IN RE DISQUALIFICATION OF COOK.

GLINSKY *v.* ZELTMAN.

[Cite as *In re Disqualification of Cook*, 173 Ohio St.3d 1271, 2023-Ohio-4883.]

Judges—Affidavits of disqualification—R.C. 2701.03—Confidential exhibits attached to purported affidavit sealed—Notarial certificate attached to purported affidavit does not indicate that purported affidavit was sworn under oath—Purported affidavit stricken.

(No. 23-AP-185—Decided December 21, 2023.)

ON AFFIDAVIT OF DISQUALIFICATION in Summit County Court of Common Pleas, Domestic Relations Division, Case No. 2021-09-2549.

KENNEDY, C.J.

{¶ 1} Kevin Glinsky, the plaintiff in the underlying domestic-relations case, has filed a purported affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge Katarina Cook of the Summit County Court of Common Pleas, Domestic Relations Division, from presiding over the case. Judge Cook filed a response to the purported affidavit of disqualification.

{¶ 2} As explained below, the clerk of this court is sua sponte ordered to place Exhibits B, D, and E attached to the purported affidavit of disqualification under seal. Glinsky's purported affidavit is stricken, and this proceeding is dismissed. The case shall proceed before Judge Cook.

Sealing of Confidential Reports

{¶ 3} "[L]ike 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." *In re Disqualification of Celebrezze*, 173 Ohio St.3d 1281, 2023-Ohio-4383, 232 N.E.3d 837, ¶ 50. However, when an affiant submits

with an affidavit of disqualification a document that is under seal in the trial court or is otherwise confidential, "the document will generally remain under seal in this court." *Id.* at ¶ 51. In addition, documents pertaining to an individual's private medical information may be restricted from public access if the individual's privacy interests outweigh the government's interest in maintaining open access to the court records. *Id.* at ¶ 68.

{¶ 4} With his filing, Glinsky submitted three exhibits that are confidential and will be restricted from public access: a "Confidential Report" from a minor child's psychologist (Exhibit B), a "Custody and Psychological Evaluation" of the parties in the underlying case (Exhibit D), and a report from the guardian ad litem in the underlying case (Exhibit E). Because the reports are marked confidential and/or contain private sensitive medical information about Glinsky's minor children, the reports shall be sealed from public access in this court.

{¶ 5} Therefore, the clerk of this court is ordered to place Exhibits B, D, and E attached to the purported affidavit of disqualification under seal.

Requirements of an Affidavit of Disqualification

{¶ 6} 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 that party or counsel may file an affidavit of disqualification with the clerk of this court. The statute requires that the affidavit of disqualification include, among other things, "[t]he jurat of a notary public or another person authorized to administer oaths or affirmations." R.C. 2701.03(B)(2).

{¶ 7} If an affidavit of disqualification does not contain a jurat, R.C. 2701.03(C)(2) prohibits the clerk of this court from accepting the affidavit for filing. However, even if a purported affidavit of disqualification is mistakenly

accepted for filing, it will be stricken if the affidavit does not contain a jurat certificate or satisfy the other requirements of R.C. 2701.03(B). *See In re Disqualification of Donnelly*, 134 Ohio St.3d 1221, 2011-Ohio-7080, 982 N.E.2d 713, ¶ 3.

{¶ 8} A "jurat" is the notarial act and certificate associated with executing affidavits. R.C. 147.011(C); *see Stern v. Cuyahoga Cty. Bd. of Elections*, 14 Ohio St.2d 175, 181, 237 N.E.2d 313 (1968). Historically, this court has defined "jurat" as a " '[c]ertificate of [the] officer or person before whom [a] writing was sworn to.' " *Stern* at 181, quoting *Black's Law Dictionary* 990 (4th Ed.1951). This court has explained that a jurat proves that the signer of the affidavit swore his statement under oath and that it "is prima facie evidence of the fact that the affidavit was properly made before such notary." *Id.*

{¶ 9} Recently, the General Assembly codified and confirmed this court's understanding of a jurat. Effective in 2019, the Notary Public Modernization Act, 2018 Sub.S.B. No. 263, provides that a jurat requires the signer of the notarized document (1) "to give an oath or affirmation that the statement in the notarized document is true and correct" and (2) to "sig[n] the notarized document in the presence of a notary public." R.C. 147.011(C). Unfortunately, it is not out of the ordinary for purportedly notarized documents to contain not a jurat but, rather, an acknowledgement.

{¶ 10} An acknowledgement is "a declaration by an individual before a notary public that the individual has signed a record for the purpose stated in the record." R.C. 147.011(A). When a notary takes an acknowledgment, the notary is certifying that (1) "[t]he person acknowledging appeared before him and acknowledged he executed the instrument" and (2) "[t]he person acknowledging was known to the person taking the acknowledgment." R.C. 147.53(A) and (B). The "key difference" between a jurat and an acknowledgment is that "an

acknowledgment is not made under oath." *State ex rel. Maras v. LaRose*, 168 Ohio St.3d 430, 2022-Ohio-3295, 199 N.E.3d 532, ¶ 32 (DeWine, J., dissenting).

{¶ 11} Ohio law requires that notaries provide a notarial certificate for every notarial act they perform, R.C. 147.542(A), and use the proper wording for each certificate, R.C. 147.542(F)(2). When a notary provides a jurat certificate, the "certificate *shall* state that an oath or affirmation was administered to the signer." (Emphasis added.) R.C. 147.542(C). When a notary administers an oath or affirmation, the notary "shall not" use an acknowledgment certificate. R.C. 147.542(D)(1). And when a notary does not administer an oath or affirmation, the notary "shall not" use a jurat certificate. R.C. 147.542(D)(2). Clarity is key.

{¶ 12} Here, the notarial certificate attached to Glinsky's purported affidavit of disqualification is an acknowledgement, not a jurat. The certificate's language reads, "**BEFORE ME**, a Notary Public in and for said State, personally appeared the above-named **KEVIN GLINSKY** who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed." (Boldface and capitalization sic.) This language does not indicate that the notary administered an oath or affirmation to Glinsky, as required by law. Rather, the certificate merely acknowledges that Glinsky signed the document before him. Because the notarial certificate does not indicate that Glinsky's purported affidavit of disqualification was sworn under oath, it is deficient and is not a jurat.

Conclusion

{¶ 13} The clerk of this court is sua sponte ordered to place under seal Exhibits B, D, and E attached to the purported affidavit of disqualification. The purported affidavit of disqualification is stricken, and this affidavit-of-disqualification proceeding is dismissed. The case may proceed before Judge Cook.