

IN RE DISQUALIFICATION OF ROBINSON.

THE STATE OF OHIO v. MACK.

**[Cite as *In re Disqualification of Robinson*, 170 Ohio St.3d 1283,
2022-Ohio-4490.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Jud.Cond.R. 2.11(A)(7)(b) does not require judge’s disqualification—Disqualification denied.

(No. 22-AP-123—Decided October 18, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Richland County Court of Common
Pleas, General Division, Case No. 21 CR 221 R.

O’CONNOR, C.J.

{¶ 1} Bernard R. Davis, 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 Brent N. Robinson from the above-referenced case. The defendant has been charged with aggravated murder and other serious offenses, and the case is scheduled for a jury trial.

{¶ 2} Mr. Davis alleges that between 1997 and 2013, Judge Robinson—while serving as an assistant prosecutor—was substantially involved in six of the defendant’s prior cases. Mr. Davis further asserts that the prosecutor’s file for one of the defendant’s prior cases included a note handwritten by Judge Robinson that stated, among other things, “This guy is *very* bad and Bob wants him to do a lot of time,” “No Deals, No Bond Reduction,” and “[The defendant] must plead to everything and throw himself on the mercy of the Court.” (Emphasis sic.) Based on these facts, Mr. Davis asserts that Judge Robinson’s ability to impartially preside

over the underlying case might reasonably be questioned. Judge Robinson submitted a response to the affidavit and requests that it be denied.

{¶ 3} As has been previously explained,

[t]he Code of Judicial Conduct requires a judge who formerly served as a government lawyer to disqualify himself or herself from any “particular matter” in which he or she personally and substantially participated as a government attorney. *See* Jud.Cond.R. 2.11(A)(7)(b). Accordingly, a judge cannot preside over a case in which the judge previously served as the prosecutor. However, the rule does not automatically require a judge’s disqualification from a case involving a defendant whom the judge prosecuted in a previous *unrelated* case.

(Emphasis sic.) *In re Disqualification of Selvaggio*, 153 Ohio St.3d 1201, 2017-Ohio-9436, 100 N.E.3d 413, ¶ 4.

{¶ 4} Here, Judge Robinson says that the defendant was charged in the underlying case with an offense occurring on February 25, 2021—seven years after the judge took the bench in 2014. While Judge Robinson acknowledges that he previously served as an assistant prosecutor and that he would have participated in many of the defendant’s prior cases, there is no allegation that the judge personally or substantially participated in the prosecution of the case now pending before him. The rule therefore does not require Judge Robinson’s disqualification.

{¶ 5} Nevertheless, the chief justice has recognized that “[d]epending on the circumstances, a judge’s prior adversarial relationship with a party appearing before the judge could potentially create an appearance of impropriety” warranting the judge’s removal. *Id.* at ¶ 5. “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. Davis suggests that Judge Robinson's prior six prosecutions of the defendant combined with his handwritten note might reasonably cause an objective observer to question the judge's impartiality. In response, Judge Robinson acknowledges that he participated in some of the defendant's prior cases, although the judge does not recall taking any of those cases to trial. With respect to the note—which was written in 1997—Judge Robinson does not recall writing it but admits that it is his handwriting. Judge Robinson further explains that the note reflected his supervisor's opinions on how the supervisor believed the case should be managed. According to the judge, when he wrote the note, he was an inexperienced attorney with little to no authority to plea-bargain cases and the note was meant to document his supervisor's instructions for the assistant prosecutor who was ultimately assigned to the case. The note, Judge Robinson claims, did not necessarily reflect his own opinion.

{¶ 7} Judge Robinson's interpretation of the note appears reasonable. The note begins, "Per Castor"—who Judge Robinson says was his supervisor at the time—and then appears to identify Castor's thoughts and instructions about how the case should be managed. In deciding whether an appearance of bias exists, "[t]he reasonable observer is presumed to be fully informed of all the relevant facts in the record—not isolated facts divorced from their larger context." *In re Disqualification of Gall*, 135 Ohio St.3d 1283, 2013-Ohio-1319, 986 N.E.2d 1005, ¶ 6. Considering Judge Robinson's explanation of the note—and the fact that he wrote it almost 25 years ago—a well-informed, objective observer would not reasonably question Judge Robinson's ability to impartially preside over the defendant's jury trial. Therefore, neither the note nor the judge's prior involvement in the defendant's cases require his disqualification. *See also In re Disqualification*

of Batchelor, 136 Ohio St.3d 1211, 2013-Ohio-2626, 991 N.E.2d 242, ¶ 9 (“Absent some showing of prejudgment, bias, or an appearance of bias, it will not be assumed that a trial judge is unable to provide a fair trial based solely on prior prosecutorial participation in an unrelated case”).

{¶ 8} “The statutory right to seek disqualification of a judge is an extraordinary remedy. 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.” (Citation omitted.) *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 in this case.

{¶ 9} The affidavit of disqualification is denied. The case may proceed before Judge Robinson.
