

IN RE DISQUALIFICATION OF STORMER.

IN RE GUARDIANSHIP OF JENKINS.

**[Cite as *In re Disqualification of Stormer*, 166 Ohio St.3d 1203,
2021-Ohio-4671.]**

Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.39—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—In general, a judge will not be disqualified merely for voicing disapproval of an attorney’s actions or for interrogating the attorney in what the attorney considers a confrontational tone—Disqualification denied.

(No. 21-AP-147—Decided November 2, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Summit County Court of Common Pleas,
Probate Division, Case No. 2020 GA 00324.

O’CONNOR, C.J.

{¶ 1} Michael K. Ashar, attorney for the proposed ward, 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 Elinore Marsh Stormer from the above-referenced guardianship case.

{¶ 2} Mr. Ashar alleges that Judge Stormer is biased in various respects. Primarily, he avers that the judge has predetermined the issue of the proposed ward’s competency and acted with open hostility toward him at September and October 2021 hearings.

{¶ 3} Judge Stormer submitted a response to the affidavit in which she details her handling of the underlying case and denies any hostility toward or bias against Mr. Ashar. The judge affirms that she will decide the competency and guardianship issues based on the evidence submitted at the upcoming hearing. The

judge has submitted audio files of the prior hearings and has filed a separate motion for an emergency ruling on the affidavit of disqualification.

{¶ 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} Upon review of the audio files and other documents in the record, Mr. Ashar has not established that Judge Stormer 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. Ashar set forth a compelling argument for disqualifying Judge Stormer to avoid an appearance of partiality. Although Judge Stormer has expressed frustration with Mr. Ashar, no objective observer would conclude that she is unable to impartially preside over this guardianship case. In general, a judge will not be disqualified merely for voicing disapproval of an attorney’s actions or for interrogating the attorney in what the attorney considers a confrontational tone.

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

January Term, 2022
