

**IN RE DISQUALIFICATION OF TURNER MCCALL.**

**THE STATE OF OHIO/THE CITY OF CLEVELAND v. CORNELY.**

[Cite as *In re Disqualification of Turner McCall*, \_\_\_ Ohio St.3d \_\_\_,  
2021-Ohio-252.]

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed to demonstrate bias or prejudice by judge or that judge has a conflict of interest—Disqualification denied.*

(No. 20-AP-107—Decided January 22, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Cleveland Municipal Court

Case No. 2018 CRB 017558.

---

**O’CONNOR, C.J.**

{¶ 1} Jay F. Crook, counsel for the defendant, has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 and Ohio Constitution, Article IV, Section 5(C), seeking to disqualify Judge Shiela Turner McCall from the above-referenced case.

{¶ 2} In 2019, the defendant pleaded guilty to a charge of domestic violence and Judge Turner McCall sentenced him to community control. The defendant later appealed a decision denying his motion to modify a condition of his community control. The defendant’s appeal remains pending. The defendant also filed separate complaints for a writ of procedendo and a writ of prohibition against Judge Turner McCall. The Eighth District Court of Appeals granted the writ of procedendo, *see State ex rel. Cornely v. McCall*, 8th Dist. Cuyahoga No. 109832, 2020-Ohio-4384 (“*Cornely I*”), but dismissed the complaint for a writ of prohibition, *see State ex rel. Cornely v. McCall*, 8th Dist. Cuyahoga No. 110125, 2020-Ohio-6747 (“*Cornely II*”).

{¶ 3} In his affidavit of disqualification, Mr. Crook alleges that Judge Turner McCall is biased against the defendant and favors the victim. Primarily, Mr. Crook asserts that the judge has engaged in obstructionist behavior and has a conflict of interest and that there have been “a number of irregularities in the proceedings” that would cause an objective observer to question her impartiality.

{¶ 4} Judge Turner McCall filed a response and a supplemental response to the affidavit and denies any bias against the defendant.

{¶ 5} 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.

{¶ 6} For the reasons explained below, Mr. Crook has not established that Judge Turner McCall has hostile feelings toward the defendant or has formed a fixed anticipatory judgment on any remaining issue in the underlying case. Nor has Mr. Crook set forth a compelling argument for disqualifying Judge Turner McCall to avoid an appearance of partiality.

*Alleged obstructionist behavior*

{¶ 7} Mr. Crook alleges that Judge Turner McCall’s failure to rule on one of the defendant’s motions resulted in the Eighth District issuing the writ of procedendo against her. He further alleges that in the defendant’s pending appeal,

the judge has ignored remand orders from the Eighth District. The judge's obstructionist actions, Mr. Crook asserts, have impeded his client's right to seek meaningful relief in the court of appeals.

{¶ 8} In response, Judge Turner McCall attempts to explain why she did not rule on the motion that led to the procedendo action. She also states that she has fully complied with remand orders from the Eighth District and that the Eighth District recently dismissed the defendant's prohibition complaint in which he raised many of the same arguments that he asserts in his affidavit of disqualification.

{¶ 9} Mr. Crook has failed to establish that Judge Turner McCall has engaged in obstructionist conduct warranting disqualification. In the procedendo action, the Eighth District found Judge Turner McCall's arguments "ill-founded," *Cornely I*, 8th Dist. Cuyahoga No. 109832, 2020-Ohio-4384, at ¶ 6, and ordered her to rule "forthwith" on a pending motion, *id.* at ¶ 6, 12. The judge complied and decided the motion within weeks. Nothing suggests that the judge's legal position in the procedendo action was the product of bias against the defendant. Rather, it appears that the judge mistakenly believed that she was unable to rule on the motion. *See id.* at ¶ 4, 6.

{¶ 10} In the prohibition action, the Eighth District noted that Judge Turner McCall had complied—at least in part—with remand orders in the defendant's appeal. *Cornely II*, 8th Dist. Cuyahoga No. 110125, 2020-Ohio-6747, at ¶ 22. Regardless of whether Mr. Crook believes that finding is accurate, this is not the appropriate forum in which to determine whether Judge Turner McCall has complied with remand instructions from the Eighth District. The court of appeals should first resolve that issue in the defendant's appeal. An affidavit of disqualification "is not the mechanism for determining whether a judge has complied with the law." *In re Disqualification of Griffin*, 101 Ohio St.3d 1219, 2003-Ohio-7356, 803 N.E.2d 820, ¶ 8.

*Alleged conflict of interest*

{¶ 11} Mr. Crook avers that Judge Turner McCall has a conflict of interest based on the following facts: the judge is a former employee of the City of Cleveland Law Department, the victim is a longtime attorney with the law department and served at the same time as the judge, the law department prosecuted the underlying criminal case against the defendant, and the law department represented the judge in the related procedendo action. Thus, Mr. Crook argues, the same law department that serves as Judge Turner McCall’s counsel also employs the victim. In addition, Mr. Crook notes that in the defendant’s ongoing divorce case, the victim included Judge Turner McCall as one of her witnesses.

{¶ 12} Judge Turner McCall disagrees that she has a conflict. The judge acknowledges that she was employed as an assistant prosecutor for the City of Cleveland Law Department from 2005 through 2010 and that the victim is an attorney for the law department. But the judge further states that she and the victim worked in different divisions of the law department and that before the underlying criminal case, the judge had never met the victim and had no knowledge of her. The judge also notes that she was unaware that she had been named as a witness in the defendant’s divorce proceeding and that she will not participate in that matter.

{¶ 13} In general, “[t]he prior professional activities of a judge are not grounds for disqualification where the record fails to demonstrate the existence of a relationship or interest that clearly and adversely impacts a party’s ability to obtain a fair and impartial trial.” *In re Disqualification of Cross*, 74 Ohio St.3d 1228, 657 N.E.2d 1338 (1991). Considering that Judge Turner McCall did not know the victim prior to the underlying case, the record is insufficient to support the conclusion that the judge could be tempted to depart from her expected judicial neutrality merely because the victim is employed by the same law department that previously employed the judge.

{¶ 14} Nor has Mr. Crook established that the judge has a conflict because the law department represented the judge in the procedendo action. Although a trial judge’s impartiality may reasonably be questioned if she presides over a case in which a litigant is represented by the judge’s own lawyer, Mr. Crook acknowledges that the law department is required by city code to represent judges of the Cleveland Municipal Court when they are sued in their official capacities. As previously explained, “[i]f a judge is represented by the prosecuting attorney or the attorney general, the judge should not hear cases in which the same individual attorney representing the judge is also representing a litigant in a case before the judge. The appearance of another lawyer from the prosecutor’s office or attorney general’s office, however, would not necessitate the judge’s recusal.” *In re Disqualification of Reinbold*, 152 Ohio St.3d 1221, 2017-Ohio-9427, 94 N.E.3d 570, ¶ 5. There is no indication here that the *same attorney* who prosecuted the defendant also defended Judge Turner McCall in the procedendo action.

{¶ 15} Finally, the fact that one of the parties in the defendant’s divorce case identified Judge Turner McCall as a potential witness does not automatically require the judge’s removal from the underlying criminal matter. At this point, it is unclear whether the judge will in fact be called as a witness in the divorce proceedings and whether the criminal matter will be pending at the time of the divorce trial.

*Other alleged “irregularities”*

{¶ 16} Mr. Crook also alleges that Judge Turner McCall has engaged in numerous instances of impropriety, including having or encouraging improper ex parte contacts with the victim and acting in a hostile manner toward the defendant at multiple hearings. For her part, Judge Turner McCall thoroughly responded to each of Mr. Crook’s averments.

{¶ 17} Upon review, none of Mr. Crook’s allegations demonstrate the existence of bias or an appearance of bias. For example, “[a]n alleged ex parte

communication constitutes grounds for disqualification when there is ‘proof that the communication \* \* \* addressed substantive matters in the pending case.’ ” (Ellipsis sic.) *In re Disqualification of Forsthoefel*, 135 Ohio St.3d 1316, 2013-Ohio-2292, 989 N.E.2d 62, ¶ 7, quoting *In re Disqualification of Calabrese*, 100 Ohio St.3d 1224, 2002-Ohio-7475, 798 N.E.2d 10, ¶ 2. “The allegations must be substantiated and consist of something more than hearsay or speculation.” *Id.* Mr. Crook’s allegations here, however, are based on speculation or hearsay.

{¶ 18} Additionally, in deciding affidavits of disqualification, “[a] judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. To overcome the presumption, affiants are often required “to submit evidence beyond the affidavit of disqualification supporting the allegations contained therein.” *In re Disqualification of Baronzzi*, 135 Ohio St.3d 1212, 2012-Ohio-6341, 985 N.E.2d 494, ¶ 6. Here, Mr. Crook alleges that Judge Turner McCall acted in a hostile manner toward the defendant at an October 2020 hearing. Yet he has failed to substantiate his allegation with a copy of the transcript. Considering that Judge Turner McCall expressly denies any such hostility, Mr. Crook has failed to overcome the presumption that the judge is fair and impartial.

{¶ 19} For the reasons explained above, the affidavit of disqualification is denied. The case may proceed before Judge Turner McCall.