

IN RE DISQUALIFICATION OF HAWKINS.

IN RE BENDER AND BENDER.

**[Cite as *In re Disqualification of Hawkins*, 165 Ohio St.3d 1256,
2021-Ohio-4360.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Disqualification denied.

(No. 21-AP-116—Decided October 8, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
Domestic Relations and Juvenile Division, Case No. 18 DR 002983.

O’CONNOR, C.J.

{¶ 1} Jennifer A. Nielsen, counsel for the petitioner, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Monica Hawkins from the above-referenced domestic-relations matter.

{¶ 2} Ms. Nielsen claims that she suffers from “Long Covid” and that this condition leaves her at a high risk of severe consequences if she contracts another COVID-19 infection. Ms. Nielsen also alleges that her minor child is at an increased risk for complications if he contracts COVID-19. According to Ms. Nielsen, Judge Hawkins refused to continue a three-day trial scheduled for September 2021 and refused to conduct the trial by remote technology.¹ Ms. Nielsen believes that the judge’s decision requiring her to appear in person jeopardizes her health and welfare and that of her child, especially considering the

1. After Ms. Nielsen filed this affidavit of disqualification, the trial did not go forward as scheduled.

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recent rise in COVID-19 infections due to the Delta variant. Ms. Nielsen also states that Judge Hawkins’s courtroom procedures conflict with court-wide COVID-19 administrative orders applicable to all domestic-relations-court judges and that Judge Hawkins has failed to update her courtroom procedures to account for the highly contagious nature of the Delta variant. For example, Ms. Nielsen alleges that Judge Hawkins permits fully vaccinated individuals to appear without masks, despite guidance from the Centers for Disease Control and Prevention (“CDC”) stating that fully vaccinated people can contract and spread the Delta variant. Ms. Nielsen believes that Judge Hawkins must be disqualified to avoid any appearance of bias.

{¶ 3} Judge Hawkins submitted a response to the affidavit and denies any bias against Ms. Nielsen. Judge Hawkins states that she refused to continue the September trial because she had already continued the matter on three prior occasions, the motion to be heard has been pending for over two years, and Ms. Nielsen did not provide any medical verification in support of her argument. The judge further notes that Ms. Nielsen requested that the entire trial be conducted by remote technology—not simply that she be permitted to individually appear by such technology. The defendant’s counsel, according to the judge, opposed proceeding by Zoom, and the judge determined that she wanted the ability to evaluate in person the credibility of the witnesses. Judge Hawkins states that Ms. Nielsen could have requested to be permitted to appear by phone or video and could have had her law partner appear in person. Judge Hawkins further states that she has complied with her court’s administrative orders and that the health and safety of those who appear in her courtroom continues to be a paramount concern.

{¶ 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. 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.

{¶ 5} Ms. Nielsen has not established that Judge Hawkins has hostile feelings toward her or that the judge has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Ms. Nielsen set forth a compelling argument for disqualifying Judge Hawkins to avoid an appearance of partiality. The chief justice previously recommended that judges follow current CDC guidance regarding the masking of individuals in public indoor settings—although the chief justice also recognized that there are times when it is appropriate for physically distanced attorneys to remove masks during a trial, such as when they are making opening or closing statements or examining witnesses.² “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.” *In re*

2. See September 15, 2021 Letter to Ohio Judges Regarding the NCSC Report on Maintaining a Safe and Secure Courthouse During and After a Pandemic, available at <https://www.supremecourt.ohio.gov/coronavirus/resources/ChiefCommunications/safeSecureCourthouse.pdf> (accessed Nov. 17, 2021) [<https://perma.cc/SG7R-D5KP>].

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Disqualification of Mallory, 165 Ohio St.3d 1282, 2021-Ohio-3572, 180 N.E.3d 1182, ¶ 8.

{¶ 6} Judge Hawkins states that she limits the number of people in her courtroom, maintains appropriate sanitation, has installed numerous Plexiglass dividers throughout her courtroom, and has otherwise complied with her court's COVID-19 administrative orders. Based on this record, Ms. Nielsen has not established that Judge Hawkins has disregarded her health and welfare or otherwise endangered the health of those who enter the judge's courtroom to the extent that disqualification is necessary. *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, had failed to sufficiently explain the urgency of going forward with the jury trials at that particular stage of the COVID-19 pandemic, and had failed to employ remote technology to reduce the flow of people through the courthouse).

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