

**IN RE DISQUALIFICATION OF COSS.**

**GREENFIELD EXEMPTED VILLAGE SCHOOL DISTRICT BOARD OF EDUCATION v.  
THE VILLAGE OF GREENFIELD.**

[Cite as *In re Disqualification of Coss*, 168 Ohio St.3d 1213, 2022-Ohio-2269.]

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

(No. 22-AP-062—Decided May 25, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Highland County Court of Common Pleas, General and Domestic Relations Division, Case No. 22CV0006.

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**O’CONNOR, C.J.**

{¶ 1} Nelson M. Reid, counsel for the plaintiff, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Rocky A. Coss from the above-referenced case, now pending for a bench trial.

{¶ 2} Mr. Reid avers that Judge Coss may have engaged in two improper ex parte communications with defense counsel and therefore should be disqualified to avoid any appearance of partiality. Specifically, Mr. Reid asserts that (1) based on a paragraph in the judge’s summary-judgment decision, the judge may have had an ex parte communication with defense counsel about her threat to file a motion for sanctions against Mr. Reid and (2) based on emails produced in discovery, defense counsel had an ex parte communication with Judge Coss about the possibility of the defense’s expert witness testifying remotely.

{¶ 3} Judge Coss submitted a response to the affidavit and denies engaging in any ex parte communications with defense counsel. The judge explains the

impetus for his mentioning sanctions in his summary-judgment decision, which, he notes, was not related to any communication with defense counsel. The judge acknowledges that defense counsel asked his staff an administrative question about the court’s policy on remote testimony, which had recently changed. But the judge denies that he or his staff had any improper ex parte communication with defense counsel about the underlying case.

{¶ 4} “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. “The reasonable observer is presumed to be fully informed of all the relevant facts in the record—not isolated facts divorced from their larger context.” *In re Disqualification of Gall*, 135 Ohio St.3d 1283, 2013-Ohio-1319, 986 N.E.2d 1005, ¶ 6. “An alleged ex parte communication constitutes grounds for disqualification when there is ‘proof that the communication \* \* \* addressed substantive matters in the pending case.’ ” (Ellipsis sic.) *In re Disqualification of Forsthoefel*, 135 Ohio St.3d 1316, 2013-Ohio-2292, 989 N.E.2d 62, ¶ 7, quoting *In re Disqualification of Calabrese*, 100 Ohio St.3d 1224, 2002-Ohio-7475, 798 N.E.2d 10, ¶ 2. “The allegations must be substantiated and consist of something more than hearsay or speculation.” *Id.*

{¶ 5} Here, Mr. Reid has presumed that Judge Coss engaged in two improper ex parte communications. Mr. Reid’s first allegation, however, is based on speculation. The second allegation is based on an email between defense counsel and an expert witness—not the judge. In his response to the affidavit, Judge Coss thoroughly explained why Mr. Reid had incorrectly assumed that the judge had engaged in ex parte communications. Based on this record, a well-

informed, objective observer would have no reason to question Judge Coss's impartiality.

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

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