

IN RE DISQUALIFICATION OF MELNICK.

**GRANDE VOITURE D’OHIO LA SOCIETE DES 40 HOMMES ET 8 CHEVAUX v.
MONTGOMERY COUNTY VOITURE NO. 34 LA SOCIETE DES 40 HOMMES ET 8
CHEVAUX ET AL.**

**[Cite as *In re Disqualification of Melnick*, 169 Ohio St.3d 1226,
2022-Ohio-4431.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Judge’s admonishing affiant to familiarize himself with Civil Rules does not establish that she has lost ability to impartially and fairly decide any issues remaining in underlying case—Disqualification denied.

(No. 22-AP-105—Decided September 27, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common Pleas, General Division, Case No. 2018 CV 01457.

O’CONNOR, C.J.

{¶ 1} Defendant Charles J. Simpson, who represents himself and his codefendants, has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Kimberly A. Melnick from the above-referenced case, now pending for a hearing on a motion for contempt and sanctions against Mr. Simpson.

{¶ 2} Mr. Simpson alleges that Judge Melnick is biased against him and the other defendants. Specifically, he argues that the judge improperly rejected and struck some of his filings, and he alleges that she used insulting and disrespectful language about him in a recent decision.

{¶ 3} Judge Melnick submitted a response to the affidavit and denies any bias against Mr. Simpson. The judge says that her decisions were consistent with the Rules of Civil Procedure and the limits of her jurisdiction. The judge also submitted a copy of her recent decision to give context for the language challenged by Mr. Simpson.

{¶ 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. In addition, 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.

{¶ 5} Mr. Simpson has not established that Judge Melnick 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. Simpson set forth a compelling argument for disqualifying Judge Melnick to avoid an appearance of partiality. It is well established that a judge’s adverse rulings, even erroneous ones, are not grounds for disqualification. *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. Therefore, it is outside the scope of

this matter to determine whether Judge Melnick properly rejected or struck any of Mr. Simpson's filings.

{¶ 6} Further, a review of Judge Melnick's recent decision does not demonstrate that she should be disqualified for insulting or disrespecting Mr. Simpson. "An attorney's unfamiliarity with court rules and procedures, as well as his or her lack of preparation, need not go unnoticed and unmentioned by a judge who observes them." *In re Disqualification of Squire*, 105 Ohio St.3d 1221, 2004-Ohio-7358, 826 N.E.2d 285, ¶ 4. Even so, "the judge must not let his or her views about or frustrations with the attorney so infect the case that a disinterested observer might reasonably question the judge's ability to evaluate fairly and objectively both the attorney's future work and the parties' legal interests." *Id.* at ¶ 5. Here, Judge Melnick's language admonishing Mr. Simpson to familiarize himself with the Civil Rules does not establish that she has lost the ability to impartially and fairly decide any remaining issues in this case.

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Melnick.
