

SUPREME COURT OF OHIO

In re Disqualification of Swift

2019-Ohio-1626 (Ohio 2019) · No. 19-AP-029 · Decided March 8, 2019

SUMMARY

The Supreme Court of Ohio denied Scott A. Melton’s affidavit seeking to disqualify Judge Thomas A. Swift from further proceedings in an estate matter. The court held that the affidavit did not establish bias, prejudice, or an appearance of impropriety, and that challenges to jurisdiction or the scheduling of a show-cause hearing were outside the limited scope of a disqualification proceeding.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	March 8, 2019
DOCKET	19-AP-029
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Scott A. Melton filed an affidavit of disqualification under R.C. 2701.03 and 2101.39 seeking to disqualify Judge Thomas A. Swift from further proceedings in an underlying probate case.
STANDARD OF REVIEW	An affidavit of disqualification addresses only the possible bias or prejudice of the judge; the affiant must establish compelling evidence sufficient to overcome the presumptions that a judge will follow the law and is not biased.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio
PARTIES	Scott A. Melton

TOPICS

[probate procedure](#) [probate](#) [civil procedure](#) [contempt](#)

PRACTICE AREAS

[probate](#) [judicial disqualification](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether Judge Swift's professional or personal relationship with Judge Rusu created an appearance of impropriety warranting disqualification.
2. Whether Judge Swift's scheduling of a show-cause hearing demonstrated bias or prejudgment.
3. Whether allegations concerning the probate court's jurisdiction, notice of the show-cause hearing, or alleged forum shopping were proper grounds for disqualification.

HOLDINGS

1. Disqualification was not warranted because the chief justice, rather than Judge Rusu, assigned Judge Swift, and the affiant failed to explain sufficiently why Swift's relationship with Rusu would cause an objective observer to harbor serious doubts about Swift's impartiality.
2. The mere scheduling of a show-cause hearing did not establish that Judge Swift was biased or had prejudged issues in the case.
3. An affidavit of disqualification is not a vehicle for contesting substantive or procedural legal issues, including the probate court's jurisdiction or the propriety of scheduling a hearing.

KEY QUOTATIONS

“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.” (¶ 6)

“affidavit of disqualification addresses the narrow issue of the possible bias or prejudice of a judge. It is not a vehicle to contest matters of substantive or procedural law.” (¶ 6)

FACTUAL BACKGROUND

Judge Thomas A. Swift, a retired judge sitting by assignment, was assigned by the chief justice to preside over proceedings in an estate matter in the Mahoning County Probate Court. The probate court's current judge, Robert Rusu, had recused himself, and the affiant alleged that Swift's professional or personal relationship with Rusu created an appearance of impropriety. The affiant also argued that Swift prejudged the case by scheduling a show-cause hearing and that another attorney had engaged in forum shopping.

PROCEDURAL HISTORY

The underlying matter was pending in the Mahoning County Court of Common Pleas, Probate Division. Judge Robert Rusu had recused himself, and Chief Justice O'Connor assigned retired Judge Thomas A. Swift to the case. After Judge Swift scheduled a show-cause hearing concerning possible contempt, Melton sought the judge's disqualification. The Supreme Court of Ohio denied the affidavit and permitted the case to proceed before Judge Swift.

DISPOSITION

writ_denied

CASES CITED

- In re Disqualification of Lewis, 117 Ohio St. 3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8
- In re Disqualification of George, 100 Ohio St. 3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5
- In re Disqualification of Solovan, 100 Ohio St. 3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/ohio-supreme-court-of-ohio/2019/in-re-disqualification-of-swift-23ecuy2>