

IN RE DISQUALIFICATION OF SERROTT.

TYACK v. EICHENBERGER.

**[Cite as *In re Disqualification of Serrott*, 170 Ohio St.3d 1209,
2022-Ohio-3203.]**

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

(No. 22-AP-080—Decided July 26, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
General Division, Case No. 21 CV 2629.

O’CONNOR, C.J.

{¶ 1} Defendant Raymond L. Eichenberger has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Mark A. Serrott and all other judges of the Franklin County Court of Common Pleas, General Division, from the above-referenced case, in which a prosecuting attorney is attempting to declare Mr. Eichenberger a vexatious litigator.

{¶ 2} Mr. Eichenberger claims that Judge Serrott is biased against him, primarily because the judge allegedly engaged in an ex parte communication with the prosecutor’s office, “wrongly and inexplicably” continued to preside over the underlying case even though the judge had recused himself from a “companion case dealing with much the same facts and circumstances,” and committed legal errors in a prior case involving Mr. Eichenberger. Mr. Eichenberger further claims that even if Judge Serrott is not personally biased against him, an appearance of bias would exist if Judge Serrott or any other Franklin County judge presided over the matter. The “companion” case, Mr. Eichenberger alleges, involves Franklin

County as a defendant. Mr. Eichenberger questions the ability of any Franklin County judge to impartially hear the underlying case because the judges are Franklin County “employees.” Mr. Eichenberger also states that he named as a defendant in the “companion” case Tenth District Court of Appeals Judge Terri Jamison, who is running for justice of the Supreme Court as a member of the Democratic Party. Mr. Eichenberger argues that because most Franklin County judges are also members of the Democratic Party, they cannot be fair and impartial in the underlying “companion” case, in which Judge Jamison is a “pseudo party.” According to Mr. Eichenberger, Franklin County judges would reasonably be expected to protect Judge Jamison.

{¶ 3} Judge Serrott filed an affidavit in response and denies any bias against Mr. Eichenberger. Judge Serrott also denies having engaged in any ex parte communications about the underlying case. The judge acknowledges that to avoid any appearance of impropriety, he recused himself from Mr. Eichenberger’s case against Judge Jamison, but Judge Serrott sees no reason to similarly recuse himself from the underlying matter. Judge Serrott acknowledges that he has been endorsed by the Democratic Party, but the judge affirms that such endorsements have no bearing on his judicial rulings.

{¶ 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. For the reasons explained below, Mr. Eichenberger has not established that Judge Serrott 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. Eichenberger set forth a compelling argument for disqualifying Judge Serrott to avoid an appearance of partiality.

{¶ 5} First, “[a]n 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.* Here, Mr. Eichenberger has not explained the basis for his allegation that Judge Serrott had an ex parte communication with the prosecutor’s office, and Judge Serrott expressly denies having engaged in any such communication. Based on this record, Mr. Eichenberger has failed to adequately substantiate this allegation. *See, e.g., In re Disqualification of Cacioppo*, 77 Ohio St.3d 1245, 674 N.E.2d 356 (1996) (“The hearsay allegations of the affiant will not stand in the face of an affirmative denial by the trial judge of substantive *ex parte* contacts”).

{¶ 6} Second, Mr. Eichenberger failed to identify the alleged legal errors that Judge Serrott committed in the prior case involving Mr. Eichenberger. Regardless, it is well settled that “a judge’s adverse rulings, even erroneous ones, are not evidence of bias or prejudice.” *In re Disqualification of Fuerst*, 134 Ohio St.3d 1267, 2012-Ohio-6344, 984 N.E.2d 1079, ¶ 14.

{¶ 7} Third, Mr. Eichenberger has not sufficiently explained why Judge Serrott’s recusal in a different case requires his removal from the underlying matter. “[A] judge’s voluntary recusal from an earlier case involving a particular attorney

[or party] does not automatically require the judge’s disqualification from all other cases involving that attorney [or party].” (Emphasis deleted.) *In re Disqualification of Saffold*, 159 Ohio St.3d 1210, 2020-Ohio-1530, 148 N.E.3d 602, ¶ 6. However, “it is also well-settled that ‘a trial judge cannot, without reasonable justification, recuse himself from a number of cases involving an attorney but at substantially the same time decline to recuse himself from an indistinguishable case involving that same attorney.’” *Id.*, quoting *In re Disqualification of Hurley*, 142 Ohio St.3d 1278, 2014-Ohio-5874, 33 N.E.3d 59, ¶ 6. Here, Judge Serrott recused himself from a different case brought by Mr. Eichenberger because Judge Jamison—a Franklin County appellate judge—was a named defendant. Judge Jamison, however, is not a party in the underlying vexatious-litigator case, which the prosecutor filed against Mr. Eichenberger nearly a year before Mr. Eichenberger filed the case against Judge Jamison. “In an affidavit-of-disqualification proceeding, the burden falls on the affiant to submit sufficient argument and evidence demonstrating that disqualification is warranted.” *In re Disqualification of Nastoff*, 134 Ohio St.3d 1232, 2012-Ohio-6339, 983 N.E.2d 354, ¶ 10. Although Mr. Eichenberger characterizes his lawsuit against Judge Jamison as a “companion” case to the vexatious-litigator matter, he has failed to sufficiently explain how the two cases are related or why Judge Serrott’s recusal from one case requires his removal from the other.

{¶ 8} Fourth, even if Mr. Eichenberger had adequately explained how the underlying case is substantively related to his case against Judge Jamison and Franklin County, the mere fact that Franklin County is a party to that case or that Judge Serrott and other judges are members of the same political party as Judge Jamison would not, without more, be grounds for disqualification. “A judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23,

¶ 5. Judges are elected to preside fairly and impartially over a variety of legal disputes, including those involving government entities. Further, judges are presumed to be “able to set aside any partisan interests once they have assumed judicial office and have taken an oath to decide cases on the facts and the law before them.” *In re Disqualification of Bryant*, 117 Ohio St.3d 1251, 2006-Ohio-7227, 885 N.E.2d 246, ¶ 3; *see also In re Disqualification of Kerenyi*, 160 Ohio St.3d 1201, 2020-Ohio-1082, 153 N.E.3d 121, ¶ 9 (“That the judge and the victim are active members of the same political party, without more, does not suggest the appearance of partiality”); *In re Disqualification of Ghiz*, 146 Ohio St.3d 1249, 2015-Ohio-5667, 55 N.E.3d 1113 (denying a request by the defendant in the underlying case to disqualify a judge based, in part, on the fact that the plaintiff’s attorney was serving as chair of the same county political party that the judge belonged to). In election-related matters, the ability of a judge to serve fairly and impartially is determined on a case-by-case basis. *See In re Disqualification of Breaux*, 150 Ohio St.3d 1305, 2017-Ohio-7374, 84 N.E.3d 1038, ¶ 10. The record here does not create any inference of an appearance of bias or impropriety.

{¶ 9} The affidavit of disqualification is denied. The case may proceed before Judge Serrott.
