IN RE DISQUALIFICATION OF CELEBREZZE.

JARDINE *v.* JARDINE ET AL.

[Cite as *In re Disqualification of Celebrezze*, 173 Ohio St.3d 1281, 2023-Ohio-4383.]

Judges—Affidavits of disqualification—R.C. 2701.03—Judge's motion to seal granted in part and denied in part—Affiant's fifth supplemental affidavit of disqualification and portions of brief in opposition to motion to seal stricken as improper replies to judge's response, in violation of S.Ct.Prac.R. 21.02(C)—Disqualification granted to avoid appearance of impropriety.

(No. 23-AP-070—Decided August 18, 2023.)

ON AFFIDAVITS OF DISQUALIFICATION in Cuyahoga County Court of Common Pleas, Domestic Relations Division, Case No. DR-20-383667.

KENNEDY, C.J.

{¶ 1} Plaintiff Jason G. Jardine has filed an affidavit of disqualification and five supplemental affidavits of disqualification pursuant to R.C. 2701.03 seeking to disqualify Administrative Judge Leslie Ann Celebrezze of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, from presiding over his divorce case. Judge Celebrezze filed a single response addressing the original affidavit of disqualification and the first three supplemental affidavits of disqualification. The judge filed a second response addressing the fourth supplemental affidavit.

{¶ 2} In conjunction with the initial response, the judge filed a motion to file the response "confidentially and/or under seal" (hereafter, the "motion to seal"). Judge Celebrezze filed a brief in support of the motion to seal, and Jardine filed a brief in opposition to the motion to seal. The judge then filed a motion to strike

portions of Jardine's brief in opposition to the motion to seal as an improper reply to the judge's response to the affidavits of disqualification.

{¶ 3} Judge Celebrezze also filed a notice of failure of service of Jardine's fifth supplemental affidavit of disqualification. In response, Jardine filed a motion to strike the notice of failure of service. The receiver in the underlying divorce case has also filed a motion for leave to file a status report.

{¶ 4} As explained below, Judge Celebrezze's motion to strike portions of Jardine's brief in opposition to the motion to seal is granted. The following portions of the brief in opposition are an improper reply to the judge's response and are stricken: the second paragraph on page 2, the third through fifth paragraphs on page 4, pages 5 and 6, the first and all numbered paragraphs on page 7, the first and third non-numbered paragraphs on page 8, page 9, and the first and second paragraphs on page 10. Exhibits 1, 2, 3, and 4 are also stricken.

{¶ 5} Judge Celebrezze's motion to seal is granted in part and denied in part. The clerk of this court is ordered to (1) redact the references to a disciplinary grievance on pages 3 and 9 of Judge Celebrezze's June 22, 2023 response to the affidavits of disqualification and on pages 2 and 4 of the judge's July 3, 2023 brief in support of her motion to seal, (2) redact the private medical information of defendant Crystal Jardine (hereafter, "the defendant") on the third page of exhibit P attached to Judge Celebrezze's June 22, 2023 response to the affidavit of disqualification, and (3) unseal all other filings in this affidavit-of-disqualification case.

{¶ 6} Jardine's fifth supplemental affidavit of disqualification is sua sponte stricken as an improper reply to the judge's response, in violation of S.Ct.Prac.R. 21.02(C). Therefore, Jardine's motion to strike the judge's notice of failure of service of the fifth supplemental affidavit of disqualification is denied as moot.

{¶ 7} The receiver's motion for leave to file a status report is also denied as moot.

{¶ 8} The affidavit of disqualification is granted to avoid the appearance of impropriety. The decision is not based on a finding of actual bias. Jardine alleges that the underlying divorce case was not randomly reassigned to Judge Celebrezze after a prior judge had recused, that Judge Celebrezze kept the case for herself, and that the motive for keeping the case was bias in favor of the receiver and the defendant and prejudice against Jardine. In response, Judge Celebrezze adamantly denies any bias or prejudice. The judge explains that as the administrative judge of the division, after two or more other judges have recused from a contentious or complex case, Judge Celebrezze often reassigns that case to herself to keep the case moving. However, as the administrative judge of the division, Judge Celebrezze's authority to reassign the case after the prior judge's recusal was limited. Rule 36.019(A) of the Rules of Superintendence for the Courts of Ohio and Local Rule 2(B)(2) of the Cuyahoga County Court of Common Pleas, Domestic Relations Division require the random reassignment of a case when a judge has recused. Therefore, to avoid the appearance of impropriety, Judge Celebrezze is disqualified.

{¶ 9} Because the affidavit of disqualification is granted to avoid the appearance of impropriety, it is unnecessary to address any remaining allegations. This matter is returned to the Cuyahoga County Court of Common Pleas, Domestic Relations Division, for random reassignment to another judge of that division.

Trial-Court Proceedings

{¶ 10} On December 29, 2020, Jardine filed a complaint for divorce. The docket indicates that Jardine's complaint was randomly assigned to Judge Tonya Jones.

{¶ 11} In March 2021, the defendant filed motions for the appointment of a receiver to oversee funeral homes and related entities that the parties jointly owned. Jardine opposed the motions. On July 14, Judge Jones granted the defendant's motions and appointed a receiver. Among other things, Judge Jones ordered the receiver to marshal assets for five of the parties' business entities.

{¶ 12} On July 16, Jardine appealed Judge Jones's order appointing the receiver to the Eighth District Court of Appeals.

{¶ 13} On May 26, 2022, the appellate court affirmed the decision of the trial court. *See Jardine v. Jardine*, 8th Dist. Cuyahoga No. 110670, 2022-Ohio-1754. On the same day, the receiver filed a motion to amend the appointment order. On June 7, the receiver filed an emergency amended motion to revise the appointment order. Jardine opposed both motions.

{¶ 14} On August 9, Judge Jones voluntarily issued an entry of recusal to avoid any appearance of impropriety or conflict of interest. Three days later, Judge Jones issued a "Judgment Entry Nunc Pro Tunc of Recusal." The entry reasserted the judge's recusal from the case and reassigned the case to Judge Celebrezze.

{¶ 15} On August 29, the receiver filed a supplemental brief in support of the motion to amend the appointment order. The following day, Judge Celebrezze issued an amended order modifying the receivership.

{¶ 16} On September 2, Jardine filed a motion to reconsider the August 30 amended order modifying the receivership. Among other things, Jardine argued that under the terms of the receiver's initial appointment, the receivership had already terminated, that the receiver had made misleading claims to justify reappointment, and that Jardine had had no opportunity to respond to the receiver's supplemental brief before Judge Celebrezze ruled on the receiver's motion. The receiver opposed the motion for reconsideration.

{¶ 17} On November 11, Jardine filed four motions related to the receivership. Jardine moved to remove the receiver, arguing that the receiver had acted beyond the scope of the appointment, that the fees and expenses charged by the receiver were excessive, that the receiver had "acted inappropriately in his lack of candor and transparency with [the] Court," and that the receiver had improperly aligned himself with the defendant. Jardine also sought an order for an accounting of the overpayment of funds to the defendant and a finding that the receiver had

paid the defendant significantly higher wages and income than Jardine, as well as an order disgorging the overpayments to the defendant. Jardine also moved for an evidentiary hearing and a stay on any further disbursements of the receiver's fees and expenses.

{¶ 18} On December 13, the receiver moved for an order authorizing the sale of certain marital property. Judge Celebrezze granted the receiver's motion the following day.

{¶ 19} On December 21, Jardine appealed that order but later voluntarily dismissed the appeal on January 4, 2023. The receiver then filed a motion to vacate the sale order on February 8.

{¶ 20} On February 10, the receiver again moved for an order to sell the property. Judge Celebrezze granted the order on February 14. Jardine appealed that order, arguing, among other things, that Judge Celebrezze had deprived him of due process by engaging in a pattern of rubber-stamping the receiver's requests without holding a hearing or giving Jardine an opportunity to be heard. The Eighth District dismissed the appeal on April 13.

{¶ 21} On February 27, Jardine filed an objection to the receiver's request for payment of fees and expenses.

{¶ 22} On March 8, Judge Celebrezze held a telephone pretrial conference.

{¶ 23} On March 20, the receiver, through counsel, filed a motion to show cause against Jardine. The receiver alleged that Jardine and his counsel had failed to comply with the receiver's requests for bank and financial records for one of the entities in receivership. The receiver argued that Jardine's failure to respond required the receiver to subpoena those records from the bank possessing the financial records. The receiver alleged that upon receiving those records, the receiver discovered that Jardine had been depositing and expending marital assets that were subject to the receivership.

{¶ 24} Two days later, Jardine filed a motion to show cause against the receiver. Jardine alleged that the receiver had failed to comply with the terms of the amended order modifying the receivership. Specifically, Jardine alleged that the receiver had failed to pay all necessary expenses of the marital businesses, including Jardine's salary, and that the receiver had disregarded contracts and obligations relating to the marital business.

{¶ 25} On March 29, Judge Celebrezze issued an entry ordering Jardine to appear for a hearing on May 26 to address the receiver's motion to show cause.

{¶ 26} On May 3, Jardine filed another objection to the receiver's requests for the payment of fees and expenses. On May 17, the receiver filed a supplement to his motion to show cause against Jardine. In the supplement, the receiver alleged that Jardine had refused to turn over records and accounts for receivership entities, that Jardine had improperly taken more than $1.2 million from the receivership estate, and that Jardine had diverted some of those receivership funds into an account that was not initially included in the receivership. The receiver's supplement to the show-cause motion asked the court to require Jardine to repay any receivership funds and turn over all records identified in the amended appointment order or be held in contempt of court. The receiver's supplement to the show-cause motion was also scheduled to be heard at the May 26 hearing.

Affidavit-of-Disqualification Proceedings

{¶ 27} On May 18, Jardine filed the original affidavit of disqualification. He filed supplemental affidavits of disqualification on May 25, June 2, June 6, June 21, and June 23. Judge Celebrezze filed responses to the affidavit of disqualification and supplemental affidavits of disqualification on June 22 and June 29.

Requirements of an Affidavit

{¶ 28} As a preliminary matter, many of the assertions in Jardine's affidavit of disqualification lack the personal knowledge necessary for inclusion in an

affidavit and for consideration by a trier of fact. This court has long held that "an affidavit must appear on its face to have been * * * in compliance with all legal requisitions." *Benedict v. Peters*, 58 Ohio St. 527, 536, 51 N.E. 37 (1898). In Ohio, "[a]n affidavit is a written declaration [made] under oath." R.C. 2319.02. Thus, an affidavit is a form of written testimony. *See Wallick Properties Midwest, L.L.C. v. Jama*, 10th Dist. Franklin No. 20AP-299, 2021-Ohio-2830, ¶ 18. A party may present testimony to a court only if "evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Evid.R. 602. A witness is traditionally " 'incompetent' to testify to any fact unless he or she possesses firsthand knowledge of that fact." Weissenberger & Stephani, *Weissenberger's Ohio Evidence Treatise*, Section 602.1 (2023); *see State v. Fears*, 86 Ohio St.3d 329, 338, 715 N.E.2d 136 (1999) (holding that testimony not based on personal knowledge was inadmissible). Therefore, "statements contained in affidavits must be based on personal knowledge." *Carkido v. Hasler*, 129 Ohio App.3d 539, 548, 718 N.E.2d 496 (7th Dist.1998), fn. 2; *see* 2A Corpus Juris Secundum, Affidavits, Section 46; *see also* Civ.R. 56(E); S.Ct.Prac.R. 12.02(B)(2).

{¶ 29} "Personal knowledge" is " '[k]nowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.' " *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 26, quoting *Black's Law Dictionary* 875 (7th Ed.Rev.1999). It follows that " '[o]ne who has no knowledge of a fact except what another has told him cannot, of course, satisfy the * * * requirement of knowledge from observation.' " *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 450, 452, 687 N.E.2d 422 (1997), quoting 1 McCormick, *Evidence* 40 (4th Ed.1992).

{¶ 30} Because the averments fail to meet the requirement for an affidavit, the following paragraphs of Jardine's original affidavit of disqualification are stricken: paragraph 14, paragraph 15, the first two sentences of paragraph 16,

paragraph 17, the second sentence of paragraph 19, paragraph 21, paragraph 27, paragraph 28, the second sentence of paragraph 29, and the last sentence of paragraph 46. *See State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174, ¶ 38, 41; *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 223-224, 631 N.E.2d 150 (1994).

Allegations in the Affidavits of Disqualification

{¶ 31} Jardine argues that Judge Celebrezze should be disqualified from his divorce case based on two allegations: (1) Judge Celebrezze is unable "to fairly and impartially consider the facts of [Jardine's] case" and (2) the judge has demonstrated her bias in favor of the defendant and the receiver while exhibiting prejudice toward the affiant.

Lack of Impartiality

{¶ 32} Jardine's evidence in support of his allegation of a lack of impartiality is that Judge Celebrezze has issued rulings—or refused to issue rulings—in the underlying divorce case that have denied Jardine a fair and impartial proceeding.

{¶ 33} In response, Judge Celebrezze states that Jardine's allegations are unfounded. Specifically, Judge Celebrezze denies that any of the rulings made in the underlying case were made on the basis of anything other than the law and the facts.

Bias and Prejudice

{¶ 34} In support of the allegation of bias and prejudice, Jardine asserts (1) that as the administrative judge, Judge Celebrezze failed to randomly reassign the underlying case after Judge Jones recused, in order to favor the receiver, and (2) that Judge Celebrezze's personal and political relationship with the receiver, the judge's relationships with members of the law firm representing the defendant, and the receiver's relationship with members of the firm representing the defendant are

evidence of bias in favor of the receiver and the defendant and evidence of prejudice against Jardine.

{¶ 35} In response, Judge Celebrezze admits that she often assigns contentious and complex cases to her own docket when another judge recuses so "as not to overly burden [her] fellow judges of the Domestic Relations Division and to save the resources needed for the appointment of a visiting judge." The judge also admits that the receiver is a longtime family friend, and the judge acknowledges that one of the receiver's employees is the deputy treasurer of the judge's campaign committee—which is a matter of public record. The judge further acknowledges that she has socialized with attorney Richard Rabb, who represents the defendant, but she denies any improper discussion of cases pending before her. And the judge admits to having a friendship with Robert Glickman, who works at the firm that represents the defendant, but the judge denies that Glickman has ever represented her or acted on her behalf.

Other Filings in the Affidavit-of-Disqualification Proceeding

{¶ 36} On May 18, 2023, a stay was issued depriving Judge Celebrezze of authority to preside in the underlying divorce case until a ruling was made on Jardine's original affidavit of disqualification. On June 21, Judge Celebrezze filed a motion to file the response under seal. On June 23, Jardine and Judge Celebrezze were asked and the defendant and her counsel were permitted to brief the issue whether the judge's response to the affidavits of disqualification should remain under seal.

{¶ 37} On July 3, Jardine, through his counsel, and Judge Celebrezze both filed responsive briefs. The clerk of this court filed the motion to seal, the judge's responses to the affidavits of disqualification, and the responsive briefs under seal pending a decision on the motion to seal.

{¶ 38} In support of sealing, Judge Celebrezze argues that the June 22 response "contains the following confidential information": (1) references to a

disciplinary grievance, (2) the judge's personal reactions, impressions, and discussions with another judge of the domestic-relations division and the judge's explanations of her judicial actions, all of which the judge argues are protected under the judicial-deliberative-process privilege, (3) video exhibits created by a private investigator hired by Jardine, which the judge claims include private information about her, (4) a video exhibit of a hearing from a different and unrelated domestic-relations case that the judge claims contains discussions about private and confidential information about the parties in that case, and (5) a May 24, 2023 email from Jardine to counsel and the court-appointed receiver that the judge asserts may contain confidential medical information about the defendant. The judge further argues that the presumption of allowing public access to the response is outweighed by a higher interest after considering the factors in Sup.R. 45(E)(2)(a) through (c).

{¶ 39} In Jardine's brief in opposition to the judge's motion to seal, Jardine argues that "[e]very citizen of this State * * * has the right to review a response to the Chief Justice of the Ohio Supreme Court by an elected judge concerning improprieties and allegations of bias." He maintains that the public's confidence in the independence, integrity, and impartiality of the judiciary is protected by requiring elected judges to be transparent. Jardine cites caselaw holding that "court records must be open to the public" and that if a court does restrict public access, then it must use the least restrictive means.

{¶ 40} On July 18, the judge filed a motion to strike portions of Jardine's brief in opposition to the motion to seal on the basis that a large portion of the brief was an improper reply to the judge's response to the affidavits of disqualification, in violation of S.Ct.Prac.R. 21.02(C). On July 27, Jardine filed a brief opposing the motion to strike.

{¶ 41} On August 2, Judge Celebrezze filed a notice of failure of service asserting that Jardine had not served the fifth supplemental affidavit of disqualification on her. Also on August 2, Jardine filed a motion to strike the notice

of failure of service, contending that the judge was served with the fifth supplemental affidavit.

{¶ 42} On August 14, the receiver filed a motion for leave to file a status report.

Motion to Strike

{¶ 43} In Judge Celebrezze's motion to strike Jardine's brief in opposition to the motion to seal, the judge identifies portions of Jardine's brief that are either a direct reply to the judge's explanations or "superfluous and irrelevant information and arguments." The judge argues that these portions are an improper reply to the judge's response to the affidavits of disqualification, in violation of S.Ct.Prac.R. 21.02(C).

{¶ 44} Jardine denies that any portion of his brief in opposition to the motion to seal is a reply to the judge's response. Jardine argues that his brief highlights the importance of maintaining public access to court records and that Judge Celebrezze has an "ulterior motive * * * for seeking to file her responses under seal."

{¶ 45} S.Ct.Prac.R. 21.02(C) provides that in an affidavit-of-disqualification proceeding, "[n]o reply to a response from the judge shall be permitted and the Clerk of the Supreme Court shall refuse to file a reply to a response from the judge." Litigants may not circumvent this rule by including improper reply arguments in a pleading captioned under a different name. *See, e.g.*, *In re Disqualification of Leach*, 164 Ohio St.3d 1244, 2021-Ohio-2321, 173 N.E.3d 530, ¶ 8 (explaining that the affiant could not "circumvent [S.Ct.Prac.R. 21.02(C)] by labeling her filing a 'supplemental' affidavit"); *In re Disqualification of Yarbrough*, 160 Ohio St.3d 1244, 2020-Ohio-4439, 155 N.E.3d 963, ¶ 7 (denying motion to strike that primarily challenged factual statements in judge's response to affidavit of disqualification, in violation of S.Ct.Prac.R. 21.02(C)); *In re Disqualification of Brannon*, 165 Ohio St.3d 1219, 2021-Ohio-3270, 176 N.E.3d

62, ¶ 8 (supplemental affidavit criticizing and replying to statements in judge's response to affidavit of disqualification violated S.Ct.Prac.R. 21.02(C)).

{¶ 46} A review of Jardine's brief confirms that the brief went well beyond arguments in support of denying the judge's motion to seal. Portions of the brief do reply to factual statements and arguments made by the judge in the response to the affidavits of disqualification. S.Ct.Prac.R. 21.02(C) prohibits the filing of any reply to a judge's response, and Jardine cannot circumvent the rule by including such arguments or statements in the brief. Therefore, Judge Celebrezze's motion to strike is granted.

{¶ 47} The following portions of Jardine's brief are stricken and will not be considered: the second full paragraph on page 2, the third through fifth paragraphs on page 4, pages 5 and 6, the first full paragraph and all numbered paragraphs on page 7, the first non-numbered full paragraph and the third full non-numbered paragraph on page 8, page 9, and the first and second full paragraphs on page 10. Jardine's exhibits 1 through 4 are also stricken.

Motion to Seal

{¶ 48} As set forth above, the day before filing a response to the affidavits of disqualification, Judge Celebrezze filed a motion to seal her response. The motion did not limit the request to specific portions of the response or certain exhibits. But in the brief in support of the motion to seal, the judge limited the request to five categories of information or documents and gave three reasons for sealing the response: (1) the information or documents are confidential or private, (2) the information or documents are protected by the judicial-deliberative-process privilege, and (3) the information or documents are not a court record available for public access pursuant to Sup.R. 44(C)(2)(h). As explained below, the judge's motion to seal is granted in part and denied in part.

{¶ 49} "Section 16, Article I of the Ohio Constitution guarantees the public's right to open courts," and "[t]his right of access * * * includes records and

transcripts that document the proceedings." *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, 805 N.E.2d 1094, ¶ 8, *superseded by statute on other grounds as stated in State v. Hubbard*, 167 Ohio St.3d 77, 2021-Ohio-3710, 189 N.E.3d 720. " '[O]pen access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor.' " *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St.3d 292, 2022-Ohio-3580, 212 N.E.3d 859, ¶ 48 (Kennedy, J., concurring in judgment only), quoting *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 17.

{¶ 50} This general right of access "is not absolute." *Winkler* at ¶ 9. But like any other filing in this court, affidavit-of-disqualification files are public records, and the public has a right to access and inspect affidavit-of-disqualification pleadings. *See In re Disqualification of Paschke*, 165 Ohio St.3d 1207, 2021-Ohio-3236, 175 N.E.3d 590, ¶ 6. The public nature of records in affidavit-of-disqualification proceedings protects the integrity of the process. Therefore, in the absence of a justification that would warrant sealing an affidavit of disqualification or a judge's response to an affidavit of disqualification, a motion to seal an affidavit-of-disqualification filing will be denied. *See In re Disqualification of Holbrook*, 167 Ohio St.3d 1244, 2022-Ohio-2141, 194 N.E.3d 387, ¶ 13.

{¶ 51} However, when an affiant includes in an affidavit of disqualification or a judge includes in a response to an affidavit of disqualification a document that is under seal in the trial court or otherwise confidential, the document will generally remain under seal in this court. *See Paschke* at ¶ 6; *In re Disqualification of Selmon*, 170 Ohio St.3d 1220, 2022-Ohio-3999, 209 N.E.3d 740, ¶ 4; *In re Disqualification of Maloney*, 88 Ohio St.3d 1215, 1216, 723 N.E.2d 1102 (1999).

{¶ 52} "[A]s a general rule, courts should not order the blanket sealing of records." *Davis v. Cincinnati Enquirer*, 164 Ohio App.3d 36, 2005-Ohio-5719, 840 N.E.2d 1150, ¶ 12 (1st Dist.). "It should only be in the rarest of circumstances

that a court seals a case from public scrutiny." *Woyt v. Woyt*, 8th Dist. Cuyahoga Nos. 107312, 107321, and 107322, 2019-Ohio-3758, ¶ 67.

{¶ 53} Among other arguments, Judge Celebrezze relies on Sup.R. 44 through 47 in support of the motion to seal. In relying on the Rules of Superintendence to evaluate whether the public should have access to a court record, Judge Celebrezze was following the precedent of this court. But in my view, that precedent is misguided; "[t]his court's cases concluding that we have the power to preempt the Public Records Act by issuing a court rule were wrongly decided." *State ex rel. Ware v. Parikh*, 172 Ohio St.3d 515, 2023-Ohio-759, 225 N.E.3d 911, ¶ 25 (Kennedy, C.J., concurring in judgment only in part and dissenting in part). As I have previously explained, this court has no constitutional authority to create rules that affect the people's right to access public records, including court records. *See, e.g., id.*; *Forsthoefel*, 170 Ohio St.3d 292, 2022-Ohio-3580, 212 N.E.3d 859, at ¶ 47 (Kennedy, J., concurring in judgment only); *State ex rel. Ware v. Kurt*, 169 Ohio St.3d 223, 2022-Ohio-1627, 203 N.E.3d 665, ¶ 52 (Kennedy, J., concurring in part and dissenting in part); *State ex rel. Parker Bey v. Byrd*, 160 Ohio St.3d 141, 2020-Ohio-2766, 154 N.E.3d 57, ¶ 53 (Kennedy, J., concurring in judgment only in part and dissenting in part); *State ex rel. Parisi v. Dayton Bar Assn. Certified Grievance Commt.*, 159 Ohio St.3d 211, 2019-Ohio-5157, 150 N.E.3d 43, ¶ 30 (Kennedy, J. concurring in part and concurring in judgment only in part).

{¶ 54} In *Forsthoefel*, a recent case in which the sealing of records in a domestic-relations matter was at issue, the majority resolved the case by applying Sup.R. 44 and 45. In that case, I explained that this court enjoys "two types of rulemaking power under the Ohio Constitution—the power to make rules for the superintendence of the courts and the power to make rules governing practice and procedure. Article IV, Sections (5)(A)(1) and (B) of the Ohio Constitution." *Forsthoefel* at ¶ 29 (Kennedy, J., concurring in judgment only). Neither of those

types of rulemaking power give this court the authority to abridge a substantive right of the people.

{¶ 55} The rules regulating judicial records are in the Rules of Superintendence. The Ohio Constitution's grant to this court of the general superintendence power over lower courts and the authority to promulgate rules under that power was implemented to remedy case-management problems that had caused backlogs in resolving cases. Marburger & Idsvoog, *Access with Attitude: An Advocate's Guide to Freedom of Information in Ohio* 151-152 (2011); Milligan & Pohlman, *The 1968 Modern Courts Amendment to the Ohio Constitution*, 29 Ohio St.L.J. 811, 821-822 (1968); *Forsthoefel* at ¶ 30 (Kennedy, J., concurring in judgment only). Pursuant to Article IV, Section 5(A)(1), this court may "adopt Rules of Superintendence that are consistent with this court's *general superintending power* over all courts in this state. That power, however, is limited to addressing the *case-management problems* that cause delays in processing cases * * *." (Emphasis sic.) *Ware* at ¶ 41 (Kennedy, J., concurring in part and dissenting in part).

{¶ 56} The authority to superintend lower courts is separate and apart from the authority granted to this court under Article IV, Section 5(B), to promulgate rules of practice and procedure. That provision constrains this court's authority—strictly prohibiting this court from promulgating rules that "abridge, enlarge, or modify any substantive right." Further, those rules of practice and procedure require the assent of the General Assembly. As the Third District Court of Appeals has explained,

> "whereas rules of procedure adopted by the Supreme Court require submission to the legislature, rules of superintendence are not so submitted and, hence, are of a different category. They are not the equivalent of rules of procedure and have no force equivalent to a

> statute. They are purely internal housekeeping rules which are of concern to the judges of the several courts but create no rights in individual defendants."

Larson v. Larson, 3d Dist. Seneca No. 13-11-25, 2011-Ohio-6013, 2011 WL 5829788, ¶ 13, quoting *State v. Gettys*, 49 Ohio App.2d 241, 243, 360 N.E.2d 735 (3d Dist.1976). "And every appellate district has consistently recognized that the superintendence rules do not supersede statutes with which they are in conflict and do not create either substantive rights or procedural law." *Forsthoefel*, 170 Ohio St.3d 292, 2022-Ohio-3580, 212 N.E.3d 859, at ¶ 44 (Kennedy, J., concurring in judgment only) (collecting cases).

{¶ 57} Therefore, "to the extent that the Rules of Superintendence encroach on a substantive right, the Ohio Constitution strictly prohibits the exercise of that rulemaking power." *Id.* at ¶ 31 (Kennedy, J., concurring in judgment only).

{¶ 58} A substantive right is a right recognized in the common law, statutory law, or the Constitution. *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552, 963 N.E.2d 1270, ¶ 16. The General Assembly codified the public's right to access government records in 1963 by enacting the Public Records Act, R.C. 149.43. *State ex rel. Natl. Broadcasting Co., Inc. v. Cleveland*, 38 Ohio St.3d 79, 81, 526 N.E.2d 786 (1988). The act requires a "person responsible for public records" to make copies of requested records available "within a reasonable period of time." R.C. 149.43(B)(1). The act defines "public record" as records that are kept by "any public office," R.C. 149.43(A)(1), which "includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of *any* function of government" (emphasis added), R.C. 149.011(A). Court records are public records; included in the definition of "state agency" is "any court or judicial agency." R.C. 149.011(B).

{¶ 59} As promulgated, the superintendence rules purport to "wholly replace the Public Records Act with respect to certain court records and thereby alter the rules by which a court will adjudicate a public-record requester's rights." *Forsthoefel*, 170 Ohio St.3d 292, 2022-Ohio-3580, 212 N.E.3d 859, at ¶ 36 (Kennedy, J., concurring in judgment only). That creates a constitutional separation-of-powers problem "of this court's making. Our general superintendence power over 'all courts in the state,' Article IV, Section 5(A)(1), does not include the authority to promulgate rules that contravene a substantive right of the people." *Id.* at ¶ 45 (Kennedy, J., concurring in judgment only).

{¶ 60} Therefore, as I wrote in *Forsthoefel*, in using the Rules of Superintendence to control the release of court records, "[t]his court has egregiously overreached, exceeding the limits of its enumerated constitutional power by using its own rules to exempt itself and lower courts from the Public Records Act." *Id.* at ¶ 47 (Kennedy, J., concurring in judgment only).

{¶ 61} Nevertheless, Judge Celebrezze relies on this court's Sup.R. 45(E) and 44(C)(2)(h) in support of the motion to seal.

Confidential or Private Information

{¶ 62} Judge Celebrezze admits that not all the documents submitted with the response to the affidavits of disqualification are confidential or under seal in the trial court. Rather, the judge argues that the response contains three categories of confidential or private information.

{¶ 63} First, Judge Celebrezze asserts that the response refers to a disciplinary grievance, which is not subject to public disclosure. With limited exceptions not applicable here, Gov.Bar R. V(8)(A)(1) provides that prior to a determination of probable cause by the Board of Professional Conduct, "all proceedings, documents, and deliberations relating to review, investigation, and consideration of grievances shall be confidential." Judge Celebrezze's response

does refer to a disciplinary grievance on pages 3 and 9, and the judge's brief in support of sealing refers to a disciplinary grievance on pages 2 and 4.

{¶ 64} Second, Judge Celebrezze argues that the original affidavit of disqualification contains the judge's home address and that this information should be sealed from public access because to the judge's knowledge, that information is not publicly available. The judge provides no statutory provision or caselaw to support that conclusion.

{¶ 65} The judge also argues that exhibits F and K attached to the judge's response, which are video exhibits, should remain under seal because the videos depict private information about her, such as the judge's leaving her home and traveling to another residence. The videos were allegedly created by a private investigator whom Jardine had retained to follow the judge.

{¶ 66} A review of the videos depicts the judge in a public place. The videos do not depict the actual location where the judge is, where the judge is going, or where the judge went. The judge may know those locations, but that information is not depicted in the videos. Moreover, the judge cites no statutory or caselaw authority to support a determination that a political figure has a right of privacy when the political figure is in public.

{¶ 67} Third, Judge Celebrezze argues that exhibit P attached to the response should be sealed because it "appears to disclose medical information" of the defendant. Exhibit P is an email from Jardine. On page 3 of the email, Jardine discloses medical information about the defendant.

{¶ 68} In support of the request that exhibit P be sealed, the judge cites Sup.R. 45(E). Under this rule, courts may restrict public access to a record if the privacy interests of a party outweigh the government's interest in maintaining open access to court records. Because exhibit P to Judge Celebrezze's response appears to contain private medical information relating to the defendant, that information will remain confidential in this court.

{¶ 69} Judge Celebrezze's motion to seal is granted in part and denied in part. The information regarding the pending grievance on pages 3 and 9 to the response and pages 2 and 4 of the judge's brief in support of the motion to seal shall remain under seal. The motion to seal exhibit P is also partially granted as it relates to the defendant's medical information on page 3.

{¶ 70} Because the foregoing information is not pervasive throughout the documents, the least restrictive means of restricting public access is to redact the information from these records. *See* Sup.R. 45(E)(3). Therefore, the clerk shall redact the foregoing information from the record.

{¶ 71} The motion to seal exhibits F and K is denied. Judge Celebrezze has not cited any statute or caselaw that supports the sealing of videos depicting a public figure in a public place. While there may be situations when weighing the constitutional requirement of open courts against a judge's privacy rights might permit the sealing of information in an affidavit-of-disqualification proceeding, Judge Celebrezze has failed to demonstrate that exhibits F and K should be sealed from public access.

Judicial-Deliberative-Process Privilege

{¶ 72} Judge Celebrezze also argues that the June 22 response to the affidavits of disqualification "contains [her] impression, reactions, and explanations of actions [she] took in [her] judicial capacity" and a summary of the judge's discussions with another domestic-relations judge about case reassignments and an unrelated affidavit of disqualification. Judge Celebrezze argues that such information is privileged "as acknowledged in Ohio common law that protects judges' deliberative processes."

{¶ 73} This court has recognized the existence of the "judicial mental process" privilege. *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision,* 81 Ohio St.3d 58, 63, 689 N.E.2d 32 (1998). The privilege, which "has unquestionably firm roots in our nation's history," *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 602, 894

N.W.2d 788 (2017), is founded on the understanding that allowing litigants to "intrude upon a judge's subjective thoughts and deliberations" would "threaten[ ] the orderly administration of justice." *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 440, 619 N.E.2d 688 (1993). This privilege exists "to ensure the quality and integrity of decision-making that benefits from the free and honest development of a judge's own thinking and candid communications among judges and between judges and the courts' staff in resolving cases before them." *In re Enforcement of Subpoena*, 463 Mass. 162, 168, 972 N.E.2d 1022 (2012). Also, "[c]onfidentiality helps protect judges' independent reasoning from improper outside influences." *In re Certain Complaints Under Investigation by an Investigating Commt. of the Judicial Council of the Eleventh Circuit*, 783 F.2d 1488, 1520 (11th Cir.1986).

{¶ 74} Multiple courts have held that the judicial-mental-process privilege, also known as the judicial-deliberative-process privilege, is narrowly tailored but absolute. *Veskrna* at 603; *Office of Citizens' Aide/Ombudsman v. Edwards*, 825 N.W.2d 8, 19 (Iowa 2012); *In re Enforcement of Subpoena* at 174; *Thomas v. Page*, 361 Ill.App.3d 484, 494, 837 N.E.2d 483 (2005). "The privilege 'covers a judge's mental impressions and thought processes in reaching a judicial decision, whether harbored internally or memorialized in other nonpublic materials. The privilege also protects confidential communications among judges and between judges and court staff made in the course of and related to their deliberative processes in particular cases.' " *Veskrna* at 603, quoting *In re Enforcement of Subpoena* at 174. However, "[i]t does not cover a judge's memory of nondeliberative events in connection with cases in which the judge participated. Nor does the privilege apply to inquiries into whether a judge was subjected to improper 'extraneous influences' or ex parte communications during the deliberative process." *In re Enforcement of Subpoena* at 174-175. Although some courts have concluded that the judicial-mental-process privilege is qualified, not absolute, *see, e.g., Judicial Council of the Eleventh Circuit* at 1520, determining the exact scope of the privilege is

unnecessary to resolve the narrow issue presented in this affidavit-of-disqualification proceeding.

{¶ 75} Judge Celebrezze's response does not reveal any deliberative processes. The judge did not reveal any mental impressions or thought processes made in reaching any decision in the underlying divorce case.

{¶ 76} The judge's summary of discussions with another judge of the domestic-relations division about the assignment of cases when a judge of the division recuses does not fall within the judicial-mental-process privilege. Those discussions relate to administrative functions. Moreover, Judge Celebrezze's discussion with another judge about an unrelated affidavit of disqualification filed *against the other judge* also does not fall within the judicial-mental-process privilege. That affidavit-of-disqualification case was not before Judge Celebrezze for resolution.

{¶ 77} While there may be situations when the judicial-mental-process privilege or judicial-deliberative-process privilege may apply in an affidavit-of-disqualification proceeding, Judge Celebrezze has not established that any information in the response is subject to the privilege. Therefore, the judge's request to seal the response based on the judicial-deliberative-process privilege is denied.

Exempt from Public Disclosure Pursuant to Sup.R. 44(C)(2)(h)

{¶ 78} Included in Judge Celebrezze's response to the affidavits of disqualification is exhibit N, a video recording of a May 25, 2023 attorney conference held by Zoom in *Maron v. Maron*, Cuyahoga C.P. No. DR20-382494. The judge argues that the video recording is "excepted from public disclosure" because it includes discussions about supervised parenting time and a verbal report from the guardian ad litem. Therefore, she contends, the exhibit should not be accessible to the public pursuant to Sup.R. 44(C)(2)(h).

{¶ 79} Sup.R. 44(C)(2)(h) lists certain documents in a domestic-relations division of a court of common pleas that are *not* defined as a "case document" and therefore not subject to public access, including:

> (iii) Guardian ad litem reports, including collateral source documents attached to or filed with the reports;
>
> * * *
>
> (vii) Supervised parenting time or companionship or visitation records and reports, including exchange records and reports.

{¶ 80} Judge Celebrezze argues that because the attorney conference includes a discussion about parenting issues and a verbal report by the guardian ad litem, exhibit N "is not a court record that should be subject to public disclosure" under Sup.R. 44(C)(2)(h)(iii) and (vii). I disagree.

{¶ 81} Sup.R. 44(C)(1) defines "case document" as "a document and information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motions, orders, and judgments, and any documentation prepared by the court or clerk in the judicial action or proceeding, such as journals, dockets, and indices, subject to the exclusions in division (C)(2) of this rule." Sup.R. 44 through 47 do not define the term "document."

{¶ 82} "To interpret court rules, this court applies general principles of statutory construction. * * * Therefore, we must read undefined words or phrases in context and construe them according to the rules of grammar and common usage." *State ex rel. Law Office of the Montgomery Cty. Pub. Defender v. Rosencrans*, 111 Ohio St.3d 338, 2006-Ohio-5793, 856 N.E.2d 250, ¶ 23. When giving effect to the words used in a rule, we must refrain from inserting or deleting

words. *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 53, 524 N.E.2d 441 (1988). If the language of a rule is plain and unambiguous and conveys a clear and definite meaning, courts apply the rule as written. *State ex rel. Potts v. Comm. on Continuing Legal Edn.*, 93 Ohio St.3d 452, 456, 755 N.E.2d 886 (2001).

{¶ 83} As used in Sup.R. 44 through 47, the term "document" means information or evidence—whether written, printed, or electronic. The term "document" cannot be so broadly construed as to include a video recording of a public hearing. Under the statutory-construction maxim expressio unius est exclusio alterius (the express inclusion of one thing implies the exclusion of the other), *see State ex rel. Ohio Presbyterian Retirement Servs., Inc. v. Indus. Comm.*, 151 Ohio St.3d 92, 2017-Ohio-7577, 86 N.E.3d 294, ¶ 28, the express list of things that are excepted from the definition of "case document" implies the exclusion of all other things that are not on that list. This court has not included recordings of hearings that the public had a right to attend in the definition of "case document." For this reason, Sup.R. 44 through 47 do not limit access to recordings of public hearings. Judge Celebrezze's request for exhibit N to remain under seal is denied.

{¶ 84} Therefore, the clerk of this court is ordered to (1) redact the references to a disciplinary grievance on pages 3 and 9 of Judge Celebrezze's June 22, 2023 response to the affidavits of disqualification and on pages 2 and 4 of her July 3, 2023 brief in support of her motion to seal, (2) redact the defendant's private medical information on the third page of exhibit P attached to Judge Celebrezze's June 22, 2023 response to the affidavits of disqualification, and (3) unseal all other filings in this affidavit-of-disqualification case.

Other Motions

{¶ 85} As stated above, on August 2, Judge Celebrezze filed a notice of failure of service of Jardine's fifth supplemental affidavit of disqualification. In response, Jardine filed a motion to strike the notice of failure of service. On August 14, the receiver filed a motion for leave to file a status report.

{¶ 86} Jardine's fifth supplemental affidavit of disqualification is an improper reply to Judge Celebrezze's response to the affidavits of disqualification. As explained above, S.Ct.Prac.R. 21.02(C) prohibits the filing of a reply to a response from the judge, and litigants may not circumvent this rule by including improper "reply" arguments in a pleading captioned under a different name. *See, e.g.*, *Leach*, 164 Ohio St.3d 1244, 2021-Ohio-2321, 173 N.E.3d 530, at ¶ 8 (explaining that the affiant could not "circumvent [S.Ct.Prac.R. 21.02(C)] by labeling her filing a 'supplemental' affidavit"). Therefore, Jardine's fifth supplemental affidavit of disqualification is sua sponte stricken.

{¶ 87} Because the fifth supplemental affidavit of disqualification is stricken, Jardine's motion to strike Judge Celebrezze's notice of failure of service of the fifth supplemental affidavit is denied as moot. The receiver's motion for leave to file a status report is also denied as moot.

Merits of the Affidavit of Disqualification

Disqualification of a Common-Pleas-Court Judge

{¶ 88} R.C. 2701.03(A) provides that if a judge of a court of common pleas "allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court," then any party to the proceeding or the party's counsel may file an affidavit of disqualification with the clerk of this court. Granting or denying the affidavit of disqualification turns on whether the chief justice determines that the allegations of interest, bias, prejudice, or disqualification alleged in the affidavit exist. R.C. 2701.03(E).

{¶ 89} In affidavit-of-disqualification proceedings, the burden falls on the affiant to submit "specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations." R.C. 2701.03(B)(1). Therefore, "[a]n affidavit must describe with specificity and

particularity those facts alleged to support the claim of bias or prejudice." *In re Disqualification of Mitrovich*, 101 Ohio St.3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶ 4. Vague and unsubstantiated allegations "are insufficient on their face for a finding of bias or prejudice." *In re Disqualification of Walker*, 36 Ohio St.3d 606, 606, 522 N.E.2d 460 (1988).

{¶ 90} "The 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.

{¶ 91} A judge is accorded a "presumption of impartiality" in an affidavit-of-disqualification proceeding. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. "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. "The 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.

{¶ 92} The constitutional right to seek the disqualification of a judge of a court of common pleas is an extraordinary remedy. " 'The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact.' " *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 869-870, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988), quoting *Pub. Util. Comm. of the*

District Of Columbia v. Pollak, 343 U.S. 451, 466-467, 72 S.Ct. 813, 96 L.Ed. 1068 (1952).

> "[A] charge of bias [or prejudice] must be deemed at or near the very top in seriousness, for bias kills the very soul of judging—fairness." * * * "[A] charge of * * * bias [or prejudice] against a trial judge in the execution of his or her duties is a most grave accusation. It strikes at the very heart of the judiciary as a neutral and fair arbiter of disputes for our citizenry. Such an attack travels far beyond merely advocating that a trial judge ruled incorrectly as a matter of law or as to a finding of fact, as is the procedure in appellate practice. A judge's personal integrity and ability to serve are thrown into question, placing a [stain] on the court that cannot easily be erased. Attorneys should be free to challenge, in appropriate legal proceedings, a court's perceived partiality without the court misconstruing such a challenge as an assault on the integrity of the court. Such challenges should, however, be made only when substantiated by the trial record."

Peatie v. Wal–Mart Stores, Inc., 112 Conn.App. 8, 26-27, 961 A.2d 1016 (2009), fn. 10, quoting *Wendt v. Wendt*, 59 Conn.App. 656, 693, 697, 757 A.2d 1225 (2000).

{¶ 93} A factual basis is required to disqualify a judge. Speculation and innuendo are insufficient to establish bias or prejudice or the appearance of impropriety.

{¶ 94} Even in cases in which there is no evidence that the judge lacks impartiality or is biased or prejudiced, a judge may nevertheless be disqualified to avoid the appearance of impropriety. *See, e.g.*, *In re Disqualification of Crawford*,

152 Ohio St.3d 1256, 2017-Ohio-9428, 98 N.E.3d 277; *In re Disqualification of Saffold*, 134 Ohio St.3d 1204, 2010-Ohio-6723, 981 N.E.2d 869, ¶ 6 ("even in cases where no evidence of actual bias or prejudice is apparent, disqualification is appropriate when the public's confidence in the integrity of the judicial system is at stake"). "Preservation of public confidence in the integrity of the judicial system is vitally important, and judicial decisions must be rendered in a manner that does not create a perception of partiality. An appearance of bias can be just as damaging to public confidence as actual bias." *In re Disqualification of Murphy*, 110 Ohio St.3d 1206, 2005-Ohio-7148, 850 N.E.2d 712, ¶ 6.

Lack of Random Reassignment

{¶ 95} As part of Jardine's allegation of bias and prejudice, he argues that as administrative judge, Judge Celebrezze failed to randomly reassign the underlying divorce case after Judge Jones recused. From the affidavit and Judge Jones's entry, it appears that there was uncertainty about how the reassignment came to pass.

{¶ 96} Judge Jones's nunc pro tunc entry uses the phrase "the case was referred to Judge Celebrezze," but in the order, the language states that "the case was reassigned to Judge Celebrezze." Judge Celebrezze's response to the affidavits of disqualification settled the matter. The case was not randomly reassigned.

{¶ 97} In response to the affidavits of disqualification, Judge Celebrezze admits that after Judge Jones recused, Judge Celebrezze "took over this matter to attempt to ensure that the parties received the timely administration of justice in their case." Judge Celebrezze states that as administrative judge, she often reassigns contentious and complex cases onto her own docket when another judge recuses "so as not to overly burden [her] fellow judges of the Domestic Relations Division and to save the resources needed for the appointment of a visiting judge." The judge claims that when two or more judges have recused from a case, her "practice is to handle the matter as administrative judge for the same reasons."

{¶ 98} While Judge Celebrezze may have had good intentions, the judge had no authority to handpick a successor after Judge Jones recused. Sup.R. 4.01(C) requires an administrative judge of a court to assign cases to individual judges of the court pursuant to Sup.R. 36. Sup.R. 36.019(A) provides that "[f]ollowing the recusal of a judge in a multi-judge court or division, the administrative judge shall *randomly* assign the case among the remaining judges of the court or division who are able to hear the case." (Emphasis added.) Similarly, Loc.R. 2(B)(2) of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, provides that "[w]hen it is necessary for a case already assigned to a judge to be reassigned due to a recusal, the Administrative Judge will reassign a judge, *at random,* and record the reassignment on the docket." (Emphasis added.)

{¶ 99} The purpose of random assignment or reassignment of cases is not only to avoid judge-shopping and to distribute cases equitably among judges, *see* Sup.R. 36.011 commentary, but also to maintain public confidence in the judicial system by ensuring that cases are assigned impartially and not deliberately to a certain judge. As one court has explained,

> [t]he "rules and orders of the court" clearly provide for a case to be randomly reassigned in the event of disqualification. The random assignment of cases, and the random reassignment in the event of disqualification, has the obvious, commonsensical and beneficial purpose of maintaining the public's confidence in the integrity of the judiciary. This purpose is defeated when cases or motions are assigned, or reassigned, to judges who are handpicked to decide the particular case or motion in question. A system of random assignment is purely objective and is not open to the criticism that business is being assigned to particular judges in accordance with any particular agenda.

Grutter v. Bollinger, 16 F.Supp.2d 797, 802 (E.D.Mich.1998); *see also United States v. Phillips*, 59 F.Supp.2d 1178, 1180 (D.Utah 1999) (recognizing "the role that random assignment procedures play in promoting fairness and impartiality and in reducing the dangers of favoritism and bias").

{¶ 100} Improper judicial assignment may create the appearance of impropriety and "may be grounds for disqualification." *In re Disqualification of Gaul*, 160 Ohio St.3d 1218, 2020-Ohio-1531, 154 N.E.3d 111, ¶ 6; *see also Grutter* at 802 ("the appearance of impropriety is manifest" when a subjective method is used to replace a judge).

{¶ 101} For example, in *In re Disqualification of Kiger*, 156 Ohio St.3d 1232, 2019-Ohio-851, 125 N.E.3d 960, the plaintiff in a small-claims case sought to disqualify an attorney from serving as an acting judge in the municipal court. In the affidavit of disqualification, the plaintiff alleged, among other things, that after the municipal-court judge had recused from the case, the municipal-court clerk assigned the acting judge to the matter. The chief justice held in *Kiger* that under R.C. 1901.121(A), when a judge of a single-judge municipal court has recused, the judge must request that the chief justice appoint an assigned judge to the case. In *Kiger*, the chief justice held, the municipal-court judge (or clerk) was not permitted to appoint an acting judge. The statute, the chief justice pointed out, reflected the general principle that a recused judge ordinarily should not select his or her successor. *Id.* at ¶ 6. Because the chief justice in *Kiger* concluded that R.C. 1901.121(A) had required the chief justice to reassign the case to a new judge, the chief justice disqualified the acting judge to avoid any appearance of impropriety. *Id.* at ¶ 8.

{¶ 102} Here, Judge Celebrezze was not randomly assigned to Jardine's case. The judge's failure to randomly assign the case was in violation of the Rules of Superintendence and the local court rules. Moreover, Judge Jones was without

authority to issue an order recusing from the case and reassigning the matter to Judge Celebrezze. *See* Sup.R. 4.01(C); Sup.R. 36.019(A). A recusing judge has no authority to select his or her successor. *See, e.g.*, *Kiger* at ¶ 6.

{¶ 103} Despite what Judge Jones stated in her nunc pro tunc entry, Judge Celebrezze admits in her response to the affidavits of disqualification that she "took over" Jardine's divorce case in her role as administrative judge. But the judge did not cite any authority permitting her to forgo the normal random assignment of cases and to reassign the case to herself. Rather, as noted above, she stated that she had reassigned the case to herself in an attempt to ensure that the parties received the timely administration of justice, and she admitted that it is her practice to reassign a case to her own docket when a judge recuses from a complex and contentious case and when more than one judge has recused from a case.

{¶ 104} The Cuyahoga County Court of Common Pleas, Domestic Relations Division, has five judges. Each judge of that court is presumed competent to handle any assigned case, even complex and contentious matters. Regardless of Judge Celebrezze's intention, the purpose of randomly reassigning cases after one judge recuses is defeated when the administrative judge handpicks a case to keep for herself. "Judicial assignments 'must be free from the appearance of impropriety.' " *Kiger*, 156 Ohio St.3d 1232, 2019-Ohio-851, 125 N.E.3d 960, at ¶ 8, quoting *Brickman & Sons, Inc. v. Natl. City Bank*, 106 Ohio St.3d 30, 2005-Ohio-3559, 830 N.E.2d 1151, ¶ 21.

{¶ 105} Therefore, to allay any concerns about the integrity of the underlying case and to ensure to the parties and the public the unquestioned neutrality of an impartial judge, Judge Celebrezze is disqualified. This court long ago noted that " '[n]ext in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness or integrity of the judge.' " *Pratt*, 164 Ohio St. at 471, 132 N.E.2d 191, quoting *Haslam v. Morrison*, 113 Utah 14, 20, 190 P.2d 520 (1948).

{¶ 106} The granting of Jardine's original affidavit of disqualification is not based on evidence that Judge Celebrezze lacks impartiality or is biased or prejudiced; rather, the affidavit of disqualification is granted on the narrow ground of avoiding the appearance of impropriety. The underlying case shall be returned to the Cuyahoga County Court of Common Pleas, Domestic Relations Division, for random reassignment to another judge of that court.

{¶ 107} Because the affidavit of disqualification is granted to avoid the appearance of impropriety, it is unnecessary to resolve any of the remaining allegations.

Conclusion

{¶ 108} Judge Celebrezze's motion to strike portions of Jardine's brief in opposition to the motion to seal is granted. The following portions of the brief in opposition are an improper reply to the judge's response and are stricken: the second paragraph on page 2, the third through fifth paragraphs on page 4, pages 5 and 6, the first and all numbered paragraphs on page 7, the first and third non-numbered paragraphs on page 8, page 9, and the first and second paragraphs on page 10. Exhibits 1, 2, 3, and 4 are also stricken.

{¶ 109} Judge Celebrezze's motion to seal is granted in part and denied in part. The clerk of this court is ordered to (1) redact the references to a disciplinary grievance on pages 3 and 9 of Judge Celebrezze's June 22, 2023 response to the affidavits of disqualification and on pages 2 and 4 of her July 3, 2023 brief in support of her motion to seal, (2) redact the defendant's private medical information on the third page of exhibit P attached to Judge Celebrezze's June 22, 2023 response to the affidavits of disqualification, and (3) unseal all other filings in this affidavit-of-disqualification case.

{¶ 110} Jardine's fifth supplemental affidavit of disqualification is sua sponte stricken as an improper reply to the judge's response, in violation of

S.Ct.Prac.R. 21.02(C). Jardine's motion to strike the judge's notice of failure of service of the fifth supplemental affidavit of disqualification is denied as moot.

{¶ 111} The receiver's motion for leave to file a status report is also denied as moot.

{¶ 112} Finally, Jardine's affidavit of disqualification is granted to avoid the appearance of impropriety. This decision is not based on a finding of actual bias. However, as the administrative judge of the division, Judge Celebrezze's authority to reassign the case after Judge Jones's recusal was limited. Rule 36.019(A) of the Rules of Superintendence for the Courts of Ohio and Local Rule 2(B)(2) of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, require the random reassignment of a case when a judge has recused. Therefore, to avoid the appearance of impropriety, Judge Celebrezze is disqualified.

{¶ 113} Because the affidavit of disqualification is granted to avoid the appearance of impropriety, it is unnecessary to address any remaining allegations.

{¶ 114} The underlying matter is returned to the Cuyahoga County Court of Common Pleas, Domestic Relations Division, for random reassignment to another judge of that court who is able to hear the case.
