IN RE DISQUALIFICATION OF PIPER.

THE STATE OF OHIO *v.* STEPP.

[Cite as *In re Disqualification of Piper*, ___ Ohio St.3d ___, 2020-Ohio-5362.]

Judges—Affidavits of disqualification—R.C. 2501.13 and 2701.03—Affidavit dismissed as moot.

(No. 20-AP-100—Decided November 17, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Twelfth District Court of Appeals Case No. CA-2020-05-0062.

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O'CONNOR, C.J.

{¶ 1} Appellant, Brian T. Stepp, has filed an affidavit pursuant to R.C. 2501.13 and 2701.03 seeking to disqualify Judge Robin N. Piper, a judge of the Twelfth District Court of Appeals, from the above-referenced case.

{¶ 2} Mr. Stepp alleges that Judge Piper, while serving as the Butler County Prosecuting Attorney, had a significant role in prosecuting Mr. Stepp in Butler County case No. CR 2004 02 0266. The underlying matter is an appeal from a May 2020 judgment overruling some of Mr. Stepp's postconviction motions in that criminal matter.

{¶ 3} Judge Piper filed a response to the affidavit and acknowledged that when he served as the prosecutor, he was involved in the investigation and prosecution of Mr. Stepp. The judge further states that he is not a member of the panel assigned to the underlying appeal and that, regardless, he would not participate in Mr. Stepp's appeal due to his prior involvement in the matter.

{¶ 4} Because Judge Piper is not assigned to the underlying appeal—and has affirmed that he will not participate in it—Mr. Stepp's affidavit of disqualification is dismissed as moot. *See also* Jud.Cond.R. 2.11(A)(7)(b)

(requiring a judge who formerly served as a government lawyer to disqualify himself or herself from any particular matter in which he or she personally and substantially participated as a governmental lawyer); *Williams v. Pennsylvania*, ___ U.S. ___, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016) ("under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case").

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