

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

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BARBARA A. STEINBOCH
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

DIANE M. ZUK, et al., :
 :
 Plaintiffs : **CASE NO. 2014 CVH 01501**
 :
 vs. :
 : **Judge McBride**
 ACUITY, A MUTUAL INSURANCE :
 COMPANY :
 : **DECISION/ENTRY**
 Defendant :
 :

Haynes and Snyder, W. Stephen Haynes, counsel for the plaintiffs Diane M. Zuk and W. Kenneth Zuk, 204 North Street, Batavia, Ohio 45103.

Mannion & Gray Co., LPA, Judd R. Uhl and Patrick B. Healy, counsel for the defendant Acuity Insurance Company, 909 Wright's Summit Parkway, Suite 230, Ft. Wright, Kentucky 41011.

This cause is before the court for consideration of a motion for recusal filed by the plaintiffs Diane M. Zuk and W. Kenneth Zuk.

At the case management conference held on March 6, 2015, the court inquired as to whether either party felt the court had a conflict hearing the present case. The court primarily raised this issue because it was unknown whether the defendant was aware that W. Kenneth Zuk sat on the bench in the Clermont County Court of Common

Pleas from 2009 until January 2011. Defense counsel indicated that his client would not be requesting recusal on that basis.

Additionally, W. Kenneth Zuk was this court's opponent in the 2012 general election. After conferring with his clients, plaintiffs' counsel filed the present motion for recusal.

" '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.' "¹

The Board of Commissioners on Grievances and Discipline stated in Opinion 87-023 that "it is unnecessary for an incumbent judge to recuse himself from proceedings where his opponent represents one of the parties, unless the judge's impartiality might reasonably be questioned."² Further, it has been held "that disqualification was not mandated merely because a party to or counsel in the underlying case campaigned for or against a sitting judge[,]" and, instead, disqualification in such cases should be decided on a case-by-case basis.³

This court harbors no bias or prejudice toward either of the plaintiffs in this case. The election in which W. Kenneth Zuk was an opponent was not contentious nor was it a "bitterly contested"⁴ race. The court does not find that the mere fact that one of the plaintiffs was the court's opponent in an election presents an appearance of impropriety.

¹ *In re Disqualification of Osowik*, 117 Ohio St.3d 1237, 2006-Ohio-7224, 884 N.E.2d 1089, ¶ 8, quoting *In re Disqualification of Lewis*, 105 Ohio St.3d 1239, 2004-Ohio-7359, 826 N.E.2d 299, citing Canon 3(E)(1) of the Ohio Code of Judicial Conduct.

² Opinion 87-023 of the Board of Commissioners on Grievances and Discipline, cited in *In re Disqualification of Burnside*, 74 Ohio St.3d 1240, 1241, 657 N.E.2d 1346 (1992). See also, *In re Disqualification of Krueger*, 74 Ohio St.3d 1267, 1267-1268, 657 N.E.2d 1365 (1995).

³ *Burnside.*, citing *In re Disqualification of Celebrezze*, 74 Ohio St.3d 1231, 657 N.E.2d 1341 (1991).

⁴ *In re Disqualification of Hurley*, 2014-Ohio-5874, ¶ 5.

"It is generally accepted that absent some evidence of bias, the fact that a party may have opposed a judge's bid for elected office is insufficient to require a judge's disqualification."⁵

As a result, the plaintiffs' motion for recusal is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED: 9-10-15



Judge Jerry R. McBride

⁵ Id. at ¶ 7, citing, *Celebrezze*, supra, 74 Ohio St.3d at 1232.