

Serial: 207983

IN THE SUPREME COURT OF MISSISSIPPI

No. 2016-M-01013

*IN RE: ROBERT SHULER SMITH*

*Petitioner*

**ORDER**

Now before the Court, en banc, is Robert Shuler Smith's Motion for Writs of Prohibition and Mandamus With Respect to Order Stripping Him of His Duties as District Attorney. Also before the Court are the responses from the Mississippi Attorney General's Office and the Honorable Jeff Weill, Sr., Circuit Judge. District Attorney Smith asks this Court to "prohibit enforcement" of the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney issued *sua sponte* by Judge Weill, in which Judge Weill found that District Attorney Smith "shall be temporarily disqualified from any and all participation, either directly or indirectly, in any grand jury proceedings in Hinds County."

District Attorney Smith asserts first that Judge Weill's Administrative Order must be set aside because it was entered in violation of his due process rights. "Whether a party received due process is a question of law, which this Court will review de novo." *Akins v. Mississippi Dept. of Revenue*, 70 So. 3d 204, 208 (Miss. 2011) (citation omitted). It is elementary that procedural due process requires, at a minimum, notice and a "meaningful opportunity to be heard." *Id.* And it is undisputed that District Attorney Smith was provided neither here. As

such, we vacate the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney for that reason.

We further find that District Attorney Smith's request to have this Court order the Hinds County Circuit Court to unseal the files in Case Nos. 251-16-26, 251-16-355, and 251-16-543 should be dismissed to be heard by Special Circuit Judge Larry Roberts in connection with District Attorney Smith's pending Motion to be Provided Transcript of Sealed Proceedings and Documents.<sup>1</sup>

IT IS THEREFORE ORDERED that Judge Weill's Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney is hereby vacated.

IT IS FURTHER ORDERED that District Attorney Smith's request to have this Court unseal the files in Hinds County Circuit Court Case Nos. 251-16-26, 251-16-355, and 251-16-543 is dismissed to be heard by Special Circuit Judge Roberts.

SO ORDERED, this the 28<sup>th</sup> day of September, 2016.

/s/ Ann H. Lamar

ANN H. LAMAR, JUSTICE

AGREE: WALLER, C.J., DICKINSON, P.J., LAMAR, KING, MAXWELL AND BEAM, JJ.  
RANDOLPH, P.J., OBJECTS WITH SEPARATE WRITTEN STATEMENT.

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<sup>1</sup>District Attorney Smith filed this motion on June 29, 2016, in Hinds County Circuit Court, First Judicial District, case No. 14-9004.

COLEMAN, J., AGREES IN PART AND IN RESULT WITH SEPARATE WRITTEN STATEMENT.

NOT PARTICIPATING: KITCHENS, J.

**IN THE SUPREME COURT OF MISSISSIPPI**

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***Petitioner***

**RANDOLPH, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:**

¶1. Robert Shuler Smith failed to appeal Judge Weill’s temporary, *sua sponte* order disqualifying Smith from participating in proceedings before a Hinds County grand jury. Instead, he sought writs of prohibition and mandamus from this Court. As opined by Justice Coleman, neither is appropriate here. A writ of mandamus “is an extraordinary writ and cannot be resorted to where there is another plain, adequate remedy provided by law.” ***Bd. of Supervisors of Rankin Cty. v. Lee***, 113 So. 194, 195 (Miss. 1927). The issuance of a writ of prohibition “is governed by the equitable principle that there is no wrong without a remedy.” ***State v. Maples***, 402 So. 2d 350, 351 (Miss. 1981). Smith had a plain and adequate remedy. If he wanted Judge Weill’s order vacated, he could have sought reconsideration from Judge Weill or appealed to this Court. He elected neither.

¶2. Smith argues that Judge Weill’s order denied him due process. I agree. Yet he fails to explain why he did not ask for reconsideration, with an opportunity to be heard, or plead with Judge Weill to vacate the order based on the lack of notice. Instead, Smith sought

extraordinary writs here. He fails to show that he sought relief from the trial court. It is a longstanding maxim that we “will not hold a trial court in error for issues not presented to it for consideration.” *See Flynt v. State*, 183 So. 3d 1, 14 (Miss. 2015).

¶3. Because he had other remedies available, and because he makes arguments here that were not presented to the trial court, Smith’s motions should be dismissed without prejudice. He can pursue relief before Special Circuit Judge Larry Roberts. If Judge Roberts fails to accord him relief, he can then appeal to this Court.<sup>2</sup>

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<sup>2</sup>“As a general rule, a successor judge is precluded from correcting errors of law made by his predecessor or changing the latter’s judgment or order on the merits, but this rule does not apply where the order or judgment is not of a final character.” *Mauck v. Columbus Hotel Co.*, 741 So. 2d 259 (Miss. 1999) (quoting 48A C.J.S. Judges § 68, at 654 (1981)). Judge Weill’s order is temporary on its face.

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**COLEMAN, J., AGREEING IN PART AND IN RESULT:**

¶4. Petitioner has filed a petition with the Court in which he seeks writs of both mandamus and prohibition. In my opinion, neither is appropriate because the petitioner has other remedies available. Nevertheless, I agree with the result of today's order, because, pursuant to Mississippi Rule of Appellate Procedure 21(d), we may treat the petition as a Rule 5 interlocutory appeal. I would do so. Then, pursuant to Rule 5(e), I would render a decision on the appeal that effects the same relief afforded by today's order.