IN RE DISQUALIFICATION OF FULLER.

MAYNARD *v.* MAYNARD.

[Cite as *In re Disqualification of Fuller*, 2025-Ohio-5601.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant forfeited allegations made about events that occurred after May 2, 2022, and/or prior to August 2024—Affiant's remaining claims failed to establish prejudice, bias, or appearance of impropriety—Disqualification denied.

(No. 25-AP-077—Decided June 16, 2025.)

ON AFFIDAVIT OF DISQUALIFICATION in Delaware County Court of Common Pleas, Domestic Relations Division, Case No. 13 DR A 10 0472.

KENNEDY, C.J.

{¶ 1} Marci L. Scales, formerly known as Marci L. Maynard, the defendant in the underlying domestic-relations case, has filed an affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge Randall D. Fuller of the Delaware County Court of Common Pleas, Domestic Relations Division. The judge was not asked to file a response.

{¶ 2} Scales filed two prior affidavits of disqualification against Judge Fuller—in case Nos. 22-AP-051 and 25-AP-029. Both affidavits of disqualification were denied—on May 2, 2022, and March 14, 2025, respectively.

{¶ 3} Throughout the affidavit of disqualification and in the exhibits attached to it, Scales reveals the names of minor children and information protected by federal and state law. The clerk of this court shall redact that information from the affidavit and the exhibits attached to it.

{¶ 4} As explained below, Scales has not established that Judge Fuller should be disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Fuller.

I. TRIAL-COURT PROCEEDINGS

{¶ 5} There are few facts in the affidavit of disqualification about the underlying domestic-relations case, which began in 2013. The crux of Scales's third successive affidavit of disqualification is the timeliness of Judge Fuller in ruling on various motions; the substance of various decisions he issued, primarily on May 20 and 30, 2025; and a failure of service on him of a complaint for writs of procedendo and mandamus she filed against him. The underlying case is scheduled for a trial beginning June 18.

{¶ 6} Scales filed the affidavit of disqualification on June 11, 2025.

II. AFFIDAVIT-OF-DISQUALIFICATION PROCEEDINGS

{¶ 7} R.C. 2701.03 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 the party's counsel may file an affidavit of disqualification with the clerk of this court.

{¶ 8} Prior to addressing Scales's allegations against Judge Fuller, which are identified in Part II(D) below, this opinion addresses three preliminary matters: (A) whether an affiant may use a successive affidavit of disqualification to reargue points that were previously raised and rejected in a prior affidavit-of-disqualification proceeding, (B) whether an affiant may rely on hearsay in an affidavit of disqualification, and (C) whether this affidavit of disqualification was filed in a timely manner.

{¶ 9} The answer to the first question is no. The answer to the second question is no, and those portions of the affidavit of disqualification that repeat a

statement someone else made will not be considered in this affidavit-of-disqualification proceeding. The answer to the third question is that the affidavit of disqualification was not timely filed as to certain events alleged in it; those portions of the affidavit relating to events that occurred before August 2024 will not be considered in this affidavit-of-disqualification proceeding.

A. Limitations of a Successive Affidavit

{¶ 10} Affiants are barred from filing a motion for reconsideration of or an appeal from a decision in an affidavit-of-disqualification proceeding. *See* S.Ct.Prac.R. 21.02(E). Litigants may not circumvent this rule by including improper arguments "in a pleading captioned under a different name," *In re Disqualification of Celebrezze*, 2023-Ohio-4383, ¶ 45. "A subsequent affidavit of disqualification may not be used to reargue a point that was raised in a prior affidavit and previously rejected." *In re Disqualification of Sundermann*, 2023-Ohio-4884, ¶ 12. Therefore, allegations made in Scales's affidavit of disqualification about events that occurred prior to May 2, 2022, the date of the decision denying the first affidavit of disqualification she filed, will not be considered in this affidavit-of-disqualification proceeding.

B. Requirements of an Affidavit

{¶ 11} This court has long held that "an affidavit must appear on its face to [be] . . . in compliance with all legal requisitions." *Benedict v. Peters*, 58 Ohio St. 527, 536 (1898). In Ohio, an affidavit is a "written declaration [made] under oath." R.C. 2319.02. As such, an affidavit is a form of written testimony. *See Wallick Properties Midwest, L.L.C. v. Jama*, 2021-Ohio-2830, ¶ 18 (10th Dist.). A party may present a witness's 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, *Weissenberger's Ohio Evidence Treatise*, § 602.1 (2024); *see also State v. Fears*,

1999-Ohio-111, ¶ 36 (holding that testimony not based on personal knowledge was inadmissible). "Therefore, 'statements contained in affidavits must be based on personal knowledge.'" *In re Disqualification of Beathard*, 2024-Ohio-3335, ¶ 23, quoting *Carkido v. Hasler*, 129 Ohio App.3d 539, 548, fn. 2 (7th Dist. 1998); *accord* 2A C.J.S., *Affidavits*, § 46, at 285-287 (2023); *see, e.g.*, Civ.R. 56(E); S.Ct.Prac.R. 12.02(B)(2).

{¶ 12} "'Personal knowledge' is 'knowledge 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*., 2002-Ohio-2220, ¶ 26, quoting *Black's Law Dictionary* (7th Rev.Ed. 1999). It follows that "'one 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*, 1997-Ohio-327, ¶ 12, quoting 1 McCormick, *Evidence*, § 10, at 40 (4th Ed. 1992).

{¶ 13} Scales's affidavit of disqualification relies on statements that were allegedly made to her by her attorney and her minor child. Those statements will not be considered in this affidavit-of-disqualification proceeding.

C. Forfeiture

{¶ 14} "When an affiant becomes aware of circumstances that the affiant believes support disqualification, an affidavit of disqualification must be filed as soon as possible." *In re Disqualification of Winkler*, 2023-Ohio-698, ¶ 1. "'The affiant has the burden to demonstrate that the affidavit is timely filed.'" *Id.* at ¶ 7, quoting *In re Disqualification of Froelich, Donovan, & Welbaum*, 2015-Ohio-3423, ¶ 5.

{¶ 15} Forfeiture is the failure to timely assert a right or object to an error. *State v. Rogers*, 2015-Ohio-2459, ¶ 21. Prior affidavit-of-disqualification decisions have recognized that "allegations supporting the disqualification of a judge may be

forfeited if not asserted with the requisite speed and diligence." *In re Disqualification of Reed*, 2024-Ohio-6175, ¶ 22; *see also Winkler* at ¶ 34.

{¶ 16} The decisions Judge Fuller issued on May 20 and 30, 2025, addressed motions filed by Scales from August 2024 through the dates of the judge's decisions. Portions of Scales's affidavit point to events that occurred after the denial of her first affidavit of disqualification on May 2, 2022, and prior to August 2024.

{¶ 17} "Litigants and counsel alike must act with [the] requisite speed when raising issues of interest, bias, or prejudice or other claims of disqualification and file affidavits of disqualification at the earliest possible time." *Winkler* at ¶ 36. Allegations made in this third successive affidavit of disqualification about events that occurred after May 2, 2022, and/or prior to August 2024 are therefore forfeited.

{¶ 18} This decision now turns to the merits of the only remaining allegations.

D. Allegations Against Judge Fuller

{¶ 19} Scales alleges that Judge Fuller should be disqualified because the judge is biased and prejudiced against her and because disqualification is necessary to avoid the appearance of impropriety. In support of her claims, which are discussed in Sections A through C of Part IV below, Scales points to (A) Judge Fuller's delay of nearly 10 months in ruling on various motions she filed, (B) the substance of various decisions he issued, primarily on May 20 and 30, and (C) the failure of service of her complaint for writs of procedendo and mandamus on Judge Fuller.

{¶ 20} First, Scales asserts that she had to file a complaint for writs of procedendo and mandamus in the Fifth District Court of Appeals to force Judge Fuller to rule on 14 motions she had filed, the oldest of which had been pending since August 2024. Next, Scales places the rulings of Judge Fuller that she challenges as improper into six categories: (1) "[j]udicial abuse—ignoring the law

and citing invalid laws or precedents," (2) "[c]oncealing unlawful activity of the guardian ad litem," (3) "disregard for the health, safety and well-being of [her] minor children," (4) "judicial decisions on behalf of [the guardian ad litem] that violate [Judge Fuller's] own orders," (5) "[d]enial of right to trial evidence, discovery and depositions," and (6) "[a]buse of judicial power to suppress access to witnesses and evidence." Lastly, Scales asserts that there is an "appearance of impropriety in Judge Fuller's continued coverup" stemming from the failure of service of the complaint for writs of procedendo and mandamus.

{¶ 21} To avoid significant repetition, Scales's specific claims against Judge Fuller are discussed separately in Sections 1 through 6 of Part III(B) and in Part III(C) of the opinion below.

III. DISQUALIFICATION OF A COMMON-PLEAS JUDGE

{¶ 22} As explained above, R.C. 2701.03(A) provides two specific grounds and a catch-all provision for the disqualification of a judge of a court of common pleas. Granting or denying an affidavit of disqualification turns on whether the chief justice determines that the interest, bias or prejudice, or disqualification alleged in the affidavit exists. R.C. 2701.03(E).

{¶ 23} 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." *In re Disqualification of Mitrovich*, 2003-Ohio-7358, ¶ 4.

{¶ 24} Scales alleges that Judge Fuller is biased and prejudiced against her and should be disqualified to avoid the appearance of impropriety.

{¶ 25} "R.C. 2701.03(A) speaks in terms of *actual* bias and prejudice." (Emphasis in original.) *In re Disqualification of Berhalter*, 2023-Ohio-4881, ¶ 29. The General Assembly did not define "bias or prejudice" for purposes of the statute. However, as explained in prior disqualification cases, "[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*, 2002-Ohio-7479, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469 (1956). "Bias or prejudice on the part of a judge will not be presumed. In fact, the law presumes that a judge is unbiased and unprejudiced in the matters over which he presides, and bias or prejudice must be strong enough to overcome the presumption of his integrity." *Id.* at ¶ 16, quoting 48A C.J.S. Judges, § 108, at 731 (1981). "A determination of whether a judge is biased or prejudiced is based on the judge's words and/or actions and whether those words and/or actions convey that the judge is predisposed to an outcome of a case." *Berhalter* at ¶ 28.

{¶ 26} "A judge's subjective bias, however, is not easy to discern. The United States Supreme Court has recognized that 'to establish an enforceable and workable framework, the Court's precedents [also] apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present.'" (Bracketed text in original.) *In re Disqualification of Clark*, 2023-Ohio-4774, ¶ 47, quoting *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016). Under an objective standard, "[t]he question is 'whether the judge's impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.'" *Reed*, 2025-Ohio-1604, at ¶ 25, quoting *In re Kansas Pub. Emps. Retirement Sys.*, 85 F.3d 1343, 1358 (8th Cir. 1996). "'These outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be.'" *Id.*, quoting *In re Mason*, 916 F.2d 384, 386 (7th Cir. 1990).

{¶ 27} A judge "otherwise is disqualified" under R.C. 2701.03(A) when none of the express bases for disqualification—interest, relation to a party, bias, or prejudice—apply but other grounds for disqualification exist. *In re Disqualification of Navarre*, 2024-Ohio-3336, ¶ 21. "[E]ven in cases in which no

evidence of actual bias or prejudice is apparent, a judge's disqualification may be appropriate to avoid an appearance of impropriety or when the public's confidence in the integrity of the judicial system is at issue." *In re Disqualification of Crawford*, 2017-Ohio-9428, ¶ 6. In addition, an ex parte communication between a judge and a party may be a basis for disqualification when the communication "either was initiated by the judge or addressed substantive matters in the pending case." *In re Disqualification of Calabrese*, 2002-Ohio-7475, ¶ 2. Jud.Cond.R. 2.11 sets forth additional circumstances in which a judge must be disqualified, including when a family member of the judge has an economic interest in the matter in controversy, Jud.Cond.R. 2.11(A)(3), and when the judge likely will be a material witness in the proceeding, Jud.Cond.R. 2.11(A)(2)(d).

{¶ 28} These examples are not exhaustive, but they illustrate that a judge may still be disqualified under R.C. 2701.03(A) even when the express statutory grounds for disqualification are not applicable.

{¶ 29} Finally, as noted above, a judge may be disqualified to avoid an appearance of impropriety. An appearance of impropriety exists when "'the [judge's] conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.'" (Bracketed text in original.) *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 888 (2009), quoting American Bar Association, Annotated Model Code of Judicial Conduct, Canon 2A, Commentary (2004); *see also id.* at 890 (noting that the codes of judicial conduct provide more protection than due process requires). The perspective of the ordinary reasonable person is considered, and that person "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*, 2013-Ohio-1319, ¶ 6.

IV. ANALYSIS

{¶ 30} For the reasons explained below, whether the claims against Judge Fuller are considered independently or collectively, Scales has not established that the judge's disqualification is warranted.

A. Complaint for Writs of Procedendo and Mandamus

{¶ 31} Scales asserts that Judge Fuller has engaged in "egregious actions that define a pattern of judicial misconduct, abuse of power and an extreme bias against" her. In support of her allegations, as stated above, Scales claims that she had to force Judge Fuller to rule on 14 pending motions by filing a complaint for writs of procedendo and mandamus in the Fifth District Court of Appeals. Scales also alleges that when Judge Fuller finally issued rulings on the motions, he "did not file them electronically as the other case filings have occurred in this case since its inception" but instead sent paper copies in the mail.

{¶ 32} "In general, a judge's alleged failure to provide timely rulings . . . is not a concern that can be addressed through an affidavit of disqualification." *In re Disqualification of Mackey*, 2022-Ohio-2837, ¶ 5. A "'judge's determination as to how to proceed with proceedings pending before him [or her] . . . generally provides no grounds for judicial disqualification.'" (Bracketed text and ellipsis added in *Sundermann.*) *In re Disqualification of Sundermann*, 2023-Ohio-4884, ¶ 25, quoting Flamm, *Judicial Disqualification*, § 15.1, at 411-412 (2d Ed. 2007).

{¶ 33} Moreover, a judge's decision whether to file a judgment entry physically or electronically is of no consequence, regardless of past practices. An affidavit of disqualification is considered based on the words and actions of the judge. *Reed*, 2024-Ohio-6175, at ¶ 34.

{¶ 34} The evidence here is insufficient to warrant Judge Fuller's disqualification based on this claim.

B. "Improper" Judicial Rulings

1. "Judicial abuse—ignoring the law and citing invalid laws or precedent"

{¶ 35} As her first claim of an improper ruling, Scales argues that Judge Fuller abused his power by denying on May 20, 2025, her motion to broadcast, record, and/or photograph the court proceedings scheduled for June.

{¶ 36} Article I, Section 16 of the Ohio Constitution guarantees the right to open courts: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." "[O]ur Constitution protects public access to court proceedings that extends further than the United States Supreme Court's interpretation of the free-speech and -press guarantees of the federal Constitution." *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 48. There is a presumption of public access to court proceedings. *See id.* at ¶ 39.

{¶ 37} And Article I, Section 11 of the Ohio Constitution protects the right to free speech: "Every citizen may freely speak, write, and publish his sentiments on all subjects," and "no law shall be passed to restrain or abridge the liberty of speech, or of the press." This court has recognized that the free-speech provision of the Ohio Constitution also affords greater protection than the Free Speech Clause of the First Amendment to the United States Constitution. *Disciplinary Counsel v. Gardner*, 2003-Ohio-4048, ¶ 19.

{¶ 38} In keeping with the constitutional rights to open courts and free speech, Sup.R. 12(A) states that "[t]he judge assigned to [a] proceeding *shall* permit audio, audio-video recording, broadcasting by electronic means, and taking photographs in court proceedings that are open to the public." (Emphasis added.) There is no language in Sup.R. 12(A) that limits the right to broadcast, record and photograph court proceedings to established, traditional, or legacy media outlets. The term "media" does not appear in the text of Sup.R. 12(A).

{¶ 39} In fact, Sup.R. 12(A) limits the role of the judge to consulting with the person seeking to broadcast, record, and/or photograph the proceedings so that the judge can determine where in the courtroom "operators and equipment are to be positioned." Therefore, "a trial court may not exclude cameras from 'court proceedings that are open to the public.'" *State v. Sowell*, 2016-Ohio-8025, ¶ 51, quoting Sup.R. 12(A).

{¶ 40} And "[t]he press" protected by the United States Constitution is more than just newspapers, books, magazines, and cable-television networks. *Lamar Advantage GP Co., L.L.C. v. Cincinnati*, 2021-Ohio-3155, ¶ 18. "'The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.'" *Id.*, quoting *Lovell v. Griffin*, 303 U.S. 444, 452 (1938). "[P]eople during the Framing Era and at the time of the ratification of the Fourteenth Amendment understood that the freedom of the press meant the right of every person to use technology (such as the printing press) to engage in mass communication." *Id.*, citing Volokh, *Freedom for the Press as an Industry, or for the Press as a Technology? From the Framing to Today*, 160 U.Pa.L.Rev. 459, 463 (2012).

{¶ 41} Therefore, this court has recognized that the "'basic premise of the First Amendment is that all present instruments of communication, as well as others that inventive genius may bring into being, shall be free from governmental censorship or prohibition.'" *Lamar* at ¶ 48, quoting *Kovacs v. Cooper*, 336 U.S. 77, 102 (1949) (Black, J., dissenting). And "the Supreme Court of the United States has consistently rejected the proposition that the 'institutional press' is afforded more protection by the First Amendment than other speakers." *Id.* at ¶ 19, quoting *Citizens United v. Fed. Election Comm.*, 558 U.S. 310, 352 (2010). For this reason, this court recently concluded that "the press" includes billboard operators, *id.* at ¶ 3, and we held that as speakers and publishers of speech, they enjoy the rights to

freedom of speech and of the press guaranteed by the First Amendment, *id.* at ¶ 19, 49.

{¶ 42} That same reasoning dictates the conclusion that the press also includes citizen journalists who use technology for mass communication. *See State ex rel. Shubert v. Breaux*, 2024-Ohio-2491, ¶ 1-2, 35 (granting a writ of prohibition barring judge from enforcing orders sealing court records sought by the relator, a "former journalist"). "Citizen journalists . . . include bloggers, Xers, Facebookers, YouTubers, Instagrammers, and others who use media that allow citizens to speak and express their views and opinions. All of these can be considered members of the press who enjoy the right to gather the news and the right to publish it—after all, '[t]he protected right to publish the news would be of little value in the absence of sources from which to obtain it.'" *In re Disqualification of Wollscheid*, 2024-Ohio-6176, ¶ 70, quoting *State ex rel. Dayton Newspapers, Inc. v. Phillips*, 46 Ohio St.2d 457, 459 (1976).

{¶ 43} "Sup.R. 12 upholds these principles, and it does not authorize judges to decide for themselves who has a legitimate voice and who does not have a legitimate voice." *Wollscheid* at ¶ 71.

{¶ 44} Judge Fuller was not asked to file a response to this affidavit of disqualification. According to the judgment entry denying Scales's motion, the judge found that the motion "implies that [Scales] is requesting permission for herself to broadcast, video record, and photograph the court proceedings." Scales asserts in the affidavit of disqualification that she did not request permission to broadcast, record, and/or photograph the proceedings herself: "A professional film crew that works for CNN, ABC, FOX and Eurovision is planning to film the trial," she avers.

{¶ 45} Scales claims that Judge Fuller's denial of her motion to broadcast, record, and/or photograph violated those rights protected by Sup.R. 12(A), and she maintains that a local rule of the Delaware County Court of Common Pleas,

Domestic Relations Division, cited in the judgment entry, that limits the right to broadcast, record, and photograph court proceeding to "news media" also violates Sup.R. 12(A).

{¶ 46} "In addition to all other powers vested by [Article IV of the Ohio Constitution] in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court." Ohio Const., art. IV, § 5(A)(1). Although Article IV, Section 5(B) of the Ohio Constitution and Sup.R. 5(A)(1) expressly recognize the authority of local courts to adopt local rules of practice, those rules shall not be "inconsistent with the rules promulgated by the supreme court." Ohio Const., art. IV, § 5(B).

{¶ 47} The determinations whether Scales's motion requested personal access to broadcast, record, and/or photograph the court proceedings, whether Judge Fuller's decision denying the motion was in error, and whether Loc.DR.R. 36 of the Delaware Court of Common Pleas, Domestic Relations Division violates Sup.R. 5(A)(1) are beyond the reach of an affidavit-of-disqualification proceeding. Article IV, Section 5(C) of the Ohio Constitution requires the chief justice to "pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or [a] division thereof." That enumerated power, however, has limitations.

{¶ 48} The chief justice does not have unilateral authority to resolve legal issues that are subject to appellate review, *In re Disqualification Gallagher*, 2023-Ohio-2977, ¶ 50, nor may the chief justice decide legal challenges regarding whether a local rule exceeds the authority of a trial court under the Superintendence Rules for Courts of Ohio adopted by the Supreme Court of Ohio.

{¶ 49} The focus of an affidavit-or-disqualification proceeding is on the judge's words or actions. *Reed*, 2024-Ohio-6175, at ¶ 34. Judge Fuller's decision to deny Scales's motion to broadcast, record, and/or photograph court proceedings—whether correct or not—is not a basis for his disqualification.

2. "Concealing unlawful activity of the guardian ad litem"

{¶ 50} Since 2019, Scales has repeatedly attempted to remove Eimear M. Bahnson as the guardian ad litem in the underlying domestic-relations case. As stated above, allegations regarding events that happened prior to August 2024 will not be considered in this affidavit-of-disqualification proceeding.

{¶ 51} Scales asserts that in October 2024, Bahnson improperly "accepted reappointment" to the underlying domestic-relations case. Scales claims that Bahnson has engaged in "self-dealing that directly benefit[s] her and lied to [Judge Fuller,] stating that she was unaware of any conflict of interest."

{¶ 52} In March 2025, Scales filed a motion seeking to stay and set aside a magistrate's order reappointing Bahnson. Judge Fuller denied the motion on May 20.

{¶ 53} In an affidavit-of-disqualification proceeding, the affiant has the burden to not only make specific allegations of disqualification but also to present record evidence to support the allegations. *See In re Disqualification of Schroeder*, 2023-Ohio-3171, ¶ 48. "A factual basis is required to disqualify a judge," and speculation, hearsay, and innuendo are insufficient. *Celebrezze*, 2023-Ohio-4383, at ¶ 93. Judge Fuller's denial of the motion to set aside the magistrate's order reappointing the guardian ad litem is insufficient to warrant the judge's disqualification.

3. "[D]isregard for the health, safety and well-being of [the] minor children"

{¶ 54} In August 2024, Scales filed a motion for emergency custody of the parties' minor children, which Judge Fuller denied. In support of her claim that Judge Fuller's denial of this motion on May 20, 2025, requires his disqualification, Scales relies on events that occurred prior to August 2024. Scales also cites hearsay evidence to support her allegation that Judge Fuller is biased and prejudiced against her.

{¶ 55} As stated above, events that occurred prior to August 2024 will not be considered in this affidavit-of-disqualification proceeding. Further, "[o]ut-of-court statements offered to prove the truth of the matter asserted within them are generally inadmissible as hearsay." *State v. LaMar*, 2002-Ohio-2128, ¶ 59. Lastly, because the remaining part of Scales's argument regarding the health and safety of her children focuses on the decision-making process of their treating physician—not the judge—this claim is not a basis for the judge's disqualification. Again, the focus of an affidavit-or-disqualification proceeding is *the judge's* words or actions. *Reed*, 2024-Ohio-6175, at ¶ 34.

4. "[J]udicial decisions on behalf of Attorney Bahnson that violate [Judge Fuller]'s own orders"

{¶ 56} Scales claims that in October 2024 and April 2025, Judge Fuller issued orders reappointing Bahnson as the guardian ad litem. The April 2025 order states that Bahnson was required to (1) quarterly file a motion for payment of fees with an "itemized invoice" in support of the fees, (2) file a proposed judgment entry, and (3) submit "trial deposits" 30 days prior to trial.

{¶ 57} Scales states that on May 27, 2025—22 days before the scheduled trial—Bahnson filed a motion for fees without an itemized invoice and requested a $5,000 trial deposit. Despite these alleged violations of the judge's reappointment order, Judge Fuller granted Bahnson's motion on May 30.

{¶ 58} "The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law." Ohio Const., art. IV, § 1. As stated above, the Supreme Court has "general superintendence over all courts" in Ohio. Ohio Const., art. IV, § 5(A)(1).

{¶ 59} Sup.R. 48 controls the appointment of a guardian ad litem in a domestic-relations case. Among other provisions, Sup.R. 48.02(A)(5) and (6) require an order of appointment of a guardian ad litem to set the "rate or amount of

compensation" and the "terms and amount of any installment payments and deposits." Moreover, Sup.R. 48.03 requires guardians ad litem to perform certain tasks. For example, Sup.R. 48.03(H)(1) requires a guardian ad litem to "keep accurate records of the time spent, services rendered, and expenses incurred." In cases in which the allocation of parental rights and responsibilities is being determined, the guardian ad litem is required to "provide a monthly statement of fees and expenses to all parties." Sup.R. 48.03(H)(2). And at the conclusion of the guardian ad litem's appointment, he or she is required to file "an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment." Sup.R. 48.03(H)(3).

{¶ 60} A trial court has inherent authority to reconsider and modify its own orders prior to the entry of final judgment. *Tims v. Holland Furnace Co*., 152 Ohio St. 469, 473 (1950) (recognizing the inherent authority of a court to modify its own orders); *see also Pitts v. Ohio Dept. of Transp*., 67 Ohio St.2d 378, 379, fn. 1 (1981) ("Interlocutory orders are subject to motions for reconsideration, whereas judgments and final orders are not."); Civ.R. 54(B) (a nonfinal order is "subject to revision at any time"). Judge Fuller exercised his discretion when he set the rate of reimbursement and the terms of deposits in his reappointment order. Because trial-court judges have inherent authority to enforce, modify, terminate, or waive application of their own interlocutory orders, Scales's claim that Judge Fuller failed to enforce his own orders against the guardian ad litem is insufficient to warrant the judge's disqualification.

5. "Denial of right to trial evidence, discovery and depositions"

{¶ 61} Scales asserts that in January 2025, her attorney attempted to depose the guardian ad litem and that the plaintiff's attorney "suspended" the deposition, relying on Civ.R. 30(D). Eleven days later, Scales's attorney moved to extend discovery deadlines. A magistrate denied the motion.

{¶ 62} In March, Scales's attorney filed a motion to stay and set aside the magistrate's order. According to Scales, Judge Fuller denied the motion.

{¶ 63} As stated above, the authority of a chief justice in an affidavit-of-disqualification proceeding is limited. The focus of an affidavit-of-disqualification proceeding is the words and conduct of the judge. *Reed*, 2024-Ohio-6175, at ¶ 34. Speculation is insufficient to establish bias or prejudice. *Celebrezze*, 2023-Ohio-4383, at ¶ 93. And "'adverse rulings, without more, are not evidence that a judge is biased or prejudiced.'" *In re Disqualification of Bickerton*, 2023-Ohio-1104, ¶ 9, quoting *In re Disqualification of Russo*, 2005-Ohio-7146, ¶ 5. This is true even if the judge's rulings are erroneous. *In re Disqualification of Melnick*, 2022-Ohio-4431, ¶ 5.

{¶ 64} And while "'a judge could be disqualified if his or her adverse rulings were accompanied by words or conduct that call into question the manner in which the proceedings are being conducted,'" *Clark*, 2023-Ohio-4774, at ¶ 51, quoting *In re Disqualification of Knece*, 2014-Ohio-1414, ¶ 10, Scales points to no words or actions separate from Judge Fuller's ruling that suggest that the judge is biased and prejudiced against her. Therefore, without more, Scales's assertion that Judge Fuller erred in regulating discovery is insufficient to warrant the judge's disqualification.

6. "Abuse of judicial power to suppress access to witnesses and evidence"

{¶ 65} Scales claims that under R.C. 3109.051(H) and a parenting order issued by Judge Fuller, she was entitled to access the same school and medical records as the residential parent. According to Scales, the judge "unlawfully modified" that order by limiting her access to school and medical records "when her parenting time is suspended, supervised, or unsupervised."

{¶ 66} Scales also asserts that her lawyer issued 29 "trial subpoenas" and that in response to those subpoenas, the plaintiff's attorney filed 19 motions to quash and requests for protective orders. In her memorandum in opposition to the

motions to quash and requests for protective orders, Scales argued that "[s]chool records, medical records and financial records are always at the heart of any custodial dispute" and go to determining the best interest of the child. Judge Fuller granted the motions to quash and the requests for protection orders.

{¶ 67} As stated above, adverse rulings, without more, are insufficient to warrant the disqualification of a judge. *Bickerton*, 2023-Ohio-1104, at ¶ 9.

C. *Appearance of Impropriety*

{¶ 68} This third affidavit of disqualification filed by Scales also includes a catch-all allegation that Judge Fuller has created the appearance of impropriety. In support of that allegation, Scales states that there was a failure of service of her complaint for writs of procedendo and mandamus on the judge. Scales claims that the reason for the failure of service was that "Judge Fuller refused to sign the green card."

{¶ 69} While it is true that the exhibits filed with the affidavit of disqualification show that the Fifth District clerk of courts issued a notice of failure of service of the complaint for writs of procedendo and mandamus, there is no evidence to support Scales's accusation that the failure of service was caused by Judge Fuller. There is no indication on the green card or the other documents submitted as evidence that Judge Fuller refused service.

{¶ 70} As stated above, in an affidavit-of-disqualification proceeding, the affiant has the burden not only to make specific allegations of disqualification but also to present record evidence to support the allegations. *See Schroeder*, 2023-Ohio-3171, at ¶ 48. "A factual basis is required to disqualify a judge," and speculation, hearsay, and innuendo are insufficient. *Celebrezze*, 2023-Ohio-4383, at ¶ 93.

{¶ 71} Because an ordinary, reasonable person with full knowledge of all the facts would not believe that Judge Fuller is unable to "'to carry out judicial responsibilities with integrity, impartiality, and competence,'" *Caperton*, 556 U.S.

at 888, quoting American Bar Association, Annotated Model Code of Judicial Conduct, Canon 2A, Commentary, this allegation also fails to support the judge's disqualification.

D. Combination of Factors

{¶ 72} "It has been recognized that 'the combination of the factors cited by [an] affiant' may be sufficient to require a judge's disqualification when the individual factors by themselves are not." (Bracketed text in original.) *In re Disqualification of Reece*, 2025-Ohio-1604, ¶ 37, quoting *In re Disqualification of Maschari*, 1999-Ohio-8, ¶ 3. But in this case, whether the evidence is considered in isolation or all together, the average person on the street aware of all the relevant facts of the case would not believe that Judge Fuller's words and conduct reflect bias or prejudice or create the appearance of impropriety.

V. CONCLUSION

{¶ 73} Throughout the affidavit of disqualification and in the exhibits attached to it, Scales reveals the names of minor children and information subject to protection under federal and state law. The Clerk of the Supreme Court of Ohio is ordered to redact that information from the affidavit of disqualification and the exhibits attached to it.

{¶ 74} And whether the allegations and claims against Judge Fuller are considered independently or collectively, Scales has not established that the judge should be disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Fuller.
