

IN RE DISQUALIFICATION OF BROWNE.

WALTON v. SMITH.

[Cite as *In re Disqualification of Browne*, 165 Ohio St.3d 1275,
2021-Ohio-4478.]

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

(No. 21-AP-133—Decided October 12, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
Domestic Relations and Juvenile Division, Case No. 21DV-07-1268.

O’CONNOR, C.J.

{¶ 1} Samuel H. Shamansky, counsel for the respondent, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Kim A. Browne from the above-referenced case.

{¶ 2} Mr. Shamansky alleges that based on Judge Browne’s conduct in an unrelated 2017 matter, it is reasonable to infer that the judge is biased against him and that her impartiality in the underlying matter may be questioned.

{¶ 3} Judge Browne submitted a response to the affidavit and denies any bias against the parties or their counsel. She asserts that Mr. Shamansky is effectively requesting a blanket order of recusal based on events that took place more than four years ago. The judge, however, sees no reason to recuse herself from Mr. Shamansky’s cases.

{¶ 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. Shamansky has not established that Judge Browne 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. Shamansky set forth a compelling argument for disqualifying Judge Browne to avoid an appearance of partiality. In 2018, Mr. Shamansky filed two affidavits of disqualification against Judge Browne relating to the incident that serves as the basis for his underlying affidavit. In response to the prior affidavits, Judge Browne recused herself from two of Mr. Shamansky’s then pending cases. But judges “are presumed to be capable of putting aside old disagreements with former opposing counsel and attorneys appearing before them.” *In re Disqualification of Burge*, 136 Ohio St.3d 1205, 2013-Ohio-2726, 991 N.E.2d 237, ¶ 13. Without more, the events from four years ago are insufficient to warrant Judge Browne’s disqualification from the underlying matter involving Mr. Shamansky. *See, e.g., In re Disqualification of Saffold*, 159 Ohio St.3d 1210, 2020-Ohio-1530, 148 N.E.3d 602, ¶ 6 (a judge’s recusal “from an earlier case involving a particular attorney does not *automatically* require the

judge's disqualification from all other cases involving that attorney" [emphasis sic]).

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