

IN RE DISQUALIFICATION OF SCOTT.

THE CITY OF CLEVELAND v. CROCKETT.

[Cite as *In re Disqualification of Scott*, 165 Ohio St.3d 1262, 2021-Ohio-4383.]

Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Disqualification denied.

(No. 21-AP-119—Decided October 27, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Cleveland Municipal Court, Housing
Division, Case No. 2017 CRB 001271.

O’CONNOR, C.J.

{¶ 1} Kimberly J. Bolton, counsel for the defendant, 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 W. Moná Scott from the above-referenced case. This is the second affidavit of disqualification that Ms. Bolton has filed against Judge Scott. Ms. Bolton’s first affidavit was dismissed as untimely in an entry dated September 9, 2021. *See* Supreme Court case No. 21-AP-118.

{¶ 2} In her present affidavit, Ms. Bolton claims that Judge Scott is biased against her and the defendant for several reasons. First, Ms. Bolton alleges that at a July 15, 2021 hearing, Judge Scott made comments indicating that she had predetermined that Ms. Bolton was guilty of contempt of court. Second, Ms. Bolton suggests that a court employee tampered with an audio recording of the July 15 hearing. Third, Ms. Bolton alleges that Judge Scott attempted to harass and embarrass her by serving her with a notice of the contempt hearing at Ms. Bolton’s place of employment. Fourth, Ms. Bolton alleges that the judge demonstrated bias against the defendant by claiming that he had failed to appear for the July 15

hearing, even though the judge knew that the defendant had attempted to appear via Zoom but was unable to connect his audio.

{¶ 3} Judge Scott submitted a response to the affidavit in which she thoroughly details her handling of the underlying matter and denies any bias. In response to Ms. Bolton’s specific arguments, Judge Scott states that despite her comments on July 15, she gave Ms. Bolton the opportunity to explain herself at a subsequent contempt hearing and decided against sanctioning Ms. Bolton for failing to appear at the July 15 hearing. The judge also states that her court produced to Ms. Bolton an audio recording of the July 15 hearing without any alterations. And the judge explains her reasons for serving Ms. Bolton with a notice of the contempt hearing at her place of employment and explains why she concluded that the defendant had failed to appear for the July 15 hearing.

{¶ 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. Bolton has not established that Judge Scott has hostile feelings toward her or the defendant or that the judge has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Ms. Bolton set forth a compelling argument for disqualifying Judge Scott to avoid an appearance of partiality. A review of the record indicates that at the July 15 and 19 hearings, Judge Scott expressed frustration with Ms. Bolton's and the defendant's failure to either appear for or participate in the July 15 hearing. But despite the judge's comments, she gave the defendant and Ms. Bolton the appropriate notice and opportunity to be heard and ultimately decided against sanctioning them for failing to appear. "[I]n general, the fact that a judge found a litigant in contempt—or threatened contempt—does not mean that the judge has lost the ability to remain impartial." *In re Disqualification of Yarbrough*, 157 Ohio St.3d 1228, 2019-Ohio-4450, 134 N.E.3d 1233, ¶ 7. Further, given Judge Scott's explanations about the audio recording of the July 15 hearing, Ms. Bolton has failed to establish that the judge tampered with any record in such a manner that would warrant her removal for bias or an appearance of bias. Ms. Bolton's allegations appear to be based on speculation, and "[a]llegations that are based solely on hearsay, innuendo, and speculation * * * are insufficient to establish bias or prejudice," *In re Disqualification of Flanagan*, 127 Ohio St.3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4. Similarly, Judge Scott adequately explained why she delivered the notice of the contempt hearing to Ms. Bolton's place of employment, and Ms. Bolton's unsubstantiated belief that the judge intended to embarrass her is insufficient to remove the judge for bias.

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge Scott.
