

IN RE DISQUALIFICATION OF SAFFOLD.

THE STATE OF OHIO v. CRUZ.

**[Cite as *In re Disqualification of Saffold*, 169 Ohio St.3d 1235,
2022-Ohio-4429.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Even in cases in which no evidence of actual bias is apparent, a judge’s disqualification may be appropriate to avoid an appearance of bias and to protect integrity of judicial proceeding—An objective observer could reasonably question impartiality of a trial judge whose staff coerced a plea—Appearance of bias created by unique facts of disqualification case in combination with their similarity to those alleged in grievance affiant had filed against judge, which could potentially lead to a disciplinary proceeding in which affiant is a witness against judge—Disqualification granted.

(No. 22-AP-097—Decided September 26, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas, General Division, Case No. CR 22-667525-A.

O’CONNOR, C.J.

{¶ 1} James Sidney Jones, counsel for the defendant, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Shirley Strickland Saffold from the above-referenced criminal case. For the reasons explained below, the affidavit is well taken.

Background

{¶ 2} Judge Saffold scheduled a jury trial for August 15, 2022, at 9:00 a.m. On the morning of the trial, Mr. Jones and the assistant prosecutor informed Judge Saffold’s bailiff that the defendant would accept the state’s plea offer. Judge

Saffold, however, was not in the courthouse. Mr. Jones claims that after a 90-minute delay, Judge Saffold's bailiff advised the parties that Judge William McGinty would conduct a change-of-plea hearing.

{¶ 3} During the change-of-plea hearing, Judge McGinty called a sidebar. According to Mr. Jones, Judge Saffold's bailiff joined counsel and Judge McGinty at the sidebar and made confusing comments about the parties' recommended sentence and suggested that it would not be "possible." The parties then recessed; Mr. Jones asserts that neither he nor his client understood why Judge Saffold's bailiff was rejecting the state's plea offer. Mr. Jones further alleges that during the recess, Judge Saffold's bailiff "interfered egregiously and repeatedly" with Mr. Jones's consultation with his client. The bailiff, Mr. Jones asserts, interrupted the meeting three times by demanding to know whether the defendant would be entering a plea and once admonished Mr. Jones for his alleged ignorance of the sentencing rules. Mr. Jones alleges that the bailiff's actions "were intended and taken as intimidation" and that the defendant ultimately returned to Judge McGinty's courtroom and entered a coerced plea. Mr. Jones also asserts that after the hearing, Judge Saffold's bailiff filed a "false" entry indicating that Judge Saffold had conducted the change-of-plea hearing.

{¶ 4} Mr. Jones filed a grievance against Judge Saffold with disciplinary counsel. He now seeks her disqualification from the underlying case, alleging that she failed to supervise her court staff and that her repeated absences, which Mr. Jones claims are "common knowledge among the lawyers," have resulted in this case in "an enormous waste of time, needless animosity, inexcusable confusion, and the practice of both law and bullying by her bailiff."

{¶ 5} Judge Saffold submitted a response to the affidavit and requests that it be denied.¹ Judge Saffold says that on August 15—the date of the scheduled

1. On September 9, 2022, a private attorney filed a letter indicating that his law firm had been retained to represent Judge Saffold and requesting a 30-day extension of time to respond to the

trial—she was out of the office due to a medical situation but had remained in contact with her bailiff and was prepared to come in to court if the parties had decided to go to trial. The judge expressly denies any bias against Mr. Jones or the defendant and any insinuation that she was unavailable on the trial date. Judge Saffold also denies that her bailiff interpreted Ohio’s sentencing laws, rejected the parties’ plea agreement, interfered with Mr. Jones’s consultation with his client, intimidated or coerced the defendant into entering a plea, or bullied Mr. Jones. Judge Saffold acknowledges that after the change-of-plea hearing, her court issued an erroneous entry, but she says that “[i]t was absolutely, unequivocally, an oversight.” After the error was realized, her staff corrected the entry to clarify that Judge McGinty had presided over the change-of-plea hearing. Judge Saffold further notes that a few days after the defendant entered his plea, he moved to withdraw it. And after a hearing, Judge Saffold permitted the defendant to withdraw his plea and scheduled the matter for trial.

Merits of the affidavit of disqualification

{¶ 6} The record here does not support a finding that Judge Saffold has a personal bias against Mr. Jones or the defendant. Indeed, it appears that Judge Saffold was not present for most of the disputed factual allegations. Nevertheless, even in cases in which no evidence of actual bias is apparent, a judge’s disqualification may be appropriate to avoid an appearance of bias and to protect the integrity of the judicial proceeding. *See, e.g., In re Disqualification of Crawford*, 152 Ohio St.3d 1256, 2017-Ohio-9428, 98 N.E.3d 277, ¶ 6.

{¶ 7} Mr. Jones—an officer of the court—has submitted an affidavit averring that Judge Saffold’s bailiff attempted to interpret Ohio’s sentencing laws and intimidated and coerced the defendant into entering a plea. Judge Saffold

affidavit of disqualification. However, a few days later, an assistant prosecuting attorney from the Cuyahoga County Prosecutor’s Office filed a response on behalf of Judge Saffold. The private law firm later withdrew from representing Judge Saffold in this matter.

denies the allegations against her bailiff. In disqualification requests, a “presumption of impartiality” is accorded all judges. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. Accordingly, when there are conflicting accounts in the record, judges are often given the benefit of the doubt. *See, e.g., In re Disqualification of Baronzzi*, 135 Ohio St.3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 8 (affiant’s “vague and unsubstantiated allegations—especially in the face of clear denials by [the judge]—are insufficient to overcome the presumption that [the judge] is fair and impartial”). But here, Judge Saffold was not in the courthouse when the defendant entered the plea, and she therefore has no personal knowledge of how her bailiff interacted with Mr. Jones or whether her bailiff’s actions could be interpreted as intimidating. Nor has the bailiff submitted his own affidavit or any response to the affidavit of disqualification. Under these circumstances, Mr. Jones’s affidavit must be considered credible evidence.

{¶ 8} Further, this is not the first affidavit of disqualification involving Judge Saffold’s oversight of her staff. In 2020, another attorney alleged that Judge Saffold’s bailiff had “acted as a jurist” when Judge Saffold was absent from the courthouse, was hostile toward the attorney, and had attempted to “strong arm” the attorney and her client into entering a plea agreement. *In re Disqualification of Saffold*, 163 Ohio St.3d 1233, 2021-Ohio-114, 168 N.E.3d 1216, ¶ 2. The affidavit-of-disqualification record gave the impression that the bailiff—not Judge Saffold—had handled the case, and the chief justice cautioned that “[j]udges must be wary of improperly entrusting—or appearing to entrust—judicial duties to court staff,” *id.* at ¶ 9. Judge Saffold was disqualified from the case to avoid any appearance of partiality and to ensure confidence in the fairness and integrity of the proceeding. *Id.* at ¶ 14.

{¶ 9} In her response to the pending disqualification request, Judge Saffold emphasizes that she has since permitted the defendant to withdraw his plea. But

the judge's allowing the plea withdrawal neither negates the fact that her staff might have possibly coerced the plea nor makes Mr. Jones's bias allegations moot. An objective observer could reasonably question the impartiality of a trial judge whose staff coerced a plea. *See, e.g., In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8 (defining the test for determining whether a judge's participation in a case presents an appearance of partiality).

{¶ 10} In addition, the record here indicates that Mr. Jones has filed a grievance against Judge Saffold with disciplinary counsel.² In general, a judge will not be disqualified based solely on the fact that a lawyer appearing before the judge has filed a disciplinary complaint against the judge. *See In re Disqualification of Kilpatrick*, 47 Ohio St.3d 605, 606, 546 N.E.2d 929 (1989). However, "a unique combination of factors arising from a pending disciplinary matter can be sufficient to create an appearance of impropriety that mandates a judge's disqualification." *In re Disqualification of O'Neill*, 100 Ohio St.3d 1226, 2002-Ohio-7476, 798 N.E.2d 12, ¶ 5. It is apparent from the filings that the facts at issue in this disqualification matter are similar to those alleged in Mr. Jones's grievance, which could potentially lead to a disciplinary proceeding in which Mr. Jones is a witness against the judge or a disciplinary complaint involving Mr. Jones's allegations. Those facts—combined with the other unique facts in this matter—are sufficient to create an appearance of bias warranting Judge Saffold's disqualification. *See, e.g., In re Disqualification of Squire*, 105 Ohio St.3d 1221, 2004-Ohio-7358, 826 N.E.2d 285 (judge disqualified from an attorney's case because the attorney had filed grievances against the judge and the judge's relationship with the attorney had become an impediment that prevented the judge from approaching the case with

2. In accordance with Gov.Bar R. V(8)(A)(1), all documents relating to an uncertified disciplinary complaint or grievance are confidential. The chief justice therefore has no knowledge about the allegations in any such grievance beyond what Mr. Jones and Judge Saffold have stated in their filings in this court.

the requisite objectivity); *In re Disqualification of O'Neill*, 100 Ohio St.3d 1228, 2002-Ohio-7477, 798 N.E.2d 13 (judge disqualified to avoid the appearance of impropriety when the attorney-affiant's allegations were part of a disciplinary complaint against the judge and the attorney would likely be a witness in the judge's disciplinary proceeding).

{¶ 11} Reassignment of this case to a new judge does not imply that any unethical conduct occurred. “As this court has long stated, ‘it is of vital importance that the litigant should believe that he [or she] will have a fair trial.’ ” *In re Disqualification of Winkler*, 135 Ohio St.3d 1271, 2013-Ohio-890, 986 N.E.2d 996, ¶ 14, quoting *State ex rel. Turner v. Marshall*, 123 Ohio St. 586, 587, 176 N.E. 454 (1931). It is fair to say that Mr. Jones and his client no longer hold that belief, and if Mr. Jones's allegations are true, an objective observer might reasonably have concerns about the amount of control Judge Saffold's bailiff had over the underlying case when Judge Saffold was not physically present and another judge was handling the change-of-plea hearing.

{¶ 12} Therefore, to allay any concerns about the fairness and integrity of the proceedings and to ensure to the parties the unquestioned neutrality of the trial judge, Judge Saffold will no longer participate in the underlying case. The matter needs to move forward without any further unnecessary distractions. The affidavit of disqualification is granted, and the case is returned to the administrative judge of the Cuyahoga County Court of Common Pleas, General Division, for random reassignment to another judge of that court.