

IN RE DISQUALIFICATION OF DESANTO KELLOGG.

IN RE ESTATE OF WORKMAN.

**[Cite as *In re Disqualification of DeSanto Kellogg*, 165 Ohio St.3d 1248,
2021-Ohio-4384.]**

Judges—Affidavits of disqualification—R.C. 2701.03—A judge may not preside over a case in which judge’s father is acting as an attorney—No basis to formally disqualify a judge when another judge has been assigned to preside over the case—Certificate of assignment must be placed in the case file—Affidavit dismissed.

(No. 21-AP-120—Decided September 14, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Ashland County Court of Common Pleas,
Probate and Juvenile Division, Case No. 2021 1184.

O’CONNOR, C.J.

{¶ 1} Andrew P. Lycans, counsel for an applicant to administer the estate, has filed an affidavit pursuant to R.C. 2701.03 and 2101.39 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Karen DeSanto Kellogg from the above-referenced case.

{¶ 2} Mr. Lycans claims that Judge DeSanto Kellogg’s father is acting as an attorney in the matter and that retired Judge Damian J. Vercillo recently issued an entry scheduling a hearing. Mr. Lycans further asserts that although it appears that Judge DeSanto Kellogg may have informally recused herself, there is nothing in the record confirming the judge’s recusal, indicating that the judge requested the assignment of a visiting judge, or demonstrating that the chief justice assigned Judge Vercillo to the matter. Mr. Lycans states that he filed this affidavit to

formally remove Judge DeSanto Kellogg because he is not aware of a rule or guideline that would allow her to appoint a replacement judge.

{¶ 3} Judge DeSanto Kellogg may not preside over a case in which her father is acting as an attorney. *See* Jud.Cond.R. 2.11(A)(2). In addition, a disqualified or recused judge ordinarily should not select his or her successor. *See In re Disqualification of Kiger*, 156 Ohio St.3d 1232, 2019-Ohio-851, 125 N.E.3d 960, ¶ 6; Supreme Court of Ohio, *Guidelines for Assignment of Judges*, Section 2.03 (in the event of the recusal of a judge in a single-judge court, the “judge shall not request the Chief Justice to assign a specific sitting or retired judge”).¹

{¶ 4} Here, the chief justice assigned retired Judge Vercillo to preside over cases in which Judge DeSanto Kellogg has a conflict. Most recently, the chief justice issued Certificate of Assignment No. 21JA2052, which assigned Judge Vercillo to preside over the Ashland County Court of Common Pleas, Probate and Juvenile Division, for the period of August 11, 2021, through November 15, 2021, and authorized him to conclude any proceedings in which he participated that are pending at the end of the assignment period. A filed-stamped copy of the certificate of assignment should be placed in the case file of every matter considered by Judge Vercillo pursuant to the certificate. *See Guidelines for Assignment of Judges* at Section 5.01(B)(2) (requiring the administrative judge to direct a copy of the filed-stamped certificate be placed in the case file of every matter considered by the assigned judge pursuant to the certificate).

{¶ 5} Because it appears that Judge Vercillo is presiding over the underlying case pursuant to Certificate of Assignment No. 21JA2052, there is no basis to formally disqualify Judge DeSanto Kellogg. The affidavit of disqualification is therefore dismissed.

1. Available at <https://www.supremecourt.ohio.gov/JCS/judicialAssignment/judgeAssignGuide.pdf> (accessed Sept. 13, 2021) [<https://perma.cc/HLA2-L5GB>].