

IN RE DISQUALIFICATION OF MARTIN.

IN RE E.G.

**[Cite as *In re Disqualification of Martin*, 167 Ohio St.3d 1247,
2022-Ohio-2215.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Generally, a trial judge will not be disqualified for a magistrate’s conduct, especially when the affiant failed to ask the trial judge to remove the magistrate—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Disqualification denied.

(No. 22-AP-058—Decided May 25, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Muskingum County Court of Common Pleas, Probate and Juvenile Division, Case Nos. 22120205, 22120239, and 22120240.

O’CONNOR, C.J.

{¶ 1} John Paul Gomez, father of the minor in the above-referenced delinquency cases, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Eric D. Martin from the matters.

{¶ 2} Mr. Gomez primarily alleges that the magistrate presiding over the cases has a conflict of interest and is biased against Mr. Gomez and his son. Mr. Gomez also complains about the conduct of his son’s court-appointed attorneys and alleges that they have colluded with the trial judge and others to delay the son’s cases and to coerce him into entering a change of plea. In addition, Mr. Gomez claims that his son has been illegally detained and that he has been treated unfairly because of his race.

{¶ 3} Judge Martin submitted a response to the affidavit and explained his limited involvement in the underlying cases. Judge Martin further said that Mr. Gomez never filed a motion to disqualify the magistrate.

{¶ 4} For the reasons explained below, no basis has been established to order the disqualification of Judge Martin.

{¶ 5} First, “R.C. 2701.03 does not permit the chief justice to consider claims of bias or prejudice against magistrates.” *In re Disqualification of Celebrezze*, 135 Ohio St.3d 1218, 2012-Ohio-6304, 985 N.E.2d 499, ¶ 8. To remove a magistrate, a litigant should file a motion with the trial court. *See In re Disqualification of Wilson*, 77 Ohio St.3d 1250, 1251, 674 N.E.2d 360 (1996). *Accord* Juv.R. 40(D)(6) (“Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court”). In general, a trial judge will not be disqualified for a magistrate’s conduct—especially when the affiant failed to ask the trial judge to remove the magistrate.

{¶ 6} Second, Mr. Gomez has failed to set forth adequate grounds to disqualify Judge Martin. “[T]he burden falls on the affiant to submit specific evidence demonstrating that disqualification is warranted.” *In re Disqualification of Jamison*, 146 Ohio St.3d 1252, 2015-Ohio-5683, 55 N.E.3d 1116, ¶ 5, citing R.C. 2701.03(B)(1). “When necessary, an affiant should submit evidence beyond the affidavit to support the allegations contained therein.” *In re Disqualification of Trimmer*, 164 Ohio St.3d 1212, 2021-Ohio-2320, 172 N.E.3d 192, ¶ 5. This is especially true when an affidavit includes allegations of racial bias, which are “among the most serious and damaging claims that can be directed at a judge” and, “if true, would not only constitute a violation of the judge’s oath of office and the Code of Judicial Conduct * * * but also would strike at the very heart of the integrity of the judiciary.” *In re Disqualification of Cunningham*, 100 Ohio St.3d 1216, 1216-1217, 798 N.E.2d 4 (2002).

{¶ 7} Here, Mr. Gomez has not submitted sufficient evidence indicating that Judge Martin treated him or his son unfairly based on their race. Similarly, Mr. Gomez’s vague allegation that Judge Martin has colluded with others is insufficient to warrant the judge’s removal. “Allegations that are based solely on hearsay, innuendo, and speculation * * * are insufficient to establish bias or prejudice.” *In re Disqualification of Flanagan*, 127 Ohio St.3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4.

{¶ 8} 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. Based on this record, Mr. Gomez has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge Martin is fair and impartial.

{¶ 9} The affidavit of disqualification is denied. The cases may proceed before Judge Martin.
