be unable to set them aside and impartially preside over Mr. Smith's trial.

{¶ 7} Mr. Smith next alleges that Judge Halliday considered improper information in granting Mr. Cosenza's motion to withdraw and acted punitively by appointing Matthew Mollica as Mr. Smith's new attorney. According to Mr. Smith, after he attempted to fire Mr. Mollica, Mr. Mollica retaliated against him by requesting that he undergo a competency evaluation. For his part, Judge Halliday explained his reasons for permitting Mr. Cosenza to withdraw and for appointing Mr. Mollica. The judge denies that his actions were punitive. Contrary to Mr. Smith's contention, this is not the appropriate forum to review the propriety of Judge Halliday's decision allowing Mr. Cosenza to withdraw. "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." *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. Mr. Smith has not established that Judge Halliday's actions here were the product of bias against him.

{¶ 8} Finally, Mr. Smith alleges that Judge Halliday has an unfavorable opinion of him because the judge described him as "contumacious," although Mr. Smith feels that he has attempted to cooperate throughout the case. Mr. Smith further points to the fact that at a recent hearing, Judge Halliday stated that Mr. Smith's "reputation had preceded" him when discussing the judge's inability to find new counsel for him. In response, Judge Halliday acknowledges stating that Mr. Smith was "contumacious," but the judge notes that Mr. Smith has been "willfully stubborn, bordering on disobedient" by interrupting and arguing with the court and consistently creating conflict and delay. The judge further states that after allowing Mr. Mollica to withdraw, the court contacted several attorneys to represent Mr. Smith but they declined, some based on their prior interactions with Mr. Smith. The judge notes that some attorneys were also aware of the issues that Mr. Cosenza

and Mr. Mollica had had with Mr. Smith. This background, according to the judge, was the context for his comment to Mr. Smith about his reputation preceding him. Judge Halliday states that despite his frustrations with Mr. Smith, he is not biased, he has not formed any personal opinion about Mr. Smith, and he will treat Mr. Smith fairly. The judge also notes that the court found new counsel for him.

{¶ 9} Judges are certainly entitled to express dissatisfaction with a party's or an attorney's dilatory tactics inside and outside the courtroom, "but that dissatisfaction can and should be expressed in a way that promotes public confidence in the integrity, dignity, and impartiality of the judiciary." *In re Disqualification of Corrigan*, 105 Ohio St.3d 1243, 2004-Ohio-7354, 826 N.E.2d 302, ¶ 10. Despite the prior tension between Judge Halliday and Mr. Smith, Mr. Smith has not established that the judge is biased or that his frustrations have so infected the underlying case that a disinterested observer might reasonably question the judge's ability to evaluate fairly and objectively Mr. Smith's legal interests. This conclusion is bolstered by the neutral tone and content of Judge Halliday's response to the affidavit of disqualification.

{¶ 10} The affidavit of disqualification is denied. The case may proceed before Judge Halliday.
