

**IN RE DISQUALIFICATION OF HELMICK.**

**THE STATE OF OHIO v. SCOTT.**

**[Cite as *In re Disqualification of Helmick*, 165 Ohio St.3d 1272,  
2021-Ohio-4410.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Trial judges are entitled to express disagreement with an attorney’s apparent dilatory tactics—Disqualification denied.*

(No. 21-AP-125—Decided September 27, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Municipal Court Case  
Nos. 20 CRB 11209 and 20 TRD 12769.

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**O’CONNOR, C.J.**

{¶ 1} Jennifer M. Kinsley, counsel for the defendant, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 and 2701.031 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Bertha Garcia Helmick from the above-referenced cases, now pending for trial.

{¶ 2} Ms. Kinsley claims that Judge Helmick is biased against her and the defendant. Ms. Kinsley primarily alleges that the judge (1) attacked her in a filing in a related writ action that she had filed against the judge, (2) berated her at a September 13, 2021 hearing, (3) unfairly granted the prosecutor’s requests for continuances but required her to return early from a vacation to appear for a scheduled trial, and (4) expressed an opinion during a September 15 hearing suggesting prejudgment of the defendant’s guilt.

{¶ 3} Judge Helmick submitted a response to the affidavit in which she denied any bias and detailed her handling of the cases. The judge also submitted transcripts of the September 13 and September 15 hearings.

{¶ 4} For the reasons explained below, Ms. Kinsley has not established that Judge Helmick’s disqualification is necessary.

*Timing of the affidavit*

{¶ 5} R.C. 2701.03(B) requires that an affidavit of disqualification be filed “not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled.” This statutory deadline may be set aside only “when compliance with the provision is impossible,” such as when the alleged bias or prejudice occurs fewer than seven days before the hearing date. *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999). Here, Ms. Kinsley filed her affidavit of disqualification on September 16, 2021, the day of the next scheduled hearing. She avers, however, that the events giving rise to the affidavit occurred within the previous seven days. Indeed, her affidavit alleges that Judge Helmick demonstrated bias in her September 9 entry denying Ms. Kinsley’s motion for a continuance and during the September 13 and September 15 hearings. Considering Ms. Kinsley’s averments, the clerk properly accepted the affidavit for filing despite the seven-day requirement of R.C. 2701.03(B). *See In re Disqualification of Squire*, 110 Ohio St.3d 1202, 2005-Ohio-7157, 850 N.E.2d 709, ¶ 3; *In re Disqualification of Adkins*, 155 Ohio St.3d 1308, 2018-Ohio-5438, 122 N.E.3d 193, ¶ 8.

*Merits of the affidavit of disqualification*

{¶ 6} 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.” (Ellipsis sic.) *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.

{¶ 7} Upon review of Judge Helmick’s filings in the related writ case, the transcripts for the September 13 and September 15 hearings, and the other exhibits submitted with Ms. Kinsley’s affidavit, she has not established that Judge Helmick has hostile feelings toward her or that the judge has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has Ms. Kinsley set forth a compelling argument for disqualifying Judge Helmick to avoid an appearance of partiality. For example, Ms. Kinsley believes that Judge Helmick berated her at the September 13 hearing. But trial judges are entitled to express disagreement with what they perceive as an attorney’s dilatory tactics. *See In re Disqualification of Russo*, 163 Ohio St.3d 1252, 2021-Ohio-1246, 169 N.E.3d 692, ¶ 7. Nothing in the record establishes that Judge Helmick has prejudged the defendant’s guilt or lost the ability to remain impartial.

{¶ 8} The affidavit of disqualification is denied. The cases may proceed before Judge Helmick.

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