

IN RE DISQUALIFICATION OF RICKETT.

THE STATE OF OHIO v. CLARK.

**[Cite as *In re Disqualification of Rickett*, 165 Ohio St.3d 1259,
2021-Ohio-4411.]**

Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Although affiant had directed vulgarities toward judge, mere fact that judge issued a contempt citation against affiant does not require judge’s disqualification from underlying case—Disqualification denied.

(No. 21-AP-129—Decided October 12, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Wayne County Municipal Court Case No.
2020 CR-B 001081.

O’CONNOR, C.J.

{¶ 1} Defendant Joseph Clark has filed an affidavit and an amended affidavit pursuant to R.C. 2701.03 and 2701.031 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Michael W. Rickett from the above-referenced case. This is Mr. Clark’s third affidavit of disqualification against Judge Rickett. His prior affidavits were denied in entries dated September 3, 2021, and September 15, 2021. *See* Supreme Court case Nos. 21-AP-107 and 21-AP-121.

{¶ 2} On September 23, 2021, Judge Rickett issued an entry notifying Mr. Clark of two counts of contempt of court and indicating that the matter would be set for a hearing. In his present affidavits, Mr. Clark alleges that a judge who initiates contempt charges against a defendant cannot also serve as the judge deciding those charges—especially if the charges are based on personal insults and

attacks against the judge. Mr. Clark also alleges that he intends to call Judge Rickett as a witness at the contempt hearing.

{¶ 3} Judge Rickett submitted a response to the affidavit and denies any bias against Mr. Clark. The judge further states that he was required by law to give Mr. Clark written notice of the indirect contempt charges against him.

{¶ 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} Mr. Clark has not established that Judge Rickett has hostile feelings toward him or that the judge has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Clark set forth a compelling argument for disqualifying Judge Rickett to avoid an appearance of partiality. It is well settled that “[j]udges are vested with inherent authority to issue contempt citations to compel obedience with court orders.” *In re Disqualification of Grossman*, 77 Ohio St.3d 1246, 674 N.E.2d 357 (1996); *see also In re Disqualification of Corrigan*, 144 Ohio St.3d 1261, 2016-Ohio-179, 45 N.E.3d 1010, ¶ 6 (“A trial court has the

requisite authority to hold a party in contempt for failure to comply with the court's orders * * *"). Contrary to Mr. Clark's contention, the mere fact that Judge Rickett issued a contempt citation does not mean that he may not continue presiding over the underlying case.

{¶ 6} Mr. Clark is correct that under certain circumstances, a judge who institutes contempt charges should not also decide the question of the alleged contemnor's guilt or innocence. This court has noted that "the appointment of another judge to hear the evidence is warranted where the alleged contempt takes the form of personal insult or vilification of the judge, so that there would exist the possibility of bias should the victim of such abuse pass judgment on the evidence." *State v. Weiner*, 37 Ohio St.2d 11, 13, 305 N.E.2d 794 (1974), citing *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971). "An accused contemnor has the right to an impartial judge who has not become personally embroiled in the contempt issue." *State v. Daly*, 2d Dist. Clark No. 06-CA-20, 2006-Ohio-6818, ¶ 52; *see also Cleveland v. Bright*, 2020-Ohio-5180, 162 N.E.3d 153, ¶ 3 (8th Dist.), quoting *id.* ("Although judges have inherent and statutory contempt powers to prevent the obstruction of the administration of justice, judges are not supposed to abuse this power when they become 'personally embroiled' with defendants who appear before them").

{¶ 7} Here, the contempt charges are based, at least in part, on Mr. Clark's alleged disobedience of a court order and of his bond requirements. Although Mr. Clark is also alleged to have directed vulgarities toward the trial judge, Mr. Clark's language is not the kind of personal attack or vilification that would cause an objective observer to question Judge Rickett's ability to maintain the neutral detachment necessary for fair adjudication. There is no evidence suggesting that Judge Rickett has become personally embroiled or involved with Mr. Clark, nor is there evidence indicating that the judge was personally offended by or had an emotional reaction to Mr. Clark's vulgar language. "As the United States Supreme

Court stated in *Mayberry*, ‘a judge cannot be driven out of a case.’ ” *In re Disqualification of Donofrio*, 135 Ohio St.3d 1253, 2012-Ohio-6338, 986 N.E.2d 13, ¶ 7, quoting *Mayberry* at 464; *see also In re Disqualification of Crawford*, 135 Ohio St.3d 1280, 2013-Ohio-1410, 986 N.E.2d 1003, ¶ 7, quoting *Mayberry* at 465 (“there is no suggestion in the record that Judge Crawford has become so ‘personally embroiled’ with [the affiant] as to make the judge unfit to sit in judgment on the contempt charges”).

{¶ 8} In addition, “it is well settled that a judge’s disqualification is not warranted ‘based solely on suppositions that the judge may be called as a witness.’ ” *In re Disqualification of McIntosh*, 152 Ohio St.3d 1274, 2017-Ohio-9434, 99 N.E.3d 409, ¶ 5, quoting *In re Disqualification of Gorman*, 74 Ohio St.3d 1251, 657 N.E.2d 1354 (1993). Mr. Clark has not explained why Judge Rickett will be a necessary witness at the contempt hearing or why the information sought to be obtained through the judge’s testimony could not be obtained from another source. *See also Weiner* at 13 (“Because it was proper for Judge Zimmers to conduct the hearing, [the] appellant’s attempt to call him as a witness was properly rejected”).

{¶ 9} The affidavit of disqualification is denied.
