

IN THE SUPREME COURT OF OHIO

In re Disqualification of  
Hon. W. Moná Scott

)  
) Case No. 23-AP-128  
)  
) On Affidavit of Disqualification in  
) *City of Cleveland v. Shaker Heights*  
) *Apartments Owner, LLC, et al.*,  
) Cleveland Municipal Court, Housing  
) Division, Case No. 2023-CVH-002772

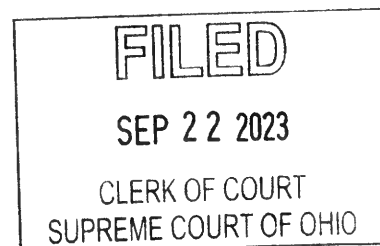
**RESPONSE TO AFFIDAVIT OF DISQUALIFICATION OF**  
**THE HONORABLE W. MONA SCOTT**

The following is Judge W. Moná Scott's Response to the Affidavit of Disqualification filed against her in the above-captioned matter.

Affiant is counsel for several individuals and entities in an underlying case pending before Judge W. Moná Scott of the Cleveland Municipal Court, Housing Division, captioned *City of Cleveland v. Shaker Heights Apartments Owners, LLC, et. al.* ("Underlying Case"). The Underlying Case is a civil nuisance action asserted by the City of Cleveland ("City") against several individuals and entities, including Shaker Heights Apartments Owners, LLC ("SHAO"). In the Underlying Case, the City seeks to enforce certain building codes and seeks abatement of properties located at 12500-12600 and 12701 Shaker Boulevard, Cleveland, Ohio (the "Properties").

In the Affidavit, Affiant argues disqualification is necessary because "Judge Scott has admitted that she has prejudged the pending Matter, and has bias against [Affiant's clients, the Defendants in the underlying case]." (Affidavit, ¶3.) According to Affiant, "[t]his is confirmed in her statements regarding Defendants to the media and in open court, on the record, during other proceedings." *Id.* Specifically, Affiant alleges Judge Scott made "inappropriate and unprovoked factual statements about Defendants, on the record, in the **unrelated case** of *City of Cleveland v. Moreland Ohio LLC*." *Id.* at ¶15 (emphasis original). He further suggests she gathered facts about the Underlying Case on her own time, from sources other than the court record. *Id.* at ¶19. Affiant claims Judge Scott "provided **an interview** with the Cleveland Media concerning [the Properties]." *Id.* at ¶22 (emphasis original). And he alleges Judge Scott has "illegally prevented [his clients] from proceeding with evictions in her Court, despite having no evidence or legal justification to do so." *Id.* at ¶5.

Judge Scott refutes each of these allegations and submits there are no grounds for disqualification.



## Analysis

“The statutory right to seek disqualification of a judge is an extraordinary remedy.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. An affidavit of disqualification addresses the narrow issue of the possible bias or prejudice of a judge. A judge is presumed to follow the law and not to be biased, and an 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. See also *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, ¶ 7 (Judges enjoy a presumption of impartiality throughout all their proceedings).

To prevail on an Affidavit of Disqualification, an affiant must demonstrate clearly the existence of bias, prejudice, or other disqualifying interest that requires a judge’s removal. *In re Disqualification of Synenberg*, 2009-Ohio-7206, 127 Ohio St.3d 1220, 937 N.E.2d 1011 (Ohio 2009); see also *In re Disqualification of Crow*, 91 Ohio St. 3d 1209, 741 N.E.2d 137 (2000).

Judge Scott is not biased against Affiant’s clients, the Defendants in the Underlying Case, nor has she prejudged the Underlying Case. Affiant bases his argument in support of disqualification on two primary contentions: (1) Judge Scott made statements in an unrelated case that he claims show she has prejudged the Underlying Case and/or is biased against his client, and (2) Judge Scott made statements to the media about the Underlying Case, again showing her bias/prejudice.

As to the first contention, Judge Scott’s statements, made on the record during a November 2022 hearing in the *Moreland* case, are taken out of context. First, some background:

As a housing court, the Cleveland Municipal Court, Housing Division (the “Court”) hears both civil and criminal cases. Judge Scott is the sole judge of the Court and has nine magistrates (7 full time, and 2 part time). Judge Scott primarily handles the criminal docket, which involves prosecution of misdemeanor housing code violations. The magistrates generally hear all civil matters, which consist of matters addressing evictions, nuisance and receivership hearings, rent disputes, etc. Judge Scott reviews each case and approves/signs off on all civil matters after the magistrates issue their judgment orders.

In November 2022 when the *Moreland* hearing was held, all matters in need of the Judge’s signature were first being reviewed by the Court’s deputy bailiff for any outstanding warrants, capias or other issues related to service on the Court’s criminal docket. This process came about because the Court found that while the Court was increasingly having issues obtaining service on defendants in criminal matters before the Court (i.e., cases seeking to enforce the building code at a given property), those same defendants were regularly appearing before the Court seeking to prosecute civil cases they had filed against tenants in the same property.

Viewing this situation as a matter of unclean hands, Judge Scott, as Administrative Judge, looked to make changes at the Court to prevent ongoing issues. Her concern was not

focused on any single corporation or organization; rather, she was trying to protect the system and those coming before it, specifically ensuring that both civil and criminal cases were being addressed.

As a result of the above service issues, the Court enacted Local Rule 3.L.4., which provides:

Where the plaintiff (in a civil matter) is identified as the subject of an open warrant or capias in a Housing Division criminal case, the plaintiff's cases may be removed from the regularly scheduled docket and rescheduled to a separate Warrant Docket. Plaintiffs whose cases are removed to the Warrant Docket must enter an appearance and plea in their criminal case prior to their scheduled appearance in the eviction case on the Warrant Docket.

In accordance with this rule, criminal cases in which service was not obtained and/or the defendant failed to appear were placed on the Court's "Corporate Docket," which handles all capias for corporations and organizations who have failed to appear. And any evictions proceedings involving the same defendant were ordered stayed.

In June 2022, the City of Cleveland filed a misdemeanor criminal complaint against SHAO, *City of Cleveland v. Shaker Heights Apartments Owners LLC*, Case No. 2022-CRB-005101 and a minor misdemeanor citation, Case No. 2022-CRB-009415. The City alleged SHAO failed to comply with an order of the Cleveland Building Department, a misdemeanor of the 1<sup>st</sup> degree. The case was passed on the Court's docket in July and September 2022 because the City had not been able to get service on SHAO, and placed on the Corporate Docket. Service was eventually perfected on both cases on September 19, 2022, through SHAO's statutory agent, but no one appeared for SHAO at the arraignment on October 18, 2022. The cases were continued to November 14, 2022, and remained on the Corporate Docket.

On November 14, 2022, SHAO's case was called on the Corporate Docket again, no one appeared, so the case was ordered to remain on the Corporate Docket. The judgment entry continuing the cases stated that all eviction cases filed by SHAO would be stayed until the defendant resolved the criminal case, and the criminal case was continued to December 5, 2022.

November 14, 2022, was the same day as the *Moreland* hearing. That case was likewise on the Corporate Docket. Moreland owns property adjacent to the Properties owned by SHAO. As with SHAO, Moreland had failed to appear for its criminal case, resulting in its case being placed on the Corporate Docket and its evictions cases stayed.

Judge Scott does not hear cases in a vacuum. As she works through the docket, specifically the criminal docket, there are often similarities among the cases. The cases on the Corporate Docket are there because the defendant corporation or organization has failed to appear, while most have continued to appear regularly for the Court's civil docket. In reviewing the Corporate Docket—and reviewing cases designated to be placed on the Corporate Docket—Judge Scott often saw the same identified corporate defendants and

various connections between them: they were represented by the same counsel; they had the same statutory agent or mailing address; the property involved was in the same area or on the same street; they had similar names or iterations of the same name. But her focus while presiding over the docket was not on the defendants, per se, or what they were alleged to have done, but rather on the issues the City and the Court were having with obtaining service on the defendants and getting them to come to Court. Judge Scott's comments in Court during the *Moreland* hearing on November 14, 2022, addressed these service issues alone and not the substance of any given case.

Focusing on the portions of the transcript cited in the Affidavit, Judge Scott was relaying her concerns to counsel for Moreland that many of the defendants she saw on the criminal docket were connected in some way and were ending up on the Corporate Docket for the same reasons. When she made her comments to counsel for Moreland, she was going off memory, not reviewing the files side by side. She was trying to relay to counsel that while she may not have all of the files in front of her at any given moment, she remembers the names of parties who come before her on both the civil and criminal dockets. She recalls the fact that many have commonalities in name, statutory agent, address, etc. This is from reviewing the files and the magistrate's proposed orders in those files (Housing Court pleadings often include both the physical property address, the owner's address and/or agent's address, as well as a property management company involved in the case). She was trying to impress upon counsel that his client—Moreland—could not fail to appear in its criminal case and yet seek to enforce evictions in its pending cases or those connected to it. As she said:

When I sign the capias – when they can't get service on you, I've got to sign the continuance. I've got to sign the evictions. So what am I doing? I'm cross-checking. Because I see the dockets and how they all have access to the civil side. But you won't show up for my criminal docket. And so when they won't show up for one or the other, what do I do? I just go over here and look (referring to the service address for a party). \*\*\* Imagine you can't get service in your criminal, but they're full – present over here in evictions to evict tenants.

Transcript, attached to Affidavit, p. 9-10. The judge believed, based on her recollection at the time, that the same property management managed Moreland Ohio LLC as other companies with similar names, such as Shaker One LLC, Shaker One Ohio LLC, The Residence at Shaker Square, and The Vista at Shaker Square that were on the Corporate Docket at the time, including SHAO. Judge Scott relayed to counsel that although Moreland had appeared in court through counsel, she would not lift the eviction stay in Moreland's civil cases until Moreland established it was not connected to other parties on the Corporate Docket.

Judge Scott's comments to Moreland's counsel were not specific to SHAO or any other single defendant. She spoke mostly in generalities, describing to counsel what she had seen in terms of the service issues on large property owners. Nothing she said at the November 2022 hearing suggested she had made a decision about how she was going to rule in the Underlying Case against SHAO. At that point, SHAO had not responded to its criminal cases, had been placed on the Court's Corporate Docket, and was ordered to appear in-person the morning of November 14, 2022, by the Court's chief magistrate. SHAO was not removed from the Court's Corporate Docket until January 9, 2023, when a notice of appearance by counsel and an

executed copy corporate authorization was filed by its attorney with the Cleveland Municipal Court's Clerk's Office.

Further, the suggestion that Judge Scott made comments to the media regarding the defendants in the Underling Case is inaccurate. A review of the article itself shows that neither SHAO nor any of the other defendants in the Underlying Case are specifically mentioned. Judge Scott spoke about the Court's rent deposit and escrow process, not about any one specific case (including the Underlying Case). She spoke generally about out-of-state investors coming before the Court but did not mention or allude to SHAO specifically.

Finally, Affiant alleges Judge Scott is biased because she has "demonstrated a goal to accomplish a predetermined outcome, and to that end has illegally prevented Defendants from proceeding with evictions in her Court." Affidavit, ¶15. Affiant cites to two writs filed against Judge Scott by SHAO seeking to address concerns with the stays issued pertaining to eviction proceedings while SHAO's criminal cases were pending. Judge Scott does not dispute that the writ cases were filed or that, in the second case, the appellate court directed her to allow the eviction cases to proceed. Since the issuance of the appellate court's writ decision in July 2023, SHAO's eviction cases have been proceeding, and the Court has lifted stays of such matters as it is related to a plaintiff's case on the Corporate Docket.<sup>1</sup> Judge Scott has signed off on several decisions in SHAO's eviction cases, SHAO's favor, without any concerns of bias or prejudice being raised by the parties.

## **Conclusion**

For the above reasons, Judge Scott respectfully submits that the Affidavit should be denied as it does not present evidence compelling enough to overcome the presumption that she is not biased.

Respectfully submitted,

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*Counsel for Hon. W. Mona Scott*

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<sup>1</sup> It should be noted that SHOA did not resolve its first-degree misdemeanor criminal matters until the City's June 27, 2023 Motion to Dismiss hearing. Traditionally the Court issues a letter, prior to their first cause hearing, informing criminal corporate defendants that they have outstanding capias such as failures to appear for arraignment, failure to pay a fine, or failure to appear at community control status update hearings, informing them they must respond to its outstanding criminal complaint with their case number. Their current first cause hearing is canceled and removed from the main docket, continued for 30 days to be placed on a predetermined criminal warrant docket for first cause hearings.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of September, a copy of the foregoing was served via electronic mail upon the following Affiant:

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