

**IN RE DISQUALIFICATION OF BONFIGLIO.**

**THE STATE OF OHIO v. ROFKAR.**

**[Cite as *In re Disqualification of Bonfiglio*, 166 Ohio St.3d 1219,  
2021-Ohio-4669.]**

*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-140—Decided November 23, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Sylvania Municipal Court Case Nos.  
TRC2001263 A, B, and C.

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**O’CONNOR, C.J.**

{¶ 1} Matthew E. Exton, 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 Michael A. Bonfiglio from the above-referenced operating-a-vehicle-while-intoxicated (“OVI”) cases.

{¶ 2} Mr. Exton avers that Judge Bonfiglio has a conflict of interest and that an appearance of impropriety would exist if he continues presiding over the underlying matters. According to Mr. Exton, the court’s file for the cases contains unlawfully submitted evidence—namely, the police report from the defendant’s OVI stop.

{¶ 3} Judge Bonfiglio submitted a response to the affidavit and requests that it be denied. The judge disputes the allegation that police reports are unlawfully submitted to the court. According to Judge Bonfiglio, case-initiating documents often include police reports and such reports have been part of the Sylvania Municipal Court’s files for over 30 years. The mere fact that the case file here

includes a copy of the police report, Judge Bonfiglio believes, does not mean that he is biased. And Mr. Exton, the judge states, has had access to the court’s physical file at every court appearance.

{¶ 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. Mr. Exton has not established that Judge Bonfiglio has hostile feelings toward the defense or that he has formed a fixed anticipatory judgment on any issue in the underlying cases. Nor has Mr. Exton set forth a compelling argument for disqualifying Judge Bonfiglio to avoid an appearance of partiality.

{¶ 5} A similar issue arose in *In re Disqualification of Forchione*, 155 Ohio St.3d 1254, 2018-Ohio-5437, 120 N.E.3d 855, in which the defense counsel argued that a judge had a pretrial policy of having the prosecutor submit ex parte documents—including the police report—before the court’s initial pretrial conference in a case. The chief justice noted that the “Code of Judicial Conduct directs, ‘[T]o the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.’ ” *Id.* at ¶ 7, quoting Jud.Cond.R. 2.9,

Comment 1. Therefore, Judge Forchione should have ensured that if parties submitted documents to him, “they include[d] all other parties or their counsel in those communications.” *Id.* However, the issue in disqualification requests is “narrow” and “focused on the ability of a judge to fairly and impartially preside over a particular case.” *Id.* In *Forchione*, the defense counsel failed to sufficiently explain why the judge’s receipt of documents, such as a police report, a few days before the defense demonstrated bias or otherwise required the judge’s disqualification.

{¶ 6} The same reasoning applies here. Mr. Exton has failed to sufficiently explain why the police report’s inclusion in the case file means that Judge Bonfiglio cannot impartially preside over the underlying cases. A judge “is presumed to be capable of separating what may properly be considered from what may not be considered.” *In re Disqualification of Basinger*, 135 Ohio St.3d 1293, 2013-Ohio-1613, 987 N.E.2d 687, ¶ 5. The issue here is narrow and limited to determining whether a judge is biased; this is not the appropriate forum in which to opine on the propriety of a municipal court’s policies for initiating a case. Mr. Exton has failed to establish that Judge Bonfiglio is biased or that an appearance of impropriety would exist if he continued presiding over the underlying matters.

{¶ 7} The affidavit of disqualification is denied. The cases may proceed before Judge Bonfiglio.

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