

IN RE DISQUALIFICATION OF O'MALLEY.

THE STATE OF OHIO v. APEX-EL.

[Cite as *In re Disqualification of O'Malley*, 168 Ohio St.3d 1230,  
2022-Ohio-3477.]

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to  
substantiate allegations of bias—Disqualification denied.*

(No. 22-AP-075—Decided July 1, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common  
Pleas, Juvenile Division, Case Nos. AC21104805 and FA18112728.

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O'CONNOR, C.J.

{¶ 1} Quila Apex-El, the mother of the child, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Thomas F. O'Malley from the above-referenced custody cases. This is the second affidavit of disqualification that Ms. Apex-El has filed against Judge O'Malley. She previously sought his removal based on his adverse rulings against her and the fact that she had filed a federal lawsuit against him. Ms. Apex-El's prior affidavit was denied in an entry dated May 27, 2022. *See* Supreme Court case No. 22-AP-067.

{¶ 2} In her present affidavit, Ms. Apex-El again asserts that Judge O'Malley is biased against her based on her federal complaint. She also asserts that the judge is biased against her based on her gender, race, national origin, and religion and that the judge's alleged bias has caused him to issue unconstitutional rulings and to ignore some of her motions.

{¶ 3} Judge O'Malley submitted a response to the affidavit addressing Ms. Apex-El's allegations and denying any bias against her.

{¶ 4} For the reasons explained below, Ms. Apex-El has not established that Judge O'Malley's disqualification is warranted.

{¶ 5} First, Ms. Apex-El repeats many of the bias allegations that were raised—and rejected—in her previous affidavit of disqualification. Those allegations will not be addressed again here. *See, e.g., In re Disqualification of Schweikert*, 158 Ohio St.3d 1211, 2019-Ohio-5487, 141 N.E.3d 258, ¶ 2.

{¶ 6} Second, Ms. Apex-El has failed to substantiate her new bias claims. “[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 bias based on race, gender, national origin, or religion, 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, Ms. Apex-El has not submitted evidence supporting her claims that Judge O'Malley treated her unfairly or issued unconstitutional rulings based on her race, gender, national origin, or religion. The affidavit presents nothing more than her subjective belief that the judge is biased against her. “Subjective belief of bias is generally not sufficient to support an affidavit of disqualification.” *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 7. “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, Ms. Apex-El has failed to set forth sufficiently compelling evidence to overcome the presumption that Judge O’Malley is fair and impartial.

{¶ 9} The affidavit of disqualification is denied.

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