

[Cite as *In re Disqualification of Miller*, ___ Ohio St.3d ___, 2022-Ohio-4674.]

IN RE DISQUALIFICATION OF MILLER.

MORRIS v. OHIO DEMOCRATIC PARTY ET AL.

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Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias, prejudice, or appearance of impropriety—Disqualification denied.

(No. 22-AP-130—Decided November 28, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
General Division, Case No. 22CV002828.

O’CONNOR, C.J.

{¶ 1} Plaintiff Herbert J. Morris has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Andy Miller from the above-referenced age-discrimination case, now pending on the defendants’ motions to dismiss.

{¶ 2} Mr. Morris has sued the Ohio Democratic Party (“ODP”) and some of its individual officers. He claims that Judge Miller has a conflict of interest because he is a member of the Franklin County Democratic Party—which Mr. Morris describes as an affiliate of the ODP—and because the judge’s campaign committee has contributed to the county party. In addition, Mr. Morris alleges that Judge Miller has demonstrated bias by ignoring some of Mr. Morris’s motions and by ruling in favor of the defendants on other matters.

{¶ 3} Judge Miller submitted a response to the affidavit and denies any bias against Mr. Morris or in favor of the defendants. The judge acknowledges that he is a member of the ODP and the Franklin County Democratic Party and that his campaign committee has made yearly contributions to the county party. Judge

Miller also admits that he personally contributes \$5.00 a month to the ODP and the Franklin County Democratic Party. The judge claims, however, that his political connections to the ODP will not affect his judicial conduct. He also affirms that his legal rulings in the underlying case have been based on the law and the facts.

{¶ 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. For the reasons explained below, Mr. Morris has not established that Judge Miller 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. Morris set forth a compelling argument for disqualifying Judge Miller to avoid an appearance of partiality.

Judge Miller’s political connections to the ODP

{¶ 5} “Affidavits of disqualification involving political and campaign issues are decided on a case-by-case basis.” *In re Disqualification of Burt*, 145 Ohio St.3d 1239, 2015-Ohio-5670, 49 N.E.3d 304, ¶ 6. Such issues typically arise when a lawyer or party appearing before a judge contributed to the judge’s campaign for judicial office or is somehow politically connected to the judge. Under longstanding precedent, it is unreasonable to question a judge’s impartiality merely because counsel or a litigant contributed to the judge’s election campaign

or because a lawyer campaigned for the judge's election opponent. *In re Disqualification of Breaux*, 150 Ohio St.3d 1305, 2017-Ohio-7374, 84 N.E.3d 1038, ¶ 10; *see also In re Disqualification of Cleary*, 77 Ohio St.3d 1246, 674 N.E.2d 357 (1996); *In re Disqualification of Gallagher*, 155 Ohio St.3d 1251, 2018-Ohio-5428, 120 N.E.3d 853, ¶ 7 (a litigant's "involvement in local party politics, without more, is insufficient to warrant disqualification of the entire county common pleas bench"); *In re Disqualification of Ghiz*, 146 Ohio St.3d 1249, 2015-Ohio-5667, 55 N.E.3d 1113 (denying a request to disqualify a judge based, in part, on the fact that the plaintiff's attorney was serving as chair of the same county political party that the judge belonged to).

{¶ 6} However, there are political circumstances in which a judge should be disqualified to avoid an appearance of impropriety. *See, e.g., In re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720 (county trial-court judges disqualified from a case involving a county commissioner who wielded considerable influence over the court's funding and who played a leadership role in local politics); *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 884, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) (due process requires a judge's recusal "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent"); Board of Professional Conduct Advisory Opinion 2014-1 (Jan. 31, 2014) ("When a lawyer's campaign activities evidence a substantial political relationship with a judge, disqualification is warranted during the campaign fundraising period").

{¶ 7} The facts here are different from those of prior disqualification matters. Judge Miller is admittedly a member of the ODP, which is a defendant in the underlying action, and the judge personally donates to the ODP each month. "Article IV of the Ohio Constitution provides that members of the judicial branch

of government shall be elected by popular vote of the citizens of Ohio.” *In re Disqualification of Ney*, 74 Ohio St.3d 1271, 1272, 657 N.E.2d 1367 (1995). One reality of an elected judiciary is that judicial candidates will be endorsed by and associate with county and state political parties. Notwithstanding those political connections, the general rule is that judges are presumed to be “able to set aside any partisan interests once they have assumed judicial office and have taken an oath to decide cases on the facts and the law before them,” *In re Disqualification of Bryant*, 117 Ohio St.3d 1251, 2006-Ohio-7227, 885 N.E.2d 246, ¶ 3.

{¶ 8} For example, in *Burt*, 145 Ohio St.3d 1239, 2015-Ohio-5670, 49 N.E.3d 304, the plaintiff’s attorney sought a judge’s removal in a case filed under the Open Meetings Act, R.C. 121.22, which was pending against the Geauga County Republican Party Central Committee and its chairperson. The affiant alleged that the judge was a member of the county Republican Party and that an appearance of bias existed due to the judge’s personal, political, and financial connections to the defendants. The chief justice denied the affidavit:

Given applicable precedent regarding judicial disqualification and campaign issues, given Judge Burt’s assurances of his impartiality, given the lack of sufficient evidence indicating that Judge Burt has substantial political ties to defendants, and given the legal nature of the question before the trial court, a reasonable and objective observer would not question Judge Burt’s ability to preside fairly and impartially over the case.

Id. at ¶ 8.

{¶ 9} The facts here similarly do not support disqualifying Judge Miller. Judge Miller affirms that his political relationship with the ODP will not influence his decision-making. The judge’s current term expires in February 2027, and it

does not appear that he is actively campaigning for reelection. Although Judge Miller personally donates a small amount each month to the ODP, there is no evidence that he holds any office in the ODP or that he is currently receiving any tangible benefit from the organization. Further, Mr. Morris claims that he seeks only injunctive relief against the ODP—that is, he seeks to get his temporary job back; he does not seek damages. We elect judges in Ohio, and just as we must ordinarily assume that an attorney’s support of a judge will not cause the judge to favor that attorney when he or she appears before the judge, *see In re Disqualification of Osowik*, 117 Ohio St.3d 1237, 2006-Ohio-7224, 884 N.E.2d 1089, ¶ 6, we must assume that a judge’s endorsement by or support of a certain political party will not affect the judge’s decision-making if that political party later appears before the judge. Based on this record, there is no evidence to call that general assumption into doubt.

{¶ 10} This conclusion is consistent with other Ohio judicial-disqualification decisions regarding a judge’s personal connection to a party appearing before him or her. *See, e.g., In re Disqualification of Fuerst*, 77 Ohio St.3d 1253, 674 N.E.2d 361 (1996) (absent a specific demonstration of bias, a judge’s membership in a church in the local Catholic diocese did not warrant his disqualification from a case involving sex-abuse claims against a Catholic priest and the diocese); *In re Disqualification of Enlow*, 149 Ohio St.3d 1235, 2016-Ohio-8604, 75 N.E.3d 226, ¶ 4-5 (the mere fact that a judge or a judge’s spouse graduated from or made contributions to a university that is a party in a case pending before the judge is not, without more, sufficient grounds for disqualification); *In re Disqualification of Judges of the First Dist. Court of Appeals*, 91 Ohio St.3d 1207, 741 N.E.2d 136 (2000) (court-of-appeals judges were not disqualified from a case against the Cincinnati Bar Association even though the judges were members of the bar association, because none of the judges held offices in the association or received any tangible benefit from their memberships); *In re Disqualification of*

O'Grady, ___ Ohio St.3d ___, 2022-Ohio-2854, ___ N.E.3d ___, ¶ 9 (“that the judge attended [a Fraternal Order of Police] charity event six months before trial does not mean that he cannot fairly or impartially preside over a case alleging police misconduct”).

Judge Miller’s legal rulings

{¶ 11} Contrary to Mr. Morris’s contention, “affidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings.” *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. If Mr. Morris believes that Judge Miller erred in his decisions, he may raise those issues on appeal. But it is outside the scope of this matter for the chief justice to review the judge’s rulings, and Mr. Morris’s disagreement or dissatisfaction with those decisions is insufficient to prove bias or prejudice. *See id.*

{¶ 12} The affidavit of disqualification is denied. The case may proceed before Judge Miller.
