

IN RE DISQUALIFICATION OF MACKEY.

IN RE GUARDIANSHIP OF SOWARDS.

**[Cite as *In re Disqualification of Mackey*, 169 Ohio St.3d 1228,
2022-Ohio-4432.]**

Judges—Affidavits of disqualification—R.C. 2101.39 and 2701.03—Affiant has failed to adequately substantiate bias allegations with specific facts or evidence and has failed to sufficiently explain why judge’s merely scheduling a hearing on a fee application demonstrates harassment or unfairness—Disqualification denied.

(No. 22-AP-107—Decided October 5, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
Probate Division, Case No. 578472.

O’CONNOR, C.J.

{¶ 1} Susan Wasserman, the guardian of the ward, has filed an affidavit pursuant to R.C. 2101.39 and 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Jeffrey D. Mackey from the above-referenced guardianship matter. This is the third affidavit of disqualification that Ms. Wasserman has filed against Judge Mackey in the last five months. Her prior affidavits were denied in entries dated June 3 and 23, 2022. *See In re Disqualification of Mackey*, 167 Ohio St.3d 1249, 2022-Ohio-2267, 194 N.E.3d 390; *In re Disqualification of Mackey*, 168 Ohio St.3d 1226, 2022-Ohio-2837, 198 N.E.3d 894.

{¶ 2} Ms. Wasserman seeks Judge Mackey’s disqualification from the underlying guardianship case and all other cases in which she has been appointed as a guardian. According to Ms. Wasserman, she has been attempting to retire for

years but due to Judge Mackey’s alleged bias, animosity, harassment, and delay, she has been unable to close out her cases. It appears that most of the outstanding issues relate to Judge Mackey’s scheduling of hearings on Ms. Wasserman’s fee applications.

{¶ 3} Judge Mackey submitted a response to the affidavit and denies any bias or hostility against Ms. Wasserman. The judge says that any alleged delays were not deliberate or intended to cause difficulty for the parties or their counsel. He further says that he reviews fee applications in all cases and that when a fee application is scheduled for a hearing, “the intent is not to penalize counsel, but to allow counsel and their client the opportunity to provide more information about the application.”

{¶ 4} To the extent that any issues remain outstanding in Ms. Wasserman’s guardianship cases, Judge Mackey should resolve them as expeditiously as possible. But Ms. Wasserman has not established that Judge Mackey should be removed for bias. “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; *see also In re Disqualification of Harwood*, 137 Ohio St.3d 1221, 2013-Ohio-5256, 999 N.E.2d 681, ¶ 5, quoting *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7 (“A ‘presumption of impartiality’ is ‘accorded all judges’ in affidavit-of-disqualification proceedings”). In addition, the burden in affidavit-of-disqualification matters falls on the affiant to submit specific allegations and facts to demonstrate that disqualification is warranted. *See* R.C. 2701.03(B)(1).

{¶ 5} Despite the filing of three disqualification requests, it remains unclear why Ms. Wasserman believes that Judge Mackey is biased against her. She repeatedly says that the judge has been hostile to her, but she has failed to adequately substantiate those allegations with specific facts or evidence. Similarly,

she has failed to sufficiently explain why merely scheduling a hearing on a fee application demonstrates harassment or unfairness. And Ms. Wasserman refers to various exhibits—and filed a motion requesting that the chief justice take judicial notice of those exhibits—yet Ms. Wasserman failed to submit most of the exhibits with her affidavit and motion. Regardless, it appears that most of Ms. Wasserman’s complaints against Judge Mackey relate to his legal rulings. It is well established that a judge’s decisions, including those relating to a fee application and those relating to the scheduling of hearings, are generally not evidence of bias or prejudice. “Trial judges are entitled to exercise discretion in ruling on many matters, and it is not the chief justice’s role in deciding an affidavit of disqualification to second-guess each ruling.” *In re Disqualification of Lawson*, 135 Ohio St.3d 1243, 2012-Ohio-6337, 986 N.E.2d 6, ¶ 6.

{¶ 6} In the end, the remedy that Ms. Wasserman seeks—i.e., to close out her guardianship cases—is not a remedy available to the chief justice under the disqualification statutes that Ms. Wasserman has repeatedly invoked in this court. “An affidavit of disqualification addresses the narrow issue of the possible bias or prejudice of a judge. It is not a vehicle to contest matters of substantive or procedural law * * *.” *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4.

{¶ 7} The affidavit of disqualification is denied. The motion requesting judicial notice is also denied.
