

IN RE DISQUALIFICATION OF ONDREY.

KRUEGER v. KRUEGER.

**[Cite as *In re Disqualification of Ondrey*, 170 Ohio St.3d 1213,
2022-Ohio-3204.]**

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

(No. 22-AP-086—Decided August 5, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Geauga County Court of Common Pleas,
General and Domestic Relations Division, Case No. 21DK000134.

O’CONNOR, C.J.

{¶ 1} Petitioner Brian J. Krueger has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge David M. Ondrey from the above-referenced case, now pending for trial on the other petitioner’s motions for relief from judgment.

Background

{¶ 2} Mr. Krueger alleges that Judge Ondrey’s statements and decisions demonstrate bias against him and his attorney, Joseph G. Stafford. Mr. Krueger primarily criticizes Judge Ondrey’s June 29, 2022 decisions on the parties’ motions to set aside a magistrate’s decision. Among other things, Mr. Krueger argues that Judge Ondrey (1) ignored well-established precedent by permitting the magistrate to proceed with the case despite the pendency of two appeals, (2) mischaracterized the record and deprived Mr. Krueger of the right to engage in necessary discovery, (3) failed to support the judge’s finding that Mr. Stafford harassed the other petitioner during her deposition, and (4) reached inconsistent results in the judge’s

decisions. Mr. Krueger also asserts that Judge Ondrey has disregarded the alleged animosity against Mr. Stafford that the magistrate showed in other cases involving Mr. Stafford. After the filing of Mr. Krueger's affidavit, Mr. Stafford filed a notice indicating that Judge Ondrey had issued a decision during the pendency of the affidavit of disqualification.

{¶ 3} Judge Ondrey filed a response to the affidavit and denies any bias against Mr. Krueger. Judge Ondrey acknowledges that he issued an entry after the filing of Mr. Krueger's affidavit. But the judge notes that he prepared the entry before he was aware of the affidavit and that due to inadvertence and staffing issues, it was filed in error a few days after the judge learned about the affidavit's filing. With respect to his rulings, Judge Ondrey says that he decides cases based on the facts before him and the law. The judge also notes that until recently, he was unaware that Mr. Stafford had had problems with the magistrate in prior cases.

{¶ 4} In response to Judge Ondrey, Mr. Stafford filed a motion for leave to file supplemental evidence in support of Mr. Krueger's affidavit. Specifically, Mr. Stafford seeks leave to file a letter responding to the statements about him in Judge Ondrey's response.

Merits of the affidavit of disqualification

{¶ 5} 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.

{¶ 6} Mr. Krueger has not established that Judge Ondrey 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. Krueger set forth a compelling argument for disqualifying Judge Ondrey to avoid an appearance of partiality. Despite Mr. Krueger’s belief that Judge Ondrey’s decisions demonstrate bias, “it is well established that ‘adverse rulings, without more, are not evidence that a judge is biased or prejudiced,’ ” *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5, quoting *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 5. “[A]ffidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings,” and “reviewing legal errors is not the role of the chief justice in deciding affidavits of disqualification.” *Id.* Therefore, it is outside the scope of this proceeding to determine whether Judge Ondrey’s recent decisions ignored established law, mischaracterized the record, or deprived Mr. Krueger of the right to obtain necessary discovery. Mr. Krueger may have other remedies—including his two pending appeals—to raise many of the legal arguments he raises in his affidavit of disqualification. Those issues, however, cannot be litigated in this forum.

{¶ 7} To be sure, the record here indicates some tension between Mr. Stafford and the judges and magistrates of the domestic-relations court. Mr. Krueger, however, has not established that the tension has affected Judge Ondrey’s ability to impartially preside over the underlying case. “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. Those presumptions have not been overcome here.

{¶ 8} Finally, pursuant to R.C. 2701.03(D)(1), if the clerk of this court accepts an affidavit of disqualification for filing, “the affidavit deprives the judge against whom the affidavit was filed of any authority to preside in the proceeding until the chief justice of the supreme court, or a justice of the supreme court designated by the chief justice, rules on the affidavit.” Here, Judge Ondrey states that he prepared an entry *before* he was aware that Mr. Krueger had filed his affidavit of disqualification but that due to inadvertence and staffing issues, the clerk’s office did not file the entry until a few days after Mr. Krueger had filed his affidavit. Although a judge’s ruling during the pendency of an affidavit of disqualification could be evidence of bias, *see, e.g., In re Disqualification of Celebrezze*, 74 Ohio St.3d 1242, 657 N.E.2d 1348 (1992), given Judge Ondrey’s explanation, there is no reason to question his impartiality here. *See, e.g., In re Disqualification of Giulitto*, 163 Ohio St.3d 1223, 2021-Ohio-625, 168 N.E.3d 546, ¶ 10 (“there is no reason to question [a judge’s] impartiality merely because he appears to have inadvertently issued an entry during the pendency of [an affidavit of disqualification]”).

Mr. Stafford’s motion for leave to file supplemental evidence

{¶ 9} In his motion for leave, Mr. Stafford seeks to submit a letter responding to various statements in Judge Ondrey’s response to the affidavit of disqualification. S.Ct.Prac.R. 21.02(C), however, prohibits the filing of a reply to a response from the judge in an affidavit-of-disqualification proceeding. Parties and attorneys cannot circumvent this rule by labeling a filing a “supplement.” *In re Disqualification of Leach*, 164 Ohio St.3d 1244, 2021-Ohio-2321, 173 N.E.3d 530, ¶ 8. Further, although a party or an attorney may file a supplemental affidavit of disqualification, the supplemental affidavit must meet the filing requirements for an original affidavit of disqualification. *See* S.Ct.Prac.R. 21.02(D). R.C. 2701.03 requires that a party or counsel seeking to disqualify a judge file an *affidavit*, which by definition “must be confirmed by oath or affirmation of the party making it and

be made before a person having authority to administer the oath or affirmation,” *In re Disqualification of Suster*, 127 Ohio St.3d 1240, 2009-Ohio-7202, 937 N.E.2d 1026, ¶ 18. An attorney cannot “raise new allegations against a judge simply by filing a letter with the court.” *Id.*

{¶ 10} For the reasons explained above, the affidavit of disqualification is denied. The case may proceed before Judge Ondrey. The motion for leave is also denied.
