

**IN RE DISQUALIFICATION OF CLARK.**

**ESTATE OF WELCH ET AL. v. TAYLOR ET AL.**

**[Cite as *In re Disqualification of Clark*, 168 Ohio St.3d 1207,  
2022-Ohio-2120.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2101.39—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Disqualification denied.*

(No. 22-AP-021—Decided April 27, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Clinton County Court of Common Pleas,  
Probate and Juvenile Division, Case No. 2017-4001.

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**O’CONNOR, C.J.**

{¶ 1} Craig T. Matthews, counsel for the plaintiffs, 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 Margaret A. Clark, a retired judge sitting by assignment, from the above-referenced case.

{¶ 2} Mr. Matthews avers that for several reasons, Judge Clark is biased against him and the plaintiffs. He primarily argues that the judge has misunderstood or misconstrued the nature of the parties’ discovery disputes and, as a result, has unfairly prevented the plaintiffs from conducting meaningful discovery and “upended the mandate from the court of appeals.” Mr. Matthews further alleges that at hearings, the judge has advocated for the defendant and requested defense counsel to draft proposed entries for the judge’s signature.

{¶ 3} Judge Clark submitted an original and a supplemental response to the affidavit of disqualification. The judge asserts that Mr. Matthews’s affidavit omits certain facts relating to the parties’ discovery disputes. The judge also denies that

she has prevented Mr. Matthews from conducting depositions and believes that she has complied with all orders from the court of appeals.

{¶ 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. For the reasons explained below, Mr. Matthews has not established that Judge Clark has hostile feelings toward him or the plaintiffs or that the judge has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Matthews set forth a compelling argument for disqualifying Judge Clark to avoid an appearance of partiality.

{¶ 5} “Trial judges are entitled to exercise considerable discretion in the management of cases on their dockets, especially in discovery matters, and any alleged abuse of that discretion should be remedied on appeal, not in an affidavit-of-disqualification proceeding.” *In re Disqualification of Holbrook*, 138 Ohio St.3d 1206, 2013-Ohio-5863, 3 N.E.3d 201, ¶ 7. Although Mr. Matthews strongly disagrees with the way that Judge Clark has managed discovery in the underlying case, “this is not the appropriate forum in which to review the propriety of a judge’s

discovery decisions,” *In re Disqualification of McMonagle*, 164 Ohio St.3d 1251, 2021-Ohio-2834, 173 N.E.3d 1251, ¶ 5.

{¶ 6} Similarly, “this is not the appropriate forum to determine whether a trial judge’s decision complies with an appellate-court order,” *In re Disqualification of Saffold*, 157 Ohio St.3d 1214, 2019-Ohio-3838, 134 N.E.3d 214, ¶ 4. Judges have, on occasion, “been removed from cases for refusing to comply with mandates from higher courts.” *In re Disqualification of Carr*, 155 Ohio St.3d 1249, 2018-Ohio-5260, 120 N.E.3d 852, ¶ 6, citing *Columbus v. Hayes*, 68 Ohio App.3d 184, 189, 587 N.E.2d 939 (10th Dist.1990) (remanding for further proceedings before a different municipal-court judge when the original sentencing judge, after being reversed, made it clear that he did not intend to follow the mandate of the appeals court by declaring that he would impose the same sentence as before, even if he were reversed ten times). Here, Judge Clark and Mr. Matthews appear to disagree about the meaning of the appellate court’s orders and whether the judge has acted consistently with those orders. It is outside the scope of this matter to decide that issue. Relevant here is the fact that Mr. Matthews has not established that Judge Clark’s actions were the product of bias against him or the plaintiffs.

{¶ 7} Finally, that Judge Clark asked defense counsel to draft proposed entries does not warrant her removal. It is not uncommon for a trial judge, at the end of a hearing, to ask counsel for one side to submit a proposed entry—although such a request should not be made through an ex parte communication. *See, e.g., In re Disqualification of Spitler*, 142 Ohio St.3d 76, 2014-Ohio-5875, 28 N.E.3d 67, ¶ 6 (“a judge’s delegation of the drafting of proposed orders to one party through ex parte contacts *could* create the appearance of impropriety” [emphasis sic]). And ideally, counsel who has been asked to prepare such an entry will provide a copy to opposing counsel to allow for a response before the judge adopts the entry. *See Flamm, Judicial Disqualification*, Section 14.8, at 402-403 (2d

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Ed.2007). Mr. Matthews notes that at two hearings, Judge Clark—in the presence of all counsel—asked Mr. Matthews’s opposing counsel to draft proposed entries. But this fact alone does not establish that the judge is biased against Mr. Matthews or the plaintiffs.

{¶ 8} The affidavit of disqualification is denied. The case may proceed before Judge Clark.

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