

**IN RE DISQUALIFICATION OF GHIZ.**

**THE STATE OF OHIO v. SIMON**

**AND**

**THE STATE OF OHIO v. THOMAS.**

**[Cite as *In re Disqualification of Ghiz*, 169 Ohio St.3d 1259, 2022-Ohio-4585.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant waived right to disqualify judge by failing to raise timely objections—Affiant failed to demonstrate bias, prejudice, or an appearance of partiality—Disqualification denied.*

(No. 22-AP-136—Decided November 23, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Court of Common Pleas, General Division, Case Nos. B21-5013 and B22-0674.

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**O’CONNOR, C.J.**

{¶ 1} Ravert J. Clark, counsel for the defendants, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Leslie Ghiz from the above-referenced cases and all other cases in which Mr. Clark appears as counsel.

{¶ 2} In March 2020, Judge Ghiz filed a grievance against Mr. Clark with disciplinary counsel relating to comments he allegedly made to the judge’s bailiff regarding a prior case. The grievance has not resulted in a formal disciplinary proceeding, and it is unclear from this record whether it will lead to any such proceeding.<sup>1</sup>

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1. 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

{¶ 3} In his affidavit, Mr. Clark claims that since the prior case, Judge Ghiz has demonstrated animus toward him and treated him differently from other attorneys. He argues that the circumstances surrounding the judge’s grievance and her conduct demonstrate bias against him or at least create an appearance of bias requiring her removal from all matters in which he serves as counsel. Judge Ghiz submitted a response to the affidavit and affirms that she can fairly and impartially preside over the underlying cases. The judge further says that she had forgotten about her grievance and that she has not heard anything from disciplinary counsel for a few years. In addition, Judge Ghiz says that since the prior case, Mr. Clark has appeared before her in other matters without objection.

{¶ 4} For the reasons explained below, no basis has been established to order the disqualification of Judge Ghiz.

*Waiver*

{¶ 5} “An affidavit of disqualification must be filed as soon as possible after the incident giving rise to the claim of bias and prejudice occurred,” and failure to do so may result in waiver of the objection, especially when “the facts underlying the objection have been known to the party for some time.” *In re Disqualification of O’Grady*, 77 Ohio St.3d 1240, 1241, 674 N.E.2d 353 (1996). The affiant has the burden to demonstrate that the affidavit is timely filed. *In re Disqualification of Capper*, 134 Ohio St.3d 1271, 2012-Ohio-6287, 984 N.E.2d 1082, ¶ 11. The record shows that in April 2022, Mr. Clark filed motions in the underlying cases seeking Judge Ghiz’s recusal for many of the reasons he raised in his affidavit of disqualification. The judge denied those motions on June 1, 2022. Yet Mr. Clark waited until November 7, 2022—seven days before the scheduled trials—to file his affidavit of disqualification. Because nothing in the record justifies the delay, Mr. Clark has waived the right to disqualify Judge Ghiz based on allegations that could

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grievance beyond what Mr. Clark and Judge Ghiz have stated in or submitted with their filings in this matter.

have been raised when the cases were first assigned to the judge—or at least months earlier than November 2022. *See, e.g., In re Disqualification of Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6 (“[affiant’s] delay in filing the affidavit of disqualification constitutes an independent ground for denying his disqualification request”); *In re Disqualification of Corrigan*, 91 Ohio St.3d 1210, 741 N.E.2d 137 (2000) (affiant waived objections to judge’s participation when incidents giving rise to claim of bias occurred “several months prior to the filing of the affidavit” and affidavit was filed “less than three weeks before the scheduled trial”).

*Merits of the affidavit of disqualification*

{¶ 6} Even if Mr. Clark had not waived his objections to Judge Ghiz, he has failed to prove bias or an appearance of bias. It is well established that “[t]he mere filing of a disciplinary complaint by a judge against a lawyer does not require the judge to recuse himself from cases involving that lawyer.” *In re Disqualification of Belskis*, 74 Ohio St.3d 1252, 657 N.E.2d 1355 (1993). “Indeed, judges have the duty to inform the appropriate authorities when they have knowledge that an attorney has violated a disciplinary rule raising a question regarding the attorney’s honesty, trustworthiness, or fitness as a lawyer.” *In re Disqualification of Sutula*, 145 Ohio St.3d 1203, 2016-Ohio-441, 47 N.E.3d 154, ¶ 5. And although a combination of factors arising from a pending disciplinary matter may be sufficient to create an appearance of bias, there is no such combination present here.

{¶ 7} For example, in *In re Disqualification of O’Neill*, 100 Ohio St.3d 1226, 2002-Ohio-7476, 798 N.E.2d 12, the following allegations relating to a pending disciplinary proceeding against a judge required the judge’s disqualification: (1) the attorney-affiant witnessed the judge’s alleged misconduct and the attorney’s allegations formed part of the basis of a later disciplinary complaint filed against the judge, (2) the judge publicly expressed her disgust with the allegations against her and labeled the complaints as politically motivated, and

(3) the attorney was likely to be an adverse witness at the judge’s disciplinary hearing and subject to vigorous cross-examination by the judge’s counsel. *Id.* at ¶ 3-5; *see also In re Disqualification of Maschari*, 88 Ohio St.3d 1212, 723 N.E.2d 1101 (1999) (judge disqualified to avoid appearance of impropriety when the attorney-affiant was to be called as a witness in a disciplinary case against the judge and the attorney was the judge’s recent election opponent); *In re Disqualification of Squire*, 105 Ohio St.3d 1221, 2004-Ohio-7358, 826 N.E.2d 285 (judge disqualified from an attorney-affiant’s case because the attorney had filed a grievance against the judge and the judge’s relationship with the attorney had become an impediment that prevented the judge from approaching the case with the requisite objectivity).

{¶ 8} No similar unique combination of factors is present here. Judge Ghiz is not a respondent in any pending or potential disciplinary case involving Mr. Clark, and at this point, it remains unclear whether the grievance that Judge Ghiz filed in March 2020 will result in a disciplinary complaint against Mr. Clark. The grievance does not appear to be an impediment to their relationship, as Judge Ghiz claims that she had forgotten about it and that Mr. Clark has appeared before her in other cases without objection.

{¶ 9} Although Mr. Clark claims that Judge Ghiz treats him differently from other attorneys, he provided only one example—that the judge refuses to meet informally with him in her chambers—which, by itself, is insufficient to show that she is biased against him. Mr. Clark also claims that because the prosecutor’s office assisted Judge Ghiz with the filing of her 2020 grievance, an appearance of bias somehow exists in the underlying cases. Although nothing suggests that the prosecutor was required to assist Judge Ghiz with her grievance, the prosecuting attorney serves as statutory counsel for judges under certain circumstances, such as when they are sued in their official capacity. No objective observer would question

Judge Ghiz’s impartiality merely because she sought the assistance of the prosecutor’s office to file a grievance.

{¶ 10} Unlike the facts in the cases cited above, the circumstances surrounding Judge Ghiz’s grievance are not grounds for disqualification. *See, e.g., In re Disqualification of Lynch*, 135 Ohio St.3d 1277, 2013-Ohio-910, 986 N.E.2d 1000 (a judge’s reporting of an attorney to disciplinary counsel did not require the judge’s disqualification from the attorney’s case). Even if Judge Ghiz previously believed that Mr. Clark engaged in unethical conduct relating to the prior case, “judges are presumed to be capable of putting aside such preliminary influences and deciding cases based on the law and the facts before them,” *id.* at ¶ 10. Indeed, “[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. In the absence of any evidence of bias or some other objective indication that would cause a reasonable observer to question Judge Ghiz’s impartiality, those presumptions have not been overcome in this case.

{¶ 11} The affidavit of disqualification is denied. The cases may proceed before Judge Ghiz.

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