

IN RE DISQUALIFICATION OF CORRIGAN.

THE STATE OF OHIO v. BUEHNER.

**[Cite as *In re Disqualification of Corrigan*, 167 Ohio St.3d 1205,
2022-Ohio-1329.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiants failed to demonstrate bias, prejudice, or appearance of impropriety—Disqualification denied.

(No. 22-AP-006—Decided February 17, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas, General Division, Case No. CR-02-417994.

O’CONNOR, C.J.

{¶ 1} Defendant Michael Buehner and his attorney, Russell A. Randazzo, have filed affidavits pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Peter J. Corrigan from the above-referenced case.

Background

{¶ 2} In 2002, a jury found Mr. Buehner guilty of two counts of murder and the trial court sentenced him to a prison term of 18 years to life. In 2014, Mr. Buehner filed several motions for leave to file a motion for new trial, arguing that the state had violated his due-process rights by failing to produce certain evidence. In August 2017, Judge Corrigan denied Mr. Buehner’s motions. In November 2018, the Eighth District Court of Appeals reversed the judgment and remanded the case for Judge Corrigan to consider whether the newly discovered exculpatory evidence was material under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10

L.Ed.2d 215 (1963). *See State v. Buehner*, 8th Dist. Cuyahoga No. 106319, 2018-Ohio-4432.

{¶ 3} In November 2019, Judge Corrigan held the required *Brady* hearing. When the judge had not issued a decision by mid-February 2020, the affiants filed a complaint for a writ of procedendo against the judge. About two months later, Judge Corrigan issued a decision denying Mr. Buehner’s motion for new trial. In December 2021, the Eighth District reversed the judgment and remanded the case for a new trial. The court of appeals concluded that based on the evidence alleged to have been withheld, there was a reasonable probability that the jury would have reached a different decision if the exculpatory evidence had been disclosed. *See State v. Buehner*, 8th Dist. Cuyahoga No. 109699, 2021-Ohio-4435.

{¶ 4} On remand, Judge Corrigan held two bond hearings and set Mr. Buehner’s bond at \$250,000. After the second bond hearing, Mr. Randazzo filed the affidavits of disqualification. Mr. Buehner posted bond and was released.

{¶ 5} In his affidavit, Mr. Buehner asserts that Judge Corrigan unnecessarily delayed his case in order to prolong his incarceration. As evidence, Mr. Buehner points to the judge’s three-year delay in deciding the 2014 motion for new trial. Mr. Buehner also claims that because of his February 2020 writ complaint against Judge Corrigan, he and the judge are in an adversarial relationship and the judge cannot be impartial toward him.

{¶ 6} In his affidavit, Mr. Randazzo primarily asserts that the bond amount set by Judge Corrigan was unreasonable and therefore demonstrates judicial bias. Mr. Randazzo also alleges that during a July 2017 in-chambers conference, Judge Corrigan made comments suggesting that he had preconceived notions about the truthfulness of potential witnesses at the *Brady* hearing. In addition, Mr. Randazzo avers that Judge Corrigan “has a dislike” for either him or Mr. Buehner and that the judge’s feelings toward them have clouded his actions.

{¶ 7} Judge Corrigan filed a response to the affidavits and addressed each of the allegations against him. The judge denies any bias against affiants.¹

Merits of the affidavits of disqualification

{¶ 8} 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, 132 N.E.2d 191 (1956), paragraph four of the syllabus. “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.

{¶ 9} For the reasons explained below, Mr. Buehner and Mr. Randazzo have not established that Judge Corrigan has hostile feelings toward them or that the judge has formed a fixed anticipatory judgment on any issue in the underlying case. Nor have affiants set forth a compelling argument for disqualifying Judge Corrigan to avoid an appearance of partiality.

1. After Judge Corrigan submitted his response, Mr. Randazzo filed a supplemental affidavit in which he challenges statements made in Judge Corrigan’s response to the affidavits of disqualification. S.Ct.Prac.R. 21.02(C), however, provides that “[n]o reply to a response from the judge shall be permitted.” Mr. Randazzo cannot circumvent this rule by labeling his filing a “supplemental” affidavit. See *In re Disqualification of Leach*, 164 Ohio St.3d 1244, 2021-Ohio-2321, 173 N.E.3d 530, ¶ 8.

{¶ 10} First, affiants have waived their objections to Judge Corrigan based on the judge’s alleged comments during the July 2017 in-chambers conference and based on affiants’ argument that Judge Corrigan unnecessarily delayed ruling on the 2014 motion for new trial. “An affidavit of disqualification must be filed as soon as possible after the incident giving rise to the claim of bias and prejudice occurred,” and failure to do so may result in waiver of the objection, especially when “the facts underlying the objection have been known to the party for some time.” *In re Disqualification of O’Grady*, 77 Ohio St.3d 1240, 1241, 674 N.E.2d 353 (1996). The affiant has the burden to demonstrate that the affidavit is timely filed. *In re Disqualification of Capper*, 134 Ohio St.3d 1271, 2012-Ohio-6287, 984 N.E.2d 1082, ¶ 11. Affiants have failed to explain why they waited until January 2022 to seek Judge Corrigan’s disqualification based on conduct occurring in or before 2017. Because nothing in the record justifies the delay, affiants have waived the right to disqualify Judge Corrigan based on those allegations. *See, e.g., In re Disqualification of Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6 (“[the affiant’s] delay in filing the affidavit of disqualification constitutes an independent ground for denying his disqualification request”).

{¶ 11} Second, even if affiants had not waived those objections, they have failed to establish that Judge Corrigan must be removed for failing to promptly rule on the 2014 motion or for unreasonably delaying the case. In general, a judge’s alleged failure to provide timely rulings on a motion is not a concern that can be addressed through an affidavit of disqualification. *In re Disqualification of Eyster*, 105 Ohio St.3d 1246, 2004-Ohio-7350, 826 N.E.2d 304, ¶ 4. Although “[l]engthy delays diminish confidence in the legal system and are especially injurious when they profoundly affect the lives of those before the court,” *In re Disqualification of Yarbrough*, 160 Ohio St.3d 1244, 2020-Ohio-4439, 155 N.E.3d 963, ¶ 5, affiants here have not established that the delays were solely caused by Judge Corrigan or the product of judicial bias. Nor have affiants proved that Judge Corrigan’s actions

were so egregious that he must be removed for neglecting his judicial duties. *See In re Disqualification of Collier-Williams*, 150 Ohio St.3d 1286, 2017-Ohio-5718, 83 N.E.3d 928, ¶ 7-8.

{¶ 12} Third, the fact that Mr. Buehner filed a writ complaint against Judge Corrigan three months after the *Brady* hearing is not a ground for disqualification. As a general rule, “a judge will not be disqualified solely because a litigant in a case pending before the judge has filed a lawsuit against that judge. To hold otherwise would invite parties to file lawsuits solely to obtain a judge’s disqualification, which would severely hamper the orderly administration of judicial proceedings.” *In re Disqualification of Pokorny*, 135 Ohio St.3d 1268, 2013-Ohio-915, 986 N.E.2d 993, ¶ 4. Although each case must be determined on its own merit and based on the nature of the perceived conflict, nothing about the facts here would cause an objective observer to question Judge Corrigan’s ability to preside fairly over the new trial merely because Mr. Randazzo filed the writ complaint on behalf of Mr. Buehner. Affiants have not alleged that Judge Corrigan has said or done anything that might suggest that the writ complaint will affect his ability to impartially preside over the new trial.

{¶ 13} Fourth, the affiants have not established that the bond amount was the product of judicial bias. Although Mr. Randazzo believes that the amount was unreasonable, reviewing legal errors is not the role of the chief justice in deciding affidavits of disqualification. And a party’s disagreement with a particular ruling cannot supply the evidentiary showing necessary to so reflect upon a judge’s partiality as to mandate disqualification. *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5; *see also In re Disqualification of D’Apolito*, 152 Ohio St.3d 1261, 2017-Ohio-9432, 98 N.E.3d 281, ¶ 6 (the affiant “may have other remedies for her disagreement with how the judge handled her bond hearing, but she has not established that the judge’s actions were the product of bias against her”). Nor does the fact that the court of appeals

reversed Judge Corrigan’s decisions suggest that he is unable to impartially preside over the new trial. “A trial judge’s opinions of law, even if erroneous, are not themselves evidence of bias or prejudice and thus are not grounds for disqualification.” *In re Disqualification of Murphy*, 36 Ohio St.3d 605, 606, 522 N.E.2d 459 (1988).

{¶ 14} Finally, affiants have not established that Judge Corrigan dislikes either of them or that his feelings toward them have clouded his judgment. Indeed, the court of appeals concluded that although it had disagreed with several of Judge Corrigan’s legal conclusions, he issued a thorough decision and “diligently considered the arguments posed by the parties, carefully weighed the credibility of the witnesses, and provided Buehner with a full and fair opportunity to litigate his motion for new trial.” *Buehner*, 2021-Ohio-4435, at ¶ 47.

{¶ 15} The affidavits of disqualification are denied. The case may proceed before Judge Corrigan.
