

SUPREME COURT OF OHIO

In re Disqualification of Burge

136 Ohio St. 3d 1205, 2013-Ohio-2726 (Ohio 2013) · No. 13-AP-027 · Decided May 13, 2013

SUMMARY

The Supreme Court of Ohio considers affidavits seeking the disqualification of Judge James M. Burge under Ohio Revised Code § 2701.03. The court disqualifies Judge Burge from the State v. Jalowiec proceeding because his media comments and failure to respond to certain allegations created an appearance of impropriety, but denies disqualification in the State v. Weber and State v. Fine cases and rejects a blanket order.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	May 13, 2013
DOCKET	13-AP-027
DISPOSITION	other
PROCEDURAL POSTURE	On affidavits of disqualification filed under Ohio Revised Code section 2701.03 seeking Judge Burge's removal from three pending criminal cases and a blanket order barring him from presiding over all current and future cases in which Cillo appeared as counsel of record.
STANDARD OF REVIEW	The court applied an objective reasonable-and-objective-observer standard to determine whether a judge's participation would create an appearance of impropriety, while recognizing the presumption that judges are impartial and capable of following the law.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Anthony Cillo v. Judge James M. Burge

TOPICS

criminal procedure

civil procedure

waiver

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Judge Burge should be disqualified from presiding over State v. Jalowiec because his alleged statement, media comments, and failure to respond to allegations created an appearance of impropriety or suggested a fixed anticipatory judgment.
2. Whether Cillo established grounds for a blanket order disqualifying Judge Burge from all current and future cases in which Cillo appeared as counsel.
3. Whether the allegations warranted disqualification from State v. Weber and State v. Fine.

HOLDINGS

1. Judge Burge must be disqualified from presiding over State v. Jalowiec because, considering the media statements and his failure to respond to certain allegations, a reasonable and objective observer could harbor serious doubts about his impartiality and perceive an intolerable adversarial atmosphere.
2. Cillo failed to establish grounds for a blanket order disqualifying Judge Burge from all current and future cases in which Cillo appeared as counsel.
3. The affidavits were denied as to State v. Weber and State v. Fine, which could proceed before Judge Burge.

KEY QUOTATIONS

“A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.” (¶ 7)

“When the case becomes about the judge rather than the facts of the case and the law, it is time for the judge to step aside,” (¶ 7)

*“Allegations that are based solely on hearsay, innuendo, and speculation * * * are insufficient to establish bias or prejudice” (¶ 13)*

FACTUAL BACKGROUND

Cillo alleged that Judge Burge's contentious history with him, public comments concerning Cillo's allegations and a possible disciplinary investigation, and an alleged statement about defendant Jalowiec's entitlement to a new trial created an appearance of bias. An assistant prosecutor supplied an affidavit attributing the alleged Jalowiec statement to Judge Burge, while Judge Burge denied making it. Judge Burge also made statements to the press that the court found could cause an objective observer to view him as Cillo's adversary, and he failed to respond to some allegations in Cillo's supplemental affidavit.

PROCEDURAL HISTORY

Cillo filed two affidavits of disqualification with the Supreme Court of Ohio concerning Judge Burge's alleged bias, public comments, and purported prejudgment in State v. Jalowiec. Judge Burge submitted written responses denying bias and denying that he had formed or expressed an opinion on the motion for a new trial. The

Supreme Court granted the affidavit as to Jalowiec, denied the affidavits as to State v. Weber and State v. Fine, and denied the requested blanket disqualification.

DISPOSITION

other

REMAND INSTRUCTIONS

Judge Burge must participate no further in State v. Jalowiec. Assignment of another judge was to be addressed in a separate entry. State v. Weber and State v. Fine could proceed before Judge Burge.

CASES CITED

- State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956)
- In re Disqualification of Synenberg, 127 Ohio St. 3d 1220, 2009-Ohio-7206, 937 N.E.2d 1011, ¶¶ 24-25
- In re Disqualification of Lewis, 117 Ohio St. 3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8
- In re Disqualification of Saffold, 134 Ohio St. 3d 1204, 2010-Ohio-6723, 981 N.E.2d 869, ¶¶ 2, 6
- In re Disqualification of Corrigan, 94 Ohio St. 3d 1234, 1235, 763 N.E.2d 602 (2001)
- In re Disqualification of Nicely, 135 Ohio St. 3d 1237, 2012-Ohio-6290, 986 N.E.2d 1, ¶ 8
- In re Disqualification of Sheward, 77 Ohio St. 3d 1258, 1260, 674 N.E.2d 365 (1996)
- In re Disqualification of Flanagan, 127 Ohio St. 3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4
- In re Disqualification of Hoover, 113 Ohio St. 3d 1233, 2006-Ohio-7234, 863 N.E.2d 634, ¶ 4
- In re Disqualification of O'Neill, 100 Ohio St. 3d 1226, 2002-Ohio-7476, 798 N.E.2d 12, ¶ 5
- State ex rel. Turner v. Marshall, 123 Ohio St. 586, 587, 176 N.E. 454 (1931)
- In re Disqualification of Hunter, 36 Ohio St. 3d 607, 608, 522 N.E.2d 461 (1988)
- In re Disqualification of George, 100 Ohio St. 3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5

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