

**IN RE DISQUALIFICATION OF ONDREY.**

**AMES v. GEAUGA COUNTY REPUBLICAN CENTRAL COMMITTEE ET AL.**

**[Cite as *In re Disqualification of Ondrey*, 170 Ohio St.3d 1242,  
2022-Ohio-4714.]**

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

(No. 22-AP-140—Decided December 1, 2022.)

ON AFFIDAVIT OF DISQUALIFICATION in Geauga County Court of Common Pleas,  
General and Domestic Relations Division, Case No. 22M000323.

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**O’CONNOR, C.J.**

{¶ 1} Plaintiff Brian M. Ames has filed an affidavit and a supplemental affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge David M. Ondrey from the above-referenced case.

{¶ 2} In June 2022, Mr. Ames sued the Geauga County Republican Party Central Committee and its chairperson for allegedly violating Ohio’s Open Meetings Act, R.C. 121.22. After Judge Ondrey dismissed the complaint, the defendants filed a motion for sanctions and attorney fees under R.C. 2323.51. Mr. Ames seeks to disqualify Judge Ondrey from deciding that motion for three reasons. First, Mr. Ames argues that the judge violated his due-process rights and the Code of Judicial Conduct by determining that he had engaged in frivolous conduct under R.C. 2323.51 without first holding a required evidentiary hearing. Second, Mr. Ames alleges that Judge Ondrey is a member of the Republican Party and that he therefore cannot impartially decide a case in which his own political party’s central

committee is a defendant. Third, Mr. Ames alleges that Judge Ondrey has permitted the county prosecuting attorney to threaten him.

{¶ 3} Judge Ondrey submitted a response to Mr. Ames’s original affidavit and denies any bias against him. The judge acknowledges that he made a mistake in prematurely determining that Mr. Ames had engaged in frivolous conduct without first holding a hearing. The judge has since amended his prior order and scheduled the mandatory hearing. Judge Ondrey further explains why his amended order was not promptly filed in the underlying case docket. In addition, Judge Ondrey acknowledges that he votes in Republican Party primaries, but he describes his involvement in the Geauga County Republican Party as “minimal.” He further affirms that his political connections to the defendants have not played any role in the underlying matter.

{¶ 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. Ames has not established that Judge Ondrey 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. Ames set forth a compelling argument for disqualifying Judge Ondrey to avoid an appearance of partiality.

*Judge Ondrey's mistake*

{¶ 5} Judge Ondrey has acknowledged his error in prematurely deciding a portion of the defendants' motion for sanctions, and the judge corrected his mistake before Mr. Ames filed his affidavit of disqualification. Mr. Ames has not established that the judge's actions were the product of bias against him or that the judge cannot fairly and impartially preside over the remainder of the case. *See, e.g., In re Disqualification of Miller*, 163 Ohio St.3d 1280, 2020-Ohio-6876, 170 N.E.3d 908, ¶ 6 ("That Judge Miller made a mistake—which she admitted and attempted to correct—does not mean that she is biased against [the affiant] or that she cannot be fair and impartial in further proceedings"); *In re Disqualification of Gold*, 155 Ohio St.3d 1321, 2018-Ohio-5443, 122 N.E.3d 1303 (judge's admitted mistake in prematurely deciding one of the defendant's motions did not prove that the judge was biased against the plaintiff). "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. Without more, those presumptions have not been overcome in this case.

{¶ 6} Further, this is not the appropriate forum in which to determine whether Judge Ondrey's mistake violated Mr. Ames's due-process rights or whether the judge had the authority to amend his prior order. *See In re Disqualification of D'Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5 ("reviewing legal errors is not the role of the chief justice in deciding affidavits of disqualification"); *In re Disqualification of Giesler*, 135 Ohio St.3d 1201, 2011-Ohio-7083, 985 N.E.2d 486, ¶ 10 ("an affidavit of disqualification is not the mechanism for determining whether a judge has violated a party's constitutional rights").

*Judge Ondrey's political connections to the defendants*

{¶ 7} “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 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} The circumstances here are similar to those in *In re Disqualification of Burt*, 145 Ohio St.3d 1239, 2015-Ohio-5670, 49 N.E.3d 304, in which the plaintiff’s attorney sought a judge’s removal from a case filed against the Geauga County Republican Party Central Committee and its chairperson regarding application of the Open Meetings Act to certain meetings held by the defendants. The affiant alleged that because the judge was a member of the county Republican Party, an appearance of bias existed due to the judge’s 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 same rationale applies here. Judge Ondrey affirms that his political connections with the defendants will have no impact on his decision-making. The judge notes that he has “no track record of any significant involvement in the Republican Party,” that he has not attended any county political-party meetings since his election to judicial office, and that he has had limited contact with the party’s chairperson. We elect judges in Ohio, and just as we must 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 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 assumption into doubt. *See also 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).

{¶ 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 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*, 170 Ohio St.3d 1201, 2022-Ohio-2854, 209

N.E.3d 725, ¶ 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”).

*The alleged “threat” against Mr. Ames*

{¶ 11} To support the allegation that Judge Ondrey permitted his statutory counsel to threaten him, Mr. Ames submitted a copy of an email from the Geauga County Prosecuting Attorney notifying Mr. Ames that if he did not voluntarily dismiss a prohibition complaint that he had filed against Judge Ondrey, the prosecutor would move to dismiss the complaint and seek sanctions against him. To the extent that the prosecutor’s email could be characterized as a threat, Mr. Ames has not established that Judge Ondrey approved or authorized the email. “Allegations that are based solely on hearsay, innuendo, and speculation—such as those alleged here—are insufficient to establish bias or prejudice.” *In re Disqualification of Flanagan*, 127 Ohio St.3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4.

{¶ 12} The affidavits of disqualification are denied. The case may proceed before Judge Ondrey.

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