

**IN RE DISQUALIFICATION OF PRATT.**

**THE STATE OF OHIO v. WELLS.**

[Cite as *In re Disqualification of Pratt*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-5327.]

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

(No. 20-AP-088—Decided November 3, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Miami County Court of Common Pleas,  
General and Domestic Relations Division, Case No. 16 CR 00671.

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**O’CONNOR, C.J.**

{¶ 1} Defendant Lisa M. Wells has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Jeannine N. Pratt from the above-referenced case.

{¶ 2} Ms. Wells primarily avers that Judge Pratt has unfairly prejudged an issue in the case by deciding to terminate Ms. Wells’s community-control sanctions for failing a drug test—even though the judge has not yet held an evidentiary hearing on the issue. Ms. Wells also alleges that Judge Pratt demonstrated bias in various ways throughout the underlying case, including by determining that Ms. Wells had violated her intervention-in-lieu-of-conviction conditions after the expiration of her two-year rehabilitation period, issuing a *capias* for Ms. Wells’s arrest after she had entered an in-patient treatment facility, setting an unreasonable bond amount, imposing unfair community-control conditions, and requiring Ms. Wells to undergo hair-follicle drug screens.

{¶ 3} Judge Pratt filed a response to the affidavit, in which she denies any bias against Ms. Wells and states that she has treated Ms. Wells like any other defendant struggling with drug addiction.

{¶ 4} In disqualification requests, “[t]he term ‘bias or prejudice’ ‘implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.’ ” *In re Disqualification of O’Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956). “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. In addition, a “presumption of impartiality” is “accorded all judges” in affidavit-of-disqualification proceedings. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7.

{¶ 5} Based on this record, Ms. Wells has not established that Judge Pratt has hostile feelings toward her or a fixed anticipatory judgment on any issue in the underlying case. Nor has Ms. Wells set forth a compelling argument for disqualifying Judge Pratt to avoid an appearance of partiality. Ms. Wells states that she has suspicions about the validity of the recent hair-follicle screen and evidence explaining the positive result. But according to Ms. Wells, her probation officer advised her that Judge Pratt has already decided to terminate Ms. Wells’s community-control sanctions for failing the test—without considering Ms. Wells’s evidence. For her part, Judge Pratt acknowledges that the probation department reported to her the results of Ms. Wells’s recent drug test and that the judge had discussions with Ms. Wells’s probation officer. The judge affirms, however, that she has not prejudged any allegation that Ms. Wells has failed to comply with her probation conditions. The judge states that when a defendant is formally charged

with a community-control violation, she listens to the evidence presented at the hearing to make a final determination. But no hearing on an alleged community-control violation has been scheduled in Ms. Wells’s case.

{¶ 6} “Allegations that are based solely on hearsay, innuendo, and speculation—such as those alleged here—are insufficient to establish bias or prejudice.” *In re Disqualification of Flanagan*, 127 Ohio St.3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4. Judge Pratt states that she has been careful not to treat any information received from the probation department as proof of any alleged community-control violation. Therefore, Ms. Wells has not established that Judge Pratt has predetermined how to handle the result of the drug test.

{¶ 7} None of the other allegations in Ms. Wells’s affidavit warrant the judge’s removal. An affidavit of disqualification “is not a vehicle to contest matters of substantive or procedural law.” *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. Therefore, it is outside the scope of this matter to determine whether Judge Pratt properly revoked Ms. Wells’s intervention in lieu of conviction or to review the propriety of community-control conditions or the methods for drug testing a probationer. *See In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5.

{¶ 8} The affidavit of disqualification is denied. The case may proceed before Judge Pratt.

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