

IN RE DISQUALIFICATION OF BRUDZINSKI.

THE STATE OF OHIO v. MENZIL.

**[Cite as *In re Disqualification of Brudzinski*, 166 Ohio St.3d 1205,
2021-Ohio-4672.]**

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-150—Decided November 30, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Fremont Municipal Court Case Nos. TRC 2101899 A, B, and C and CRB2100627.

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 Daniel L. Brudzinski from the above-referenced operating-a-vehicle-while-intoxicated and criminal cases.

{¶ 2} Mr. Exton avers that Judge Brudzinski has a conflict of interest and that an appearance of impropriety would exist if he continued presiding over the underlying matters. According to Mr. Exton, the court’s case file includes unlawfully submitted evidence—namely, the police report and other materials—and the clerk of the municipal court provided ex parte copies of such materials to the prosecutor’s office. Based on the court’s practices, Mr. Exton does not believe that Judge Brudzinski can maintain his impartiality.

{¶ 3} Judge Brudzinski submitted a response to the affidavit and requests that it be denied. The judge denies that the court’s files include unlawful evidence and that the presence of materials such as the police report in the file means that he

is biased. According to the judge, the clerk of the municipal court has a longstanding policy of accepting for filing police reports and other materials that law enforcement files with its complaint. If a defendant enters a not-guilty plea—as the defendant in these matters has done—copies of the court’s file are forwarded to the prosecutor’s office in order to commence prosecution. Judge Brudzinski further notes that he has not yet reviewed the police report or impaired-driver report in the underlying matters. And he acknowledges that he may consider as evidence only materials properly admitted during an evidentiary hearing, which has not yet occurred in the underlying 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.” (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. Mr. Exton has not established that Judge Brudzinski 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 Brudzinski to avoid an appearance of partiality.

{¶ 5} Mr. Exton recently filed a similar affidavit of disqualification against the judge of the Sylvania Municipal Court. In denying that disqualification request, the chief justice explained:

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.

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.

In re Disqualification of Bonfiglio, 166 Ohio St.3d 1219, 2021-Ohio-4669, 185 N.E.3d 117, ¶ 5-6.

{¶ 6} Similarly, this is not the appropriate forum in which to opine on the propriety of the case-initiating policies of the Fremont Municipal Court or the prosecuting attorney's office. To the extent that the municipal court is forwarding materials to the prosecutor's office, all parties should be copied on such communications. But the mere fact that the court's files include case-initiating documents, such as a police report, does not mean that Judge Brudzinski is unable to impartially preside over the underlying cases. Judge Brudzinski has acknowledged that evidence must be properly admitted and that no evidence has been admitted in the underlying matters.

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