

[Cite as *In re Disqualification of Synenberg*, ___ Ohio St.3d ___, 2013-Ohio-5916.]

IN RE DISQUALIFICATION OF SYNENBERG.

STATE v. UNTIED.

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2013-Ohio-5916.]

Judges—Affidavit of disqualification—R.C. 2701.03—Affiant bears the burden of showing compliance with statutory filing deadline—Affidavit denied.

(No. 13-AP-118—Decided December 6, 2013.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas Case No. CR 13-575483.

O’CONNOR, C.J.

{¶ 1} Defendant David M. Untied has filed an affidavit with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge Joan Synenberg from presiding over any further proceedings in case No. CR13-575483, now pending for trial in the Court of Common Pleas of Cuyahoga County.

{¶ 2} Untied alleges that he has made eight “costly two hour one way trips” to Cleveland for scheduled hearings and conferences before Judge Synenberg, only to discover upon his arrival that the hearing was continued or that the judge refused to see him. In addition, Untied claims that Judge Synenberg has falsified the court’s journal and has refused his request to represent himself. According to Untied, the judge’s actions demonstrate her bias and prejudice against him.

{¶ 3} Untied, however, filed his affidavit on Friday, December 6, 2013, and the trial in the underlying case is scheduled for Tuesday, December 10, 2013. Under R.C. 2701.03(B), an affidavit of disqualification must be filed “not less than seven calendar days before the day on which the next hearing in the

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proceeding is scheduled.” This statutory deadline may be set aside only “when compliance with the provision is impossible,” such as when the alleged bias or prejudice occurs fewer than seven days before the hearing date or the case is scheduled or assigned to a judge within seven days of the next hearing. *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999). The affiant bears the burden of showing that he or she has complied with the statutory filing deadline. *In re Disqualification of Eyster*, 105 Ohio St.3d 1246, 2004-Ohio-7350, 826 N.E.2d 304, ¶ 3.

{¶ 4} Untied claims that he was prevented from filing his affidavit before the seven-day deadline because of the financial hardship caused by Judge Synenberg’s conduct. In addition, he alleges that he attempted to file the affidavit in person on the seventh day before trial, but his car broke down on the way to Columbus. Finally, Untied states that after his car problems, he had to prepare a new affidavit because he had not initially included a certificate of service, as required by R.C. 2701.03(B).

{¶ 5} On this record, Untied has not set forth a sufficient basis for excusing his failure to comply with the seven-day requirement in R.C. 2701.03(B). Accordingly, his affidavit of disqualification is dismissed as untimely. The case may proceed before Judge Synenberg.
