

**IN RE DISQUALIFICATION OF MYERS, BERGERON, AND CROUSE.**

**HENDERSON v. DEWINE, GOVERNOR, ET AL.**

**[Cite as *In re Disqualification of Myers, Bergeron, and Crouse*, 167 Ohio St.3d 1203, 2022-Ohio-1333.]**

*Judges—Affidavits of disqualification—R.C. 2501.13 and 2701.031—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Disqualification denied.*

(No. 21-AP-164—Decided January 21, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in First District Court of Appeals Case No.  
C 210201.

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**O’CONNOR, C.J.**

{¶ 1} Appellee, S. Adele Shank, who is an attorney, has filed an affidavit pursuant to R.C. 2501.13 and 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Beth A. Myers, Judge Pierre H. Bergeron, and Judge Candace C. Crouse from the above-referenced case in the First District Court of Appeals.

{¶ 2} On November 24, 2021, the appellate judges affirmed the trial court’s dismissal of a case brought against Ms. Shank by one of her former clients. Ms. Shank claims, however, that the court’s opinion needlessly included an inaccurate and irrelevant summary of the plaintiff’s allegations against her. She avers that by including the plaintiff’s unproved and sensational allegations, the appellate judges gave the false impression that the plaintiff had potentially viable claims and either demonstrated bias against Ms. Shank or created an appearance of bias. The judges also demonstrated bias, Ms. Shank asserts, by changing the case’s caption to focus on her name—although there were multiple defendants named before her—and by

failing to correct the case caption and the other alleged errors in the court’s opinion even after she filed motions requesting the court to do so.

{¶ 3} Judge Myers, Judge Bergeron, and Judge Crouse submitted a joint response in which they deny any bias against Ms. Shank. Ms. Shank, the judges contend, has misread the court’s opinion, which merely summarized the plaintiff’s *allegations* in his complaint. Nothing in the opinion, the judges believe, indicates any bias against Ms. Shank. The judges acknowledge committing a “scrivener’s error” in the case caption of the opinion. But they further state that the court corrected the case caption—both in an entry and on the court’s website. The judges also state that Ms. Shank filed her affidavit of disqualification before the court had adequate time to consider the motions she filed after release of the court’s opinion.

{¶ 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, 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.

{¶ 5} Ms. Shank has not established that Judge Myers, Judge Bergeron, or Judge Crouse have hostile feelings toward her or that the judges have formed a

fixed anticipatory judgment on any issue in the underlying case. Nor has Ms. Shank set forth a compelling argument for disqualifying the judges to avoid an appearance of partiality. Although it appears that the plaintiff's specific allegations against Ms. Shank were not necessary to the court of appeals' analysis, the fact that the court included those allegations in its opinion does not mean that the judges are biased against Ms. Shank. Contrary to Ms. Shank's contention, the opinion does not suggest that the allegations were valid; indeed, the court of appeals ruled in Ms. Shank's favor by affirming the dismissal of the complaint. Further, the court has acknowledged the error in the case caption and corrected the mistake. Ms. Shank has not established that the court's opinion or the judges' conduct was the product of bias against her. Nor has she set forth any reason to disqualify the judges at this late stage of the appellate process.

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge Myers, Judge Bergeron, and Judge Crouse.

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