

IN THE SUPREME COURT OF OHIO

TIMOTHY F. HAGAN, et al.,	Common Pleas Case No. CV-04-537445
Plaintiffs,	From the Cuyahoga County
vs.	Court of Common Pleas
GOVERNOR BOB TAFT, et al.,	Supreme Court Case No. 05-AP-59
Defendants.	<b>Judgment Entry</b>

Attorney Maria Armstrong – counsel for several of the defendants – has filed an affidavit with the Clerk of this Court under R.C. 2701.03 seeking the disqualification of Judge Brian Corrigan and all other common pleas judges in Cuyahoga County from acting on any further proceedings in Case No. CV-04-537445 in the Court of Common Pleas for Cuyahoga County.

Armstrong alleges that plaintiff Timothy Hagan is currently serving as the president of the Cuyahoga County Board of County Commissioners, and in that capacity he has authority over fiscal and other matters that affect Judge Corrigan and his colleagues. In addition, affiant Armstrong contends that plaintiff Hagan is a former chairman of the county Democratic Party and a former county recorder who has significant personal and political connections to many local judges. Three of the county's judges have recused themselves from the case, and the affiant alleges that the other judges should now be disqualified to avoid any appearance of impropriety.

Judge Corrigan has responded to the affidavit, and he states that he does not intend to step aside unless recusal becomes necessary as he learns more about the case. Presiding Judge Richard McMonagle has responded as well, and he states that any of the judges in Cuyahoga County could preside fairly and impartially over the case.

Counsel for the plaintiffs, Kenneth Seminatore, has responded to the affidavit also. He notes that the plaintiffs' complaint was filed in August 2004 and yet the defendants never objected to the participation of Cuyahoga County jurists until May 2005.

I conclude that Judge Corrigan and the other judges in Cuyahoga County should be disqualified. Last year, I likewise disqualified all of the judges in Cuyahoga County from serving on another case in which a different county officeholder was a party, and I noted the importance of avoiding "even an appearance of bias, prejudice, or impropriety" and the need to "ensure the parties, their counsel, and the public the unquestioned neutrality of an impartial judge." See *In re Disqualification of Celebreeze*, 105 Ohio St.3d 1241, 2004-Ohio-7360, ¶ 4, citing *In re Disqualification of Floyd*, 101 Ohio St.3d 1215, 2003-Ohio-7354, ¶ 10.

Those same concerns underlie my decision in this case. No one has suggested that Judge Corrigan has said or done anything reflecting bias or prejudice for or against any of the parties to the case. Nonetheless, plaintiff Hagan is a county commissioner who necessarily exercises considerable authority over the budget of the common pleas courts in Cuyahoga County. The public could reasonably question whether any judge now serving on the court of common pleas in Cuyahoga County would be able to render a decision based solely on the relevant facts and the law applicable to those facts.

To be sure, "[j]udges are elected to preside fairly and impartially over a variety of legal disputes, including those involving public officials . . ." *In re Disqualification of Villanueva* (1995), 74 Ohio St.3d 1277, 1278 (denying an affidavit of disqualification in a case involving members of a county board of elections). Even so, this case involves a county commissioner, and commissioners wield considerable influence over the funding of local courts. Any appearance or perception of bias in the administration of justice and the courts can be nearly as

harmful as the actual presence of bias. It is significant as well that three of Judge Corrigan's colleagues have already recused themselves from the case.

"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* (2004), 105 Ohio St.3d 1239, 1240 (citing Canon 3(E)(1) of the Ohio Code of Judicial Conduct).

I believe that plaintiff Hagan's leadership role in local politics and his service as a county commissioner could reasonably cause an objective and disinterested observer to question any action that a Cuyahoga County judge might take in this case. A judge from outside the county will be able to act without generating a similar appearance of impropriety in the mind of a reasonable and objective observer. I reached a similar conclusion several years ago in *In re Disqualification of Nadel* (1989), 47 Ohio St.3d 604. In that case, despite the absence of any evidence suggesting that the assigned judge could not preside fairly and impartially over a criminal case in which another local judge's daughter was the victim, I ordered the disqualification of all judges in the county because the "relationships within the judicial system of Hamilton County . . . could suggest to a reasonable person the appearance of prejudice or impropriety" if the case were decided by a judge from that county. 47 Ohio St.3d at 605.

Certainly the defendants in this case could – and therefore should – have filed their request for disqualification sooner, given that they ask for the appointment of a visiting judge from outside Cuyahoga County. Still, none of the various judges who have presided over this case since it was filed in August 2004 appear to have issued any substantive rulings, and this is therefore not a case in which "an affidavit of disqualification . . . [is being] used to disqualify a judge after lengthy proceedings have taken place in the case." *In re Disqualification of Belskis*

(1993), 74 Ohio St.3d 1252. Judge Corrigan himself was not assigned to the case until May 4, 2005, and by his own admission has not yet met with the attorneys for the parties. Any tardiness in the filing of the affidavit is outweighed by my concern that any appearance of impropriety be eliminated.

The law requires not only an impartial judge but also one who appears to be impartial to the parties and public. To allay any concerns on that issue, I will appoint a retired visiting judge from outside Cuyahoga County to hear any further proceedings in the trial court.

For the reasons stated above, the affidavit of disqualification is granted. I will address in a separate entry the appointment of a visiting judge from outside Cuyahoga County.

Dated this 11<sup>th</sup> day of July, 2005.



THOMAS J. MOYER  
Chief Justice

Copies to: Marcia J. Mengel, Clerk of the Supreme Court  
Hon. Brian J. Corrigan  
Hon. Richard J. McMonagle  
Gerald E. Fuerst, Cuyahoga County Clerk of Courts  
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