

**IN RE DISQUALIFICATION OF BAKER ROSS.**

**THE STATE OF OHIO v. TAYSE.**

**[Cite as *In re Disqualification of Baker Ross*, 168 Ohio St.3d 1245,  
2022-Ohio-2191.]**

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

(No. 22-AP-050—Decided April 27, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Summit County Court of Common Pleas,  
General Division, Case No. 2007-04-1285.

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**O’CONNOR, C.J.**

{¶ 1} Defendant Jimmy Tayse has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Susan Baker Ross from the above-referenced case, now pending on Mr. Tayse’s motion to dismiss for lack of jurisdiction. This is Mr. Tayse’s second affidavit of disqualification regarding the underlying matter. He previously attempted to disqualify Judge Thomas A. Teodosio. That affidavit was denied in an entry dated July 8, 2016. *See* Supreme Court case No. 16-AP-058.

{¶ 2} In his present affidavit, Mr. Tayse alleges that in September 2019, Judge Baker Ross issued an entry dismissing one of his motions and indicated that she would summarily dismiss any future motions filed by him. Mr. Tayse argues that because of the judge’s prior statement, she will be unable to fairly consider his pending motion to dismiss.

{¶ 3} Mr. Tayse, however, waived his objection to Judge Baker Ross’s participation regarding her purported statement in the September 2019 entry. “An

affidavit of disqualification must be filed as soon as possible after the incident giving rise to the claim of bias and prejudice,” 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. Mr. Tayse has failed to explain why he waited until April 2022 to seek Judge Baker Ross’s disqualification based on the September 2019 entry. The trial court’s docket indicates that Mr. Tayse has filed other postconviction motions since September 2019 and, therefore, he could have sought the judge’s disqualification while those motions were pending. Because nothing in the record justifies the delay, Mr. Tayse has waived the right to disqualify Judge Baker Ross based on this allegation. *See, e.g., In re Disqualification of Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6 (“[affiant’s] delay in filing the affidavit of disqualification constitutes an independent ground for denying his disqualification request”).

{¶ 4} In the alternative, even if Mr. Tayse had not waived his objection to Judge Baker Ross, he has failed to set forth sufficient grounds for disqualification. 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} Mr. Tayse has not established that Judge Baker Ross 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. Tayse set forth a compelling argument for disqualifying Judge Baker Ross to avoid an appearance of partiality. The judge's September 2019 entry merely states that the claims raised in Mr. Tayse's motion were barred by the doctrine of res judicata. In the same entry, the judge *denied* the state's motion for sanctions against Mr. Tayse but cautioned him that the time for filing postconviction-relief petitions had expired and that further such motions would be summarily denied. Contrary to Mr. Tayse's contention, the judge's statement does not mean that she would be unable to fairly and impartially consider any future motion properly filed by Mr. Tayse.

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

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