

2016-m-1013

FILED

JUL 18 2016

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE MISSISSIPPI SUPREME COURT
CAUSE NO. _____

IN RE: ROBERT SHULER SMITH

**ROBERT SMITH'S MOTION FOR WRITS OF PROHIBITION AND MANDAMUS
WITH RESPECT TO ORDER STRIPPING HIM OF HIS
DUTIES AS DISTRICT ATTORNEY**

ORIGINAL

Robert Shuler Smith (hereinafter "Smith") is the elected District Attorney for Hinds County, Mississippi. Pursuant to Miss. R. App. P. 21(c), Smith requests this Court prohibit enforcement of the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney. Further, Smith requests that this Court order the Hinds County Circuit Court to unseal files which are sealed in violation of the First Amendment to the United States Constitution, and in violation of this Court's precedents. Grounds for this motion are as follows:

1. On June 22, 2016, Smith was arrested by the Attorney General's office based on a criminal affidavit of an Attorney General's investigator. A copy of that affidavit is attached hereto as Exhibit "A." At the time of his arrest, Smith had been involved with an ongoing dispute with the Attorney General's office regarding the handling of criminal cases. Smith planned to present matters pertinent to one of these criminal cases to the Grand Jury on June 23, 2016, but his arrest prohibited his doing so.

2. On June 23, 2016, Hinds County Circuit Judge Jeff Weill, Sr. entered the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney. A copy of that Order is attached hereto as Exhibit "B." Judge Weill gave Smith neither notice of a hearing nor a hearing before entering the Order attached hereto as Exhibit "B." Smith

MOTION#

2016

3089

had no prior notice that Judge Weill was considering removing him from the duties of his office, or that Judge Weill was considering any other action against him.

3. The Order bars Smith "from any and all participation, either directly or indirectly, in any grand jury proceedings in Hinds County." See Order attached hereto as Exhibit "B," at p. 3.

4. This Order should be set aside for the following reasons:

A. *Smith was not given notice of a hearing or a hearing with respect to the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney. Thus, the Order violates Smith's right not to be deprived of "property" and "liberty" without due process of law. This right is guaranteed by the United States Constitution, Amendment Fourteen, and the Mississippi Constitution § 14.*

Both the United States and Mississippi Constitutions prohibit the taking of "property" and "liberty" without due process of law. See, United States Constitution, Amendment Fourteen and Mississippi Constitution, Section 14. A person has a "property" interest for due process purposes if there are "... rules or mutually explicit understandings that support his claim of entitlement to the benefit." *Perry v. Sindermann*, 408 U.S. 593, 601 (1972). For example, a public employee, who cannot be removed from office except for "misfeasance, malfeasance or nonfeasance in office . . . possesse[s] property rights in continued employment. . . ." *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 538-39 (1985). Similarly, "an elected [Mississippi] city official who is entitled to hold an office under state law has a property interest in his employment." *Crowe v. Lucas*, 555 F.2d 992-93 (5th Cir. 1971). "Property" consists of entitlements "upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Board of Regents of State College v. Roth*, 408 U.S. 564, 577 (1972). These expectancies "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state

law” *Id.* Here, state law gave Smith a “reasonable expectancy” in being allowed “to represent the state in all matters coming before the grand juries . . .” and “appear[ing] in the circuit courts and prosecut[ing] for the state in his district all criminal prosecutions” MISSISSIPPI CODE ANNOTATED § 25-31-11.

Smith also had a clearly-established “liberty” interest in not being stripped of his duties and status as a district attorney based on public allegations damaging to his reputation. *See, Goss v. Lopez*, 419 U.S. 565, 574-75 (1975) (Suspension from school based on charges of misconduct is a denial of “liberty”); *Paul v. Davis*, 424 U.S. 693 (1976) (Damage to reputation standing alone is not deprivation of liberty, but altering or extinguishing rights established by State law is a denial of liberty); *Coast Materials Co., v. Harrison Co. Dev. Comm’n*, 730 So.2d 1128, 1133 (Miss. 1998) (No taking of liberty where there was “no evidence of any affirmative governmental action which unreasonably interfered with [plaintiff’s] right to hold specific private employment or follow [plaintiff’s] profession”). In this case, the Administrative Order of Immediate Disqualification of the Hinds County District Attorney damages Smith’s reputation and, in so doing, extinguishes or alters his duties as district attorney. Thus, Smith was also deprived of “liberty.”

Because Smith has a Fourteenth Amendment “property” and “liberty” interest, a judge cannot lawfully strip him of his duties without prior notice of hearing and a hearing. “An essential principle of due process is that a deprivation of . . . liberty or property ‘[must] be preceded by notice and opportunity for hearing appropriate to the nature of the case.’ ” *Cleveland Bd. of Education*, 470 U.S. at 542. “The right to due process reflects a fundamental value in our American constitutional system.” *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971).

B. *The Order conflicts with the Mississippi Constitution and Mississippi statutes requiring an indictment and a trial before a public officer may be removed from his office.*

The Order removes crucial parts of a district attorney's duties without his having been indicted or convicted. Mississippi Constitution § 175 requires indictment by a Grand Jury and conviction in order to remove any public officer from office "for wilful neglect of duty or misdemeanor in office." MISSISSIPPI CODE ANNOTATED § 97-11-3 provides that a district attorney may be removed from office upon conviction of either a crime or misdemeanor. It does not and could not¹ modify the requirements of Mississippi Constitution § 175, which mandates that the charge be made through indictment.²

For example, *Lizano v. City of Pass Christian*, 50 So. 981, 982 (Miss. 1910) held that an ordinance providing for the removal from office of a town marshal "does not conform to the requirements of the section of the Constitution in question, in that it provides for the removal [from public office] without indictment, trial and conviction, and is, therefore, a nullity." "Unless there is immediate and serious cause, the ballot is intended to be the method of removal, and it was not

¹ "The general principle followed when considering a possible conflict between the constitution and a statute is that the constitutional provision prevails." *Board of Trustees of State Institutions of Higher Learning v. Ray*, 809 So.2d 627, 636 (Miss. 2002).

² Mississippi Constitution § 175's right to an indictment before one may be removed from public office is not trumped by Mississippi Constitution § 27, which provides a general rule that the "legislature, in cases not punishable by death or by imprisonment at a penitentiary, may dispense with inquest of a grand jury, and may authorize prosecution before justice court judges, or such other inferior court or courts as may be established." Mississippi Constitution § 175 specifically instructs about removal from public office. Mississippi Constitution § 27 states a general rule. "To the extent that two constitutional or statutory provisions of the Mississippi Constitution overlap or conflict, specific provisions control over general provisions." *Harrison v. State*, 800 So.2d 1134, 1137 (2001).

the purpose of the Constitution makers that the will of the people should be thwarted by partisans,” *Id.* Accord, *State v. Henderson*, 146 So. 456, 457 (Miss. 1933) (for removal, “the Constitution requires the judgment of conviction to be rendered in a trial on a presentment or indictment by a grand jury.”³

Allowing a single judge to cancel the duties of an elected district attorney diminishes the authority of the voters to choose persons for public office. The right to vote is a “fundamental political right, because preservative of all rights.” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 667 (1966).

When considering an agreement between a judge and the Mississippi Commission on Judicial Performance to prohibit a judge from seeking a future judicial office, this Court *sua sponte* observed that our Constitution “requires us to recognize the limits of our constitutional . . . power in these matters,” and that “our constitution does not expressly empower this Court to enter such a prohibition.” *Mississippi Commission on Judicial Performance v. Darby*, 143 So.3d 564, 568 (2014). Similarly, there is no constitutional provision or even a statute that gives any judge the authority to remove a district attorney from the duties of his elected office except upon indictment and conviction.

³ The fact that the criminal charge against Smith is made by affidavit and not by indictment, and made by an attorney general’s investigator, who was one of the persons with whom Smith was involved in a serious legal dispute, emphasizes why an indictment by a grand jury is so important. See, *Blau v. State*, 34 So. 153, 155 (1903) (“It cannot be doubted that one whose acts are the subject of an investigation is as much entitled to the just, impartial, and unbiased judgment of that body [a grand jury] as he is to that of the petit jury on his final trial. . .”).

C. *The Order should be set aside because it is based, in substantial part, upon proceedings which the circuit court sealed in contravention of this Court's orders.*
The Order relies upon three "sealed proceedings in Cause Nos. 251-16-26, and more recently in 251-16-355 and 251-16-543. See Order, attached hereto as Exhibit "B," at p. 3. Smith is seeking a copy of these sealed proceedings.⁴

Additionally, evidence indicating that Smith is innocent of aiding criminal defendants was adduced in another sealed hearing held on March 30, 2016 in sealed Cause No. 251-16-120. Removing Smith's duties based upon sealed hearings, to which Smith has no access, is fundamentally unfair. Smith cannot know the "nature of the charge" (United States Constitution, Amendment Six) without examining the transcript of the sealed hearing upon which the charges against him are based. Furthermore, "the suppression of the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment. . . ." *Brady v. Maryland*, 373 U.S. 83, 87 (1983).

⁴ To this point, Smith has been unsuccessful in obtaining these sealed proceedings. Smith filed a Motion to be Provided Transcript of Sealed Proceedings and Documents filed in Judge Weill's court on June 30, 2016. See Motion to Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings, attached hereto as Exhibit "C." Upon being informed by the circuit clerk that the motion should be filed in the same court as the criminal case, Smith then filed his motion in Hinds County Court. See, Motion to Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings, attached hereto as Exhibit "D." Smith notified both Judge Weill and Hinds County Court Judge Priester of these motions. See Email to Judge Weill with attached Letter from Jim Waide, attached hereto as Exhibit "E," and Email to Judge Priester from Jim Waide, attached hereto as Exhibit "F." There has been no ruling to date. Smith is also now requesting the County Court to provide him with a transcript of the sealed hearing held on March 30, 2016, in Cause No. 251-16-120. See Second Motion to be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings filed in the County Court of Hinds County, attached hereto as Exhibit "G." Of course, one could hardly expect the county court judge to overrule the circuit court judge's decision to seal the proceedings.

The sealing of these files disobeys this Court's instructions in *Gannett River State Publishing Co. v. Hand*, 571 So.2d 941, 945 (Miss. 1990). *Gannett* relied upon *Globe Newspaper Company v. Superior Court for the County of Norfolk*, 457 U.S. 596 (1982), which interpreted the First Amendment to the United States Constitution. *Gannett River* held that "[b]ecause of the frequency for which closure orders have been entered in the trial courts of our State, we find it is time that this Court issue some procedural guidelines as to how such closure motions should be handled in the trial courts in order to protect the First Amendment rights of the press and public," *Gannett River*, 571 So.2d at 945. *Gannett River* found that any motion for closure "must be docketed, as notice to the press and public, in the court clerk's office for at least 24 hours before any hearing on such submission, with the usual notice to all parties." *Id.* Further, at the closure hearing, it must be shown that there is an "overriding interest that is likely to be prejudiced" by open proceedings, and "the closure must be no broader than necessary to protect that interest." *Id.* Further, "the trial court must consider reasonable alternatives to closing the proceedings, and it must make findings adequate to support the closures." *Gannett River* also requires the court to make public a transcript of the closure hearing. *Id.*⁵

Gannett River noted cases where the "rights of the accused override the qualified First Amendment rights of access." *Id.* at 942. In this case, however, it was the Attorney General, not the

⁵ The First Amendment implications of closing public records are explored in *Richmond Newspaper, Inc. v. Virginia*, 448 U.S. 555, 567-68 (1980). Of course, Grand Jury proceedings are secret by statute. MISSISSIPPI CODE ANNOTATED § 25-61-11. The suppression of names of persons who file motions to suppress subpoenas exceed any legitimate need for Grand Jury secrecy. To protect Smith's Fourteenth Amendment rights to a "fair opportunity to defend the State's allegations," *Chambers v. Mississippi*, 460 U.S. 284, 294 (1973), Smith is entitled to see the sealed documents and transcripts of the sealed proceedings.

accused (Smith), who asked that the proceedings be sealed. The proceedings were sealed in Judge Weill's court over Smith's objection.

D. *The Order should be voided because Judge Weill was not the impartial judge required by the due process clause of the United States Constitution, Amendment Fourteen and Mississippi Constitution § 14.*

District Attorney Smith and Circuit Judge Weill were very recent adversaries in a proceeding in which Smith had attempted, unsuccessfully, to subpoena Judge Weill. See, Redacted email from Amy Whitten, attached hereto as Exhibit "H."

Davis v. Neshoba County General Hospital, 611 So.2d 904 (1992) held it error for a judge not to recuse himself when "personal tension. . . obviously existed" against the opposite party's attorney. "[R]ecusal is required when the evidence produces a reasonable doubt as to the judge's impartiality." *Dodson v. Singing River Hospital*, 839 So.2d 530, 533 (2003). *In Re: Blake*, 912 So.2d 907 (Miss. 2005) held that a Hinds County Circuit Judge should have recused herself where she had shown hostility toward an attorney, and had failed to provide a transcript necessary to an appeal despite multiple requests. As in *In Re: Blake*, Judge Weill has ordered proceedings sealed, but has never responded to Smith's request that he be allowed to have a copy of the proceedings for his own defense. See, Motion to Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings, attached hereto as Exhibit "C." "A fair trial in a fair tribunal is a basic requirement of due process." *In Re: Murchinson*, 349 U.S. 133, 136 (1955). Accordingly, "[e]very procedure which would offer a possible temptation to the average man as a judge. . . not to hold the balance nice, clear and true between the State and the accused denies the latter due process of law." *Id.* Given the adversarial relationship between Judge Weill and Smith, Judge Weill should not have ruled upon any matter affecting Smith.

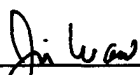
CONCLUSION

Smith requests that this Court prohibit enforcement of the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney. Further, Smith requests that this Court Order the Hinds County Circuit Court to unseal all of the files it has previously sealed without complying with *Gannett River State Publishing Co. v. Hand*, 571 So.2d 941, 945 (Miss. 1990).

Respectfully submitted this the 15th day of July, 2016.

ROBERT SMITH, Defendant

By:


Jim Waide, MS Bar No. 6857
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Post Office Box 1357
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(662) 842-7324 / Telephone
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ATTORNEYS FOR ROBERT SMITH

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, emailed and mailed, via United States Postal System, a true and correct copy to the following:

Attorney General Jim Hood
P. O. Box 220
Jackson, Mississippi 39205
jhood@ago.state.ms.us

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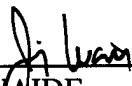
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Honorable Jeff Weill, Sr.
Circuit Court Judge
P O Box 22711
Jackson, MS 39225
weillslawclerk@co.hinds.ms.us

Tesa Barrett, Court Reporter
PO Box 22711
Jackson, Mississippi 39225

SO CERTIFIED, this the 15th day of July, 2016.



JIM WAIDE

STATE OF MISSISSIPPI

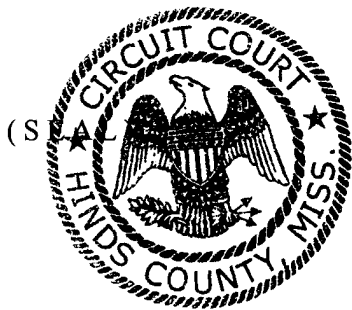
COUNTY OF Hinds

PERSONALLY came and appeared before me, the undersigned authority in and for the aforesaid jurisdiction, the within named ROBERT SHULER SMITH, who, after being first duly sworn, states under oath that the facts contained in the above and foregoing MOTION FOR A WRIT OF PROHIBITION WITH RESPECT TO ORDER STRIPPING HIM OF HIS DUTIES AS DISTRICT ATTORNEY are true and correct as stated therein, and that the documents attached as exhibits to the Motion are authentic.


ROBERT SHULER SMITH

GIVEN under my hand and official seal of office on this the 13th day of July, 2016.


NOTARY PUBLIC *expires 1-6-2020*



AFFIDAVIT

FILED

JUN 22 2016

ZACK WALLACE, CIRCUIT CLERK

BY _____ D.C.

STATE OF MISSISSIPPI
COUNTY OF HINDS
FIRST JUDICIAL DISTRICT

16-624

Personally appeared before the undersigned Justice Court Judge, Leland McDivitt, criminal investigator with the office of the Mississippi Attorney General, who being duly sworn, deposes and makes affidavit on information and belief that in the First Judicial District of Hinds County, Mississippi

COUNT I

Robert Shuler Smith on or about the 10th day of June, 2016, while acting in his capacity as the District Attorney of the 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Darnell Turner, who was then and there charged in the Circuit Court of the First Judicial District of Hinds County with the crimes of aggravated assault and domestic violence, by delivering to the Hon. Dennis Sweet III, who is the attorney for Darnell Turner, the attached e-mails (which are incorporated by reference) of conversations that took place between the State, District Attorney, and the Court regarding matters that had been previously sealed by the Court in cause number 16-239, all of this was done in order to consult, advise counsel or defend Darnell Turner by and through attorney Dennis Sweet III against the state's pending charges, this against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Motion to Dismiss.

Exhibit 2: Motion to Unseal Sealed Order and all Discoverable Communications

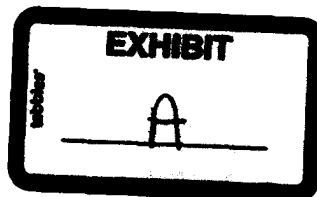
CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

COUNT II

Robert Shuler Smith on or about the 26th day of May, 2016, while acting in his capacity as the District Attorney of 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise and counsel Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of embezzlement and wire fraud, at the Hinds County Jail outside the presence of Butler's attorney on May 26, 2016 from 8:56 a.m. to 09:13 a.m., against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Sheriff's Department Jail Visitation Log.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]



COUNT III

Robert Shuler Smith on or about March 21, 2016, while acting in his capacity as the District Attorney 7th Circuit Court District of, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of Embezzlement and Wire Fraud, by delivering to Sanford Knott, who was at that time Mr. Butler's attorney, the attached letter dated March 21st 2016 (which is incorporated by reference), in which Mr. Smith advises attorney Knott of various ways to attack the state's pending case against Mr. Butler; thereby, providing advice, counsel, and defense to Christopher Butler, by and through his attorney, against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Letter dated March 21, 2016 to Attorney Sanford Knott.

CHARGE: District Attorney not to advise, consult, counsel, or defend criminals [97-11-3]

COUNT IV

Robert Shuler Smith, on or about May 9, 2016, while acting in his capacity as the District Attorney of 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel, or defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of Embezzlement and Wire Fraud at the Hinds County Jail, outside the presence of Mr. Butler's attorney on May 9, 2016, against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Sheriff's Department Jail Visitation Log.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

COUNT V

Robert Shuler Smith on or about and between the dates of January 14, 2016 and June 20, 2016, while acting in his capacity as the District Attorney of the 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of embezzlement and wire fraud, by meeting with the family of the defendant Christopher Butler, referring to Butler as "his client", attempting to retain defense counsel for defendant Butler and working with defense counsel to obtain the release of defendant Butler from the Hinds County Jail, against the peace, dignity and laws of the State of Mississippi;

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

COUNT VI

Robert Smiler Smith on or about and between the dates of January 14, 2016 and June 20, 2016, while acting in his capacity as the District Attorney of the 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel, and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 12-845 and 12-831 with the crime of possession of a controlled substance, by using the power of the grand jury to pressure a sitting circuit court judge to dismiss the charges of possession of marijuana against Christopher Butler, against the peace and dignity of the State of Mississippi.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

AFFIANT: 

Swoon and Subscribed before me this 22nd day of June, 2016


County Court Judge, Hinds County

Motions25CI1:14-cv-09004-JAW Ex. Rel. Circuit Clerk - Judge Weill Admin Book

Mississippi Electronic Courts

Hinds County Circuit Court

Notice of Electronic Filing

The following transaction was entered by Waide, Jim on 6/29/2016 at 4:23 PM CDT and filed on 6/29/2016

Case Name: Ex. Rel. Circuit Clerk - Judge Weill Admin Book

Case Number: 25CI1:14-cv-09004-JAW

Filer: ZACK WALLACE

Document Number: 23

Docket Text:

MOTION Motion to Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings by In Re ZACK WALLACE (Attachments: # (1) Exhibit A - Administrative Order of Immediate Temporary Disqualification of the Hinds Co District Attorney, # (2) Exhibit B - Affidavit) (Waide, Jim)

25CI1:14-cv-09004-JAW Notice has been electronically mailed to:

Jim D Waide, III waide@waidelaw.com, jwaide@waidelaw.com, kdempsey@waidelaw.com

25CI1:14-cv-09004-JAW Notice will be delivered by other means to:

25CI1:14-cv-09004-JAW Parties to the Case:

The following document(s) are associated with this transaction:

Document description:Main Document

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Document description:Exhibit A - Administrative Order of Immediate Temporary Disqualification of the Hinds Co District Attorney

Original filename:00300973.PDF

Electronic document Stamp:

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Document description:Exhibit B - Affidavit

Original filename:00300974.PDF

Electronic document Stamp:

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI

IN RE: HINDS COUNTY DISTRICT
ATTORNEY

FILED

JUN 23 2016

CIVIL ACTION NO. 14-9004

ZACK WALLACE, CIRCUIT CLERK

BY _____ D.C.

ADMINISTRATIVE ORDER OF IMMEDIATE TEMPORARY DISQUALIFICATION
OF THE HINDS COUNTY DISTRICT ATTORNEY¹

BEFORE THE COURT is the unfortunate fact that the Hinds County District Attorney has been arrested for criminal charges. Given the fact that the charges allege serious incidents of improper, unlawful and unethical use of the Office of the Hinds County District Attorney by the district attorney himself and considering that the charges relate to pending cases and to actions before the Hinds County Grand Jury including improperly "using the power of the grand jury to pressure" judicial action the Court finds that the interests of justice require as follows:

While the district attorney, and all citizens, are entitled to the presumption of innocence, the district attorney's status as a public official and the undersigned's duty to uphold the independence and integrity of the judicial system requires the administrative action ordered herein. The district attorney faces at least six separate criminal charges alleging improper use of his office. Thus, the undersigned finds that pending final resolution of those charges, temporary administrative actions are necessary in light of the specific nature of the allegations against the district attorney and based upon the documentation filed in support thereof. See June 22, 2016 *Affidavit and Warrant*, 25CO1:16-cr-624. Pursuant to Miss. Code Ann. §97-11-3, Mississippi law provides that a district attorney shall not "in any manner, consult, advise, counsel, or defend,

¹ Per Miss. Code Ann. § 25-31-21: "If, at the time of impaneling the grand jury in any circuit court, the district attorney be absent or unable to perform his duties or, if after impaneling of the grand jury, the district attorney be absent or unable to perform his duties or be disqualified, the court shall forthwith appoint some attorney at law to act for the state in the place of the district attorney during his absence or inability or disqualification, and the person appointed shall have the power to discharge all the duties of the office during the absence or inability or disqualification of the district attorney..."

EXHIBIT

B

within this state, a person charged with a crime or misdemeanor or the breach of a penal statute.”

Miss. Code Ann. §97-11-3. If convicted of consulting with a criminal defendant, a district attorney shall be filed and “*removed from office.*” *Id.* (emphasis added). In Mississippi, district attorneys are elected officials who serve as the chief criminal prosecutor and public officer of their respective judicial districts. Mississippi law prescribes the duties of the district attorney to “represent the state in all matters coming before the grand juries of the counties within his district and to appear in the circuit courts and prosecute for the state in his district all criminal prosecutions and all civil cases in which the state or any county within his district may be interested.” Miss. Code. Ann. § 25-31-11.

District attorneys, as public officers, are also subject to the Section 175 of the Mississippi Constitution, which provides: “All public officers, for willful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury; and, upon conviction, shall be removed from office, and otherwise punished as may be prescribed by law.” Miss. Const. § 175. Just as the district attorney is liable for any willful neglect of a duty of his office, so are circuit judges who willfully neglect the judicial office, including difficult judicial administrative responsibilities. See Canon 3(C), *Mississippi Code of Judicial Conduct* (A judge shall diligently discharge administrative responsibilities “without bias or prejudice and maintain professional competence in judicial administration...”). Based upon the nature of the criminal charges against the Hinds County District Attorney, which involve alleged abuses and neglect of duties of the public office of district attorney such as consulting and aiding criminal defendants with current pending indictments in Hinds County, the Court finds it necessary to issue a finding that Hinds County District Attorney Robert Shuler Smith is hereby disqualified from participating in the prosecution of any criminal case or proceeding on the *undersigned’s* docket.² Given the serious implications that the charges have upon the office of the Hinds County District Attorney

² The undersigned does not intend, in any manner, to extend this ruling to the dockets of any other Hinds County Circuit Judge.

as a whole, this Court finds that temporary remedial action is necessary in order to ensure that the integrity of the undersigned's extensive criminal docket is not compromised. This order of disqualification is issued pursuant to Canon 3 of the *Code of Judicial Conduct* governing judicial administrative responsibilities, and it is a temporary finding of disqualification, pending the outcome of the criminal charges pending against the district attorney.

Grand juries conduct lawful criminal investigations and issue felony indictments upon finding a true bill. When the indictment is returned to and received by the circuit court, the court acquires jurisdiction of the particular case, and the "functions and powers of the grand jury as to the indictment so returned are ended" *Fields v. State*, 25 So. 726, 727 (Ala. 1899). The indictment then becomes a pending case on the court's docket, and the court has the inherent power and duty to control, manage, and dispose of the case. *Mitchell v. Parker*, 804 So.2d 1066, 1072 (Miss.App.2001) ("A trial court has inherent power to manage its docket and *protect the integrity of the judicial process*."; *Harrington v. State*, 336 So.2d 721, 724 (Miss. 1976) ("The trial judge, not the district attorney, has control of the docket."). In a sincere effort to "protect the integrity of the judicial process" from any additional perceived impropriety, in concert with the aforementioned finding related to criminal proceedings before the undersigned, this Court further finds that the Hinds County District Attorney Robert Shuler Smith shall be temporarily disqualified from any and all participation, either directly or indirectly, in any grand jury proceedings in Hinds County.

This additional temporary disqualification is made necessary by two central facts. First, the state constitutional provision cited herein provides that the District Attorney may be presented to the grand jury concerning his actions and inactions in office, creating an unavoidable conflict of interest between the District Attorney and the grand jury. Second and even more significantly, sealed proceedings in Cause Nos. 251-16-26 and more recently in 251-16-355 and 251-16-543, support this finding disqualifying the district attorney from all

proceedings and decisions regarding the grand jury. Based upon the extensive findings of a sealed report by Special Master Amy Whitten and a Sealed Order of Senior Circuit Judge Tomie Green, the district attorney has been engaged in improper use and abuse of the sacred grand jury process.³ Despite a clear ruling requiring regularity in the grand jury process, ⁴the improprieties have continued very recently, according to sealed filings submitted earlier this week. The undersigned simply cannot ignore the fact that the district attorney is taking actions consistently contrary to the sacrosanct legal purpose of the grand jury. Accordingly, the undersigned finds it necessary, under these unusually exigent circumstances, to disqualify the district attorney from all participation and knowledge in the grand jury process. This includes a prohibition from participation by proxy through directing any district attorney staff members. Due to the very confidential nature of the grand jury process, participation by the district attorney while facing charges of consulting with indicted defendants, would further erode the public's confidence in the system of justice and would protect the district attorney from any additional accusations related to grand jury improprieties. The district attorney's participation in the grand jury while this conflict of interest exists would risk taint and invalidation of any proper act made by the grand jury and further jeopardize the secrecy of the proceedings.⁵

Importantly, district attorney staff members are not disqualified by this Order, either concerning pending cases on the undersigned's docket or concerning grand jury matters, unless

³ "[P]ublic disclosure of matters presented to the grand jury is an issue of great concern and actions contrary to the strict secrecy requirements [raise] serious ethical questions." *Ex Parte Jones County Grand Jury, First Judicial Dist. v. Pacific*, 705 So.2d 1308, 1315 (Miss. 1997); See also URCCC 7.04; Miss. Code Ann. §97-9-53.

⁴ The district attorney elected not to seek appellate review of the sealed order, which clearly defined and upheld the proper function and role of the grand jury. Accordingly, he has continued to act affirmatively and inconsistently with that final order despite being legally bound by the ruling.

⁵ On June 22, 2016, just hours his arrest, the district attorney issued a press release wherein he improperly divulged the identity of a witness whom he claims was subpoenaed to testify before the grand jury. This unlawful public disclosure further supports the temporary action taken by the court herein. Finally, the court notes that statutory authority exists for the grand jury to be discharged at any time, in the court's discretion. Rather than ordering a discharge (which would prevent the grand jury for conducting legitimate business related to the Hinds County criminal justice system), the undersigned found it less disruptive to the defendants who have been bound over to the grand jury for presentation of indictment to simply enter this temporary disqualification of the district attorney to protect the integrity of the process.

their actions are taken in concert or at the behest of the district attorney. However, the assistant district attorneys are specifically cautioned that any grand jury action or proceeding must relate to a lawful grand jury investigation and not made to serve in retaliation, in any manner, for the district attorney's recent criminal charges and arrest. "Grand juries are not licensed to engage in arbitrary fishing expeditions, nor may they select targets of investigation out of malice or an intent to harass." *U.S. v. R. Enterprises, Inc.*, 111 S.Ct. 722, 727 (1991).

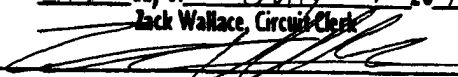
IT IS, THEREFORE, HEREBY ORDERED AND ADJUDGED that the Hinds County District Attorney is hereby disqualified per Miss Code Ann. 25-31-25, as ordered herein. Though the disqualification does not extend to district attorney staff members, the undersigned will defer to Senior Circuit Judge Tomie Green as to whether the appointment of a temporary acting district attorney per §25-31-25 is necessary.

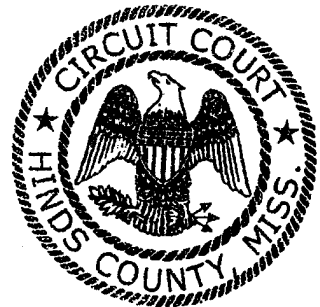
IT IS FURTHER, HEREBY ORDERED AND ADJUDGED that the circuit clerk shall publish a copy of this Order to the District Attorney, all Assistant District Attorneys and staff members via personal service and via email and a copy shall be placed on the door of the grand jury room immediately upon filing. The circuit clerk shall also provide a copy of the order to each currently empaneled grand juror, either in person if in session or via mail if discharged, and file a certification confirming the personal service of the district attorney and all district attorney staff members and confirming service of each grand juror. Finally, the circuit clerk shall provide a copy of this Order to the other circuit court judges and to the Hinds County Sheriff for enforcement, particularly to the Court Bailiff currently attending the grand jury and to any other Bailiff who the Sheriff designates. The circuit clerk may request assistance from the Hinds

County Sheriff to safely and effectively accomplish the personal service requirements ordered herein.⁶

SO ORDERED AND ADJUDGED this the 23rd day of June, 2016.


CIRCUIT JUDGE

STATE OF MISSISSIPPI, COUNTY OF HINDS
I, Zack Wallace, Clerk of the Circuit Court in and for the said State
and County do hereby certify that the above and foregoing is a true
and correct copy of the original Order
and the same is of record in this office in MFC
Book No. 14-9004 at page Doc # 20
Given under my hand and the seal of the Circuit Court
this the 13 day of July, 20 16.
Zack Wallace, Circuit Clerk
BY  D.C.



⁶ If the district attorney or any staff member attempts to violate this order of the Court, the Sheriff shall take immediate action to enforce this order and the security of the courthouse including removing the district attorney from the grand jury meeting room, if necessary.

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

IN RE: HINDS COUNTY DISTRICT ATTORNEY

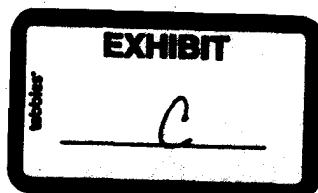
CIVIL ACTION NO.: 14-9004

**MOTION TO BE PROVIDED TRANSCRIPTS OF SEALED PROCEEDINGS
AND COPIES OF DOCUMENTS FILED IN SEALED PROCEEDINGS**

Robert Smith (hereinafter "Smith"), through his undersigned attorney, requests this Court to order the court reporter to furnish his attorney with copies of transcripts of all sealed hearings and to order the circuit clerk to furnish copies of all papers filed in the sealed hearings. In support of his motion, Smith shows the following:

1. This Court has entered an Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney attached hereto as Exhibit "A." This Order references sealed proceedings in Cause Nos. 251-16-26, 251-16-355, and 251-16-543. See Exhibit "A," p. 3. Smith believes that Cause Nos. 251-16-26, 251-16-355, and 251-16-543 include:

- A. Sealed hearing before Judge Weill regarding an investigation of Smith by the Attorney General, which was held on or about April 4, 2016;
- B. Sealed hearing before Judge Weill held on June 21, 2016, wherein the Court, on request of the Attorney General, suppressed subpoenas issued by the District Attorney; and
- C. Sealed hearing before Special Master Amy Whitten held in January 2016 entitled, "In Re: Grand Jury Proceedings" and concerning quashing of subpoenas issued by Robert Smith.



2. Besides the Administrative Order referenced above, the Attorney General is criminally prosecuting Smith in the County Court of Hinds County under the affidavit attached hereto as Exhibit "B."

3. Smith believes that the sealed transcripts contain evidence which is favorable to him. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment" *Brady v. Maryland*, 373 U.S. 83, 87 (1983).

4. Exhibit "A" also relies upon a sealed order of Senior Circuit Judge Tomie Green and a sealed report of Special Master Amy Whitten. See Exhibit "A," p. 4. The Sixth and Fourteenth Amendments to the United States Constitution require that Smith know "the nature of the charge" against him. Therefore, Smith is also entitled to a copy of the sealed Order of Judge Green and the sealed report of Special Master Amy Whitten.

ACCORDINGLY, Defendant Smith requests that this Court direct the court reporter to furnish his attorney, Jim Waide, with the transcription of all sealed proceedings concerning him, including all sealed proceedings in Cause Nos. 251-16-26, 251-16-355, and 251-16-543, and including:

- A. Hearing regarding an investigation of Smith by the Attorney General which was held on or about April 4, 2016;
- B. Hearing held on June 21, 2016, wherein the Court, on request of the Attorney General suppressed subpoenas issued by the District Attorney; and
- C. Hearing held before Special Master Amy Whitten regarding suppression of subpoena by Smith.

Smith also requests the Court to direct the circuit court clerk to furnish defense counsel, Jim Waide, with all papers filed in Cause Nos. 251-16-26, 251-16-355, and 251-16-543, including the sealed report of Special Master Amy Whitten and sealed Order of Judge Green.

Respectfully submitted this the 29th day of June, 2016.

ROBERT SMITH, Defendant

By: /s/ Jim Waide
Jim Waide, MS Bar No. 6857
waide@waidelaw.com
WAIDE & ASSOCIATES, P.A.
332 North Spring Street
Tupelo, MS 38802-3955
Post Office Box 1357
Tupelo, MS 38802-1357
(662) 842-7324 / Telephone
(662) 842-8056 / Facsimile

ATTORNEYS FOR ROBERT SMITH

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

Attorney General Jim Hood
Carroll Gartin Justice Building
450 High Street,
Jackson, Mississippi 39201
jhood@ago.state.ms.us

Assistant Attorney General Stanley Alexander
Carroll Gartin Justice Building
450 High Street,
Jackson, Mississippi 39201
salex@ago.state.ms.us

Honorable Jeff Weill, Sr.
Circuit Court Judge
P O Box 22711
Jackson, MS 39225
weillslawclerk@co.hinds.ms.us

Tesa Barrett, Court Reporter
PO Box 22711
Jackson, Mississippi 39225

SO CERTIFIED, this the 29th day of June, 2016.

/s/ Jim Waide
JIM WAIDE

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
HINDS COUNTY, MISSISSIPPI

IN RE: HINDS COUNTY DISTRICT ATTORNEY **FILED**

JUN 23 2016 CIVIL ACTION NO. 14-9004

ZACK WALLACE, CIRCUIT CLERK

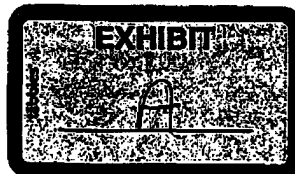
BY _____ D.C.

ADMINISTRATIVE ORDER OF IMMEDIATE TEMPORARY DISQUALIFICATION
OF THE HINDS COUNTY DISTRICT ATTORNEY¹

BEFORE THE COURT is the unfortunate fact that the Hinds County District Attorney has been arrested for criminal charges. Given the fact that the charges allege serious incidents of improper, unlawful and unethical use of the Office of the Hinds County District Attorney by the district attorney himself and considering that the charges relate to pending cases and to actions before the Hinds County Grand Jury including improperly "using the power of the grand jury to pressure" judicial action the Court finds that the interests of justice require as follows:

While the district attorney, and all citizens, are entitled to the presumption of innocence, the district attorney's status as a public official and the undersigned's duty to uphold the independence and integrity of the judicial system requires the administrative action ordered herein. The district attorney faces at least six separate criminal charges alleging improper use of his office. Thus, the undersigned finds that pending final resolution of those charges, temporary administrative actions are necessary in light of the specific nature of the allegations against the district attorney and based upon the documentation filed in support thereof. See June 22, 2016 *Affidavit and Warrant*, 25CO1:16-cr-624. Pursuant to Miss. Code Ann. §97-11-3, Mississippi law provides that a district attorney shall not "in any manner, consult, advise, counsel, or defend,

¹ Per Miss. Code Ann. § 25-31-21: "If, at the time of impaneling the grand jury in any circuit court, the district attorney be absent or unable to perform his duties or, if after impaneling of the grand jury, the district attorney be absent or unable to perform his duties or be disqualified, the court shall forthwith appoint some attorney at law to act for the state in the place of the district attorney during his absence or inability or disqualification, and the person appointed shall have the power to discharge all the duties of the office during the absence or inability or disqualification of the district attorney..."



within this state, a person charged with a crime or misdemeanor or the breach of a penal statute.”

Miss. Code Ann. §97-11-3. If convicted of consulting with a criminal defendant, a district attorney shall be filed and “*removed from office.*” *Id.* (emphasis added). In Mississippi, district attorneys are elected officials who serve as the chief criminal prosecutor and public officer of their respective judicial districts. Mississippi law prescribes the duties of the district attorney to “represent the state in all matters coming before the grand juries of the counties within his district and to appear in the circuit courts and prosecute for the state in his district all criminal prosecutions and all civil cases in which the state or any county within his district may be interested.” Miss. Code. Ann. § 25-31-11.

District attorneys, as public officers, are also subject to the Section 175 of the Mississippi Constitution, which provides: “All public officers, for willful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury; and, upon conviction, shall be removed from office, and otherwise punished as may be prescribed by law.” Miss. Const. § 175. Just as the district attorney is liable for any willful neglect of a duty of his office, so are circuit judges who willfully neglect the judicial office, including difficult judicial administrative responsibilities. See Canon 3(C), *Mississippi Code of Judicial Conduct* (A judge shall diligently discharge administrative responsibilities “without bias or prejudice and maintain professional competence in judicial administration...”). Based upon the nature of the criminal charges against the Hinds County District Attorney, which involve alleged abuses and neglect of duties of the public office of district attorney such as consulting and aiding criminal defendants with current pending indictments in Hinds County, the Court finds it necessary to issue a finding that Hinds County District Attorney Robert Shuler Smith is hereby disqualified from participating in the prosecution of any criminal case or proceeding on the *undersigned’s* docket.² Given the serious implications that the charges have upon the office of the Hinds County District Attorney

² The undersigned does not intend, in any manner, to extend this ruling to the dockets of any other Hinds County Circuit Judge.

as a whole, this Court finds that temporary remedial action is necessary in order to ensure that the integrity of the undersigned's extensive criminal docket is not compromised. This order of disqualification is issued pursuant to Canon 3 of the *Code of Judicial Conduct* governing judicial administrative responsibilities, and it is a temporary finding of disqualification, pending the outcome of the criminal charges pending against the district attorney.

Grand juries conduct lawful criminal investigations and issue felony indictments upon finding a true bill. When the indictment is returned to and received by the circuit court, the court acquires jurisdiction of the particular case, and the "functions and powers of the grand jury as to the indictment so returned are ended" *Fields v. State*, 25 So. 726, 727 (Ala. 1899). The indictment then becomes a pending case on the court's docket, and the court has the inherent power and duty to control, manage, and dispose of the case. *Mitchell v. Parker*, 804 So.2d 1066, 1072 (Miss.App.2001) ("A trial court has inherent power to manage its docket and *protect the integrity of the judicial process.*"; *Harrington v. State*, 336 So.2d 721, 724 (Miss. 1976) ("The trial judge, not the district attorney, has control of the docket."). In a sincere effort to "protect the integrity of the judicial process" from any additional perceived impropriety, in concert with the aforementioned finding related to criminal proceedings before the undersigned, this Court further finds that the Hinds County District Attorney Robert Shuler Smith shall be temporarily disqualified from any and all participation, either directly or indirectly, in any grand jury proceedings in Hinds County.

This additional temporary disqualification is made necessary by two central facts. First, the state constitutional provision cited herein provides that the District Attorney may be presented to the grand jury concerning his actions and inactions in office, creating an unavoidable conflict of interest between the District Attorney and the grand jury. Second and even more significantly, sealed proceedings in Cause Nos. 251-16-26 and more recently in 251-16-355 and 251- 16-543, support this finding disqualifying the district attorney from all

proceedings and decisions regarding the grand jury. Based upon the extensive findings of a sealed report by Special Master Amy Whitten and a Sealed Order of Senior Circuit Judge Tomie Green, the district attorney has been engaged in improper use and abuse of the sacred grand jury process.³ Despite a clear ruling requiring regularity in the grand jury process, "the improprieties have continued very recently, according to sealed filings submitted earlier this week. The undersigned simply cannot ignore the fact that the district attorney is taking actions consistently contrary to the sacrosanct legal purpose of the grand jury. Accordingly, the undersigned finds it necessary, under these unusually exigent circumstances, to disqualify the district attorney from all participation and knowledge in the grand jury process. This includes a prohibition from participation by proxy through directing any district attorney staff members. Due to the very confidential nature of the grand jury process, participation by the district attorney while facing charges of consulting with indicted defendants, would further erode the public's confidence in the system of justice and would protect the district attorney from any additional accusations related to grand jury improprieties. The district attorney's participation in the grand jury while this conflict of interest exists would risk taint and invalidation of any proper act made by the grand jury and further jeopardize the secrecy of the proceedings."³

Importantly, district attorney staff members are not disqualified by this Order, either concerning pending cases on the undersigned's docket or concerning grand jury matters, unless

³ "[P]ublic disclosure of matters presented to the grand jury is an issue of great concern and actions contrary to the strict secrecy requirements [raise] serious ethical questions." *Ex Parte Jones County Grand Jury, First Judicial Dist. v. Pacific*, 705 So.2d 1308, 1315 (Miss. 1997); See also URCCC 7.04; Miss. Code Ann. §97-9-53.

⁴ The district attorney elected not to seek appellate review of the sealed order, which clearly defined and upheld the proper function and role of the grand jury. Accordingly, he has continued to act affirmatively and inconsistently with that final order despite being legally bound by the ruling.

⁵ On June 22, 2016, just hours his arrest, the district attorney issued a press release wherein he improperly divulged the identity of a witness whom he claims was subpoenaed to testify before the grand jury. This unlawful public disclosure further supports the temporary action taken by the court herein. Finally, the court notes that statutory authority exists for the grand jury to be discharged at any time, in the court's discretion. Rather than ordering a discharge (which would prevent the grand jury for conducting legitimate business related to the Hinds County criminal justice system), the undersigned found it less disruptive to the defendants who have been bound over to the grand jury for presentation of indictment to simply enter this temporary disqualification of the district attorney to protect the integrity of the process.

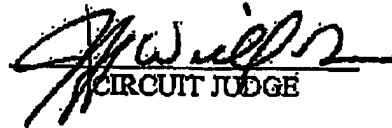
their actions are taken in concert or at the behest of the district attorney. However, the assistant district attorneys are specifically cautioned that any grand jury action or proceeding must relate to a lawful grand jury investigation and not made to serve in retaliation, in any manner, for the district attorney's recent criminal charges and arrest. "Grand juries are not licensed to engage in arbitrary fishing expeditions, nor may they select targets of investigation out of malice or an intent to harass." *U.S. v. R. Enterprises, Inc.*, 111 S.Ct. 722, 727 (1991).

IT IS, THEREFORE, HEREBY ORDERED AND ADJUDGED that the Hinds County District Attorney is hereby disqualified per Miss Code Ann. 25-31-25, as ordered herein. Though the disqualification does not extend to district attorney staff members, the undersigned will defer to Senior Circuit Judge Tomie Green as to whether the appointment of a temporary acting district attorney per §25-31-25 is necessary.

IT IS FURTHER, HEREBY ORDERED AND ADJUDGED that the circuit clerk shall publish a copy of this Order to the District Attorney, all Assistant District Attorneys and staff members via personal service and via email and a copy shall be placed on the door of the grand jury room immediately upon filing. The circuit clerk shall also provide a copy of the order to each currently empaneled grand juror, either in person if in session or via mail if discharged, and file a certification confirming the personal service of the district attorney and all district attorney staff members and confirming service of each grand juror. Finally, the circuit clerk shall provide a copy of this Order to the other circuit court judges and to the Hinds County Sheriff for enforcement, particularly to the Court Bailiff currently attending the grand jury and to any other Bailiff who the Sheriff designates. The circuit clerk may request assistance from the Hinds

County Sheriff to safely and effectively accomplish the personal service requirements ordered herein.⁶

SO ORDERED AND ADJUDGED this the 23rd day of June, 2016.


CIRCUIT JUDGE

⁶ If the district attorney or any staff member attempts to violate this order of the Court, the Sheriff shall take immediate action to enforce this order and the security of the courthouse including removing the district attorney from the grand jury meeting room, if necessary.

AFFIDAVIT

FILED

JUN 22 2016

ZACK WALLACE, CIRCUIT CLERK

BY _____ D.C.

STATE OF MISSISSIPPI
COUNTY OF HINDS
FIRST JUDICIAL DISTRICT

16-624

Personally appeared before the undersigned Justice Court Judge, Leland McDivitt, criminal investigator with the office of the Mississippi Attorney General, who being duly sworn, deposes and makes affidavit on information and belief that in the First Judicial District of Hinds County, Mississippi

COUNT I

Robert Shuler Smith on or about the 10th day of June, 2016, while acting in his capacity as the District Attorney of the 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Darnell Turner, who was then and there charged in the Circuit Court of the First Judicial District of Hinds County with the crimes of aggravated assault and domestic violence, by delivering to the Hon. Dennis Sweet III, who is the attorney for Darnell Turner, the attached e-mails (which are incorporated by reference) of conversations that took place between the State, District Attorney, and the Court regarding matters that had been previously sealed by the Court in cause number 16-239, all of this was done in order to consult, advise counsel or defend Darnell Turner by and through attorney Dennis Sweet III against the state's pending charges, this against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Motion to Dismiss.

Exhibit 2: Motion to Unseal Sealed Order and all Discoverable Communications

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

COUNT II

Robert Shuler Smith on or about the 26th day of May, 2016, while acting in his capacity as the District Attorney of 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise and counsel Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of embezzlement and wire fraud, at the Hinds County Jail outside the presence of Butler's attorney on May 26, 2016 from 8:56 a.m. to 09:13 a.m., against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Sheriff's Department Jail Visitation Log.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]



COUNT III

Robert Shuler Smith on or about March 21, 2016, while acting in his capacity as the District Attorney 7th Circuit Court District of, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of Embezzlement and Wire Fraud, by delivering to Sanford Knott, who was at that time Mr. Butler's attorney, the attached letter dated March 21st 2016 (which is incorporated by reference), in which Mr. Smith advises attorney Knott of various ways to attack the state's pending case against Mr. Butler; thereby, providing advice, counsel, and defense to Christopher Butler, by and through his attorney, against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Letter dated March 21, 2016 to Attorney Sanford Knott.

CHARGE: District Attorney not to advise, consult, counsel, or defend criminals [97-11-3]

COUNT IV

Robert Shuler Smith, on or about May 9, 2016, while acting in his capacity as the District Attorney of 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel, or defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of Embezzlement and Wire Fraud at the Hinds County Jail, outside the presence of Mr. Butler's attorney on May 9, 2016, against the peace, dignity and laws of the State of Mississippi;

See Exhibit 1: Sheriff's Department Jail Visitation Log.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

COUNT V

Robert Shuler Smith on or about and between the dates of January 14, 2016 and June 20, 2016, while acting in his capacity as the District Attorney of the 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 16-50-AG with the crimes of embezzlement and wire fraud, by meeting with the family of the defendant Christopher Butler, referring to Butler as "his client", attempting to retain defense counsel for defendant Butler and working with defense counsel to obtain the release of defendant Butler from the Hinds County Jail, against the peace, dignity and laws of the State of Mississippi;

CHARGE: District Attorney not to advise, counsel, consult, or defend criminals [97-11-3]

COUNT VI

Robert Smiler Smith on or about and between the dates of January 14, 2016 and June 20, 2016, while acting in his capacity as the District Attorney of the 7th Circuit Court District, Mississippi, did willfully and unlawfully consult, advise, counsel, and defend Christopher Butler, who was then and there charged in the County Court of the First Judicial District of Hinds County in case number 12-645 and 12-831 with the crime of possession of a controlled substance, by using the power of the grand jury to pressure a sitting circuit court judge to dismiss the charges of possession of marijuana against Christopher Butler, against the peace and dignity of the State of Mississippi.

CHARGE: District Attorney not to advise, counsel, consult, or defend criminal 12-11-33

AFFIANT: 

Sworn and Subscribed before me this 22nd day of June, 2016


County Court Judge, Hinds County

Motions25CI1:14-cv-09004-JAW Ex. Rel. Circuit Clerk - Judge Weill Admin Book

Mississippi Electronic Courts

Hinds County Circuit Court

Notice of Electronic Filing

The following transaction was entered by Waide, Jim on 6/29/2016 at 4:23 PM CDT and filed on 6/29/2016

Case Name: Ex. Rel. Circuit Clerk - Judge Weill Admin Book

Case Number: 25CI1:14-cv-09004-JAW

Filer: ZACK WALLACE

Document Number: 23

Docket Text:

MOTION Motion to Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings by In Re ZACK WALLACE (Attachments: # (1) Exhibit A - Administrative Order of Immediate Temporary Disqualification of the Hinds Co District Attorney, # (2) Exhibit B - Affidavit) (Waide, Jim)

25CI1:14-cv-09004-JAW Notice has been electronically mailed to:

Jim D Waide, III waide@waidelaw.com, jwaide@waidelaw.com, kdempsey@waidelaw.com

25CI1:14-cv-09004-JAW Notice will be delivered by other means to:

25CI1:14-cv-09004-JAW Parties to the Case:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:00300972.PDF

Electronic document Stamp:

[STAMP dcecfStamp_ID=1090522767 [Date=6/29/2016] [FileNumber=825418-0]
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Document description:Exhibit A - Administrative Order of Immediate Temporary Disqualification of the Hinds Co District Attorney

Original filename:00300973.PDF

Electronic document Stamp:

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Document description:Exhibit B - Affidavit

Original filename:00300974.PDF

Electronic document Stamp:

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IN THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CRIMINAL ACTION NO.: 16-624

ROBERT SHULER SMITH

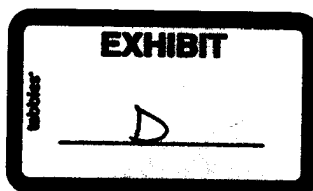
DEFENDANT

**MOTION TO BE PROVIDED TRANSCRIPTS OF SEALED PROCEEDINGS
AND COPIES OF DOCUMENTS FILED IN SEALED PROCEEDINGS**

Robert Smith (hereinafter "Smith"), through his undersigned attorney, requests this Court to order the court reporter to furnish his attorney with copies of transcripts of all sealed hearings and to order the circuit clerk to furnish copies of all papers filed in the sealed hearings. In support of his motion, Smith shows the following:

1. This Court has entered an Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney attached hereto as Exhibit "A." This Order references sealed proceedings in Cause Nos. 251-16-26, 251-16-355, and 251-16-543. See Exhibit "A," p. 3. Smith believes that Cause Nos. 251-16-26, 251-16-355, and 251-16-543 include:

- A. Sealed hearing before Judge Weill regarding an investigation of Smith by the Attorney General, which was held on or about April 4, 2016;
- B. Sealed hearing before Judge Weill held on June 21, 2016, wherein the Court, on request of the Attorney General, suppressed subpoenas issued by the District Attorney; and
- C. Sealed hearing before Special Master Amy Whitten held in January 2016 entitled, "In Re: Grand Jury Proceedings" and concerning quashing of subpoenas issued by Robert Smith.



2. Besides the Administrative Order referenced above, the Attorney General is criminally prosecuting Smith in the County Court of Hinds County under the affidavit attached hereto as Exhibit "B."

3. Smith believes that the sealed transcripts contain evidence which is favorable to him. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment" *Brady v. Maryland*, 373 U.S. 83, 87 (1983).

4. Exhibit "A" also relies upon a sealed order of Senior Circuit Judge Tomie Green and a sealed report of Special Master Amy Whitten. See Exhibit "A," p. 4. The Sixth and Fourteenth Amendments to the United States Constitution require that Smith know "the nature of the charge" against him. Therefore, Smith is also entitled to a copy of the sealed Order of Judge Green and the sealed report of Special Master Amy Whitten.

ACCORDINGLY, Defendant Smith requests that this Court direct the court reporter to furnish his attorney, Jim Waide, with the transcription of all sealed proceedings concerning him, including all sealed proceedings in Cause Nos. 251-16-26, 251-16-355, and 251-16-543, and including:

- A. Hearing regarding an investigation of Smith by the Attorney General which was held on or about April 4, 2016;
- B. Hearing held on June 21, 2016, wherein the Court, on request of the Attorney General suppressed subpoenas issued by the District Attorney; and
- C. Hearing held before Special Master Amy Whitten regarding suppression of subpoena by Smith.

Smith also requests the Court to direct the circuit court clerk to furnish defense counsel, Jim Waide, with all papers filed in Cause Nos. 251-16-26, 251-16-355, and 251-16-543, including the sealed report of Special Master Amy Whitten and sealed Order of Judge Green.

Respectfully submitted this the 30th day of June, 2016.

ROBERT SMITH, Defendant

By: /s/ Jim Waide
Jim Waide, MS Bar No. 6857
waide@waidelaw.com
WAIDE & ASSOCIATES, P.A.
332 North Spring Street
Tupelo, MS 38802-3955
Post Office Box 1357
Tupelo, MS 38802-1357
(662) 842-7324 / Telephone
(662) 842-8056 / Facsimile

ATTORNEYS FOR ROBERT SMITH

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

Attorney General Jim Hood
Carroll Gartin Justice Building
450 High Street,
Jackson, Mississippi 39201
jhood@ago.state.ms.us

Assistant Attorney General Stanley Alexander
Carroll Gartin Justice Building
450 High Street,
Jackson, Mississippi 39201
salex@ago.state.ms.us

Honorable Jeff Weill, Sr.
Circuit Court Judge
P O Box 22711
Jackson, MS 39225
weillslawclerk@co.hinds.ms.us

Tesa Barrett, Court Reporter
PO Box 22711
Jackson, Mississippi 39225

SO CERTIFIED, this the 30th day of June, 2016.

/s/ Jim Waide
JIM WAIDE

Patricia Nowlin

From: Patricia Nowlin
Sent: Wednesday, June 29, 2016 4:42 PM
To: 'weillslawclerk@co.hinds.ms.us'
Cc: Karen Dempsey
Subject: Robert Smith
Attachments: Robert Smith ltr to Judge Weill enclosing Order to receive sealed documents (00300976).pdf; Robert Smith filed Motion to Be Provided Transcripts of Sealed Proceedings (00300977).pdf; Robert Smith proposed Order Granting Smith's Motion to Be Provided Transcripts (00300978).pdf

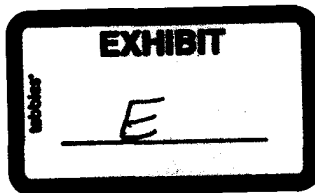
Judge Weill:

Please find attached a letter from Mr. Waide regarding Robert Smith, along with attachment, and a proposed Order.

If anything further is needed, please let us know.

Thank you.

Patricia Nowlin
Paralegal
Waide and Associates, P.A.
P. O. Box 1357
Tupelo, MS 38802
662-842-7324
662-842-8056 (fax)
pnowlin@waidelaw.com



WAIDE & ASSOCIATES, P.A.
ATTORNEYS AND COUNSELORS AT LAW

JIM WAIDE
RACHEL PIERCE WAIDE
RON L. WOODRUFF

MAILING ADDRESS:
POST OFFICE BOX 1357
TUPELO, MISSISSIPPI 38802-1357
TELEPHONE: 662.842.7324
FACSIMILE: 662.842.8056
EMAIL: waide@waidelaw.com

STREET ADDRESS:
332 NORTH SPRING STREET
TUPELO, MISSISSIPPI 38804-1357

June 29, 2016

VIA REGULAR MAIL AND EMAIL: weillslawclerk@co.hinds.ms.us

Honorable Jeff Weill, Sr.
Circuit Court Judge
P O Box 22711
Jackson, MS 39205

Re: Robert Smith

Dear Judge Weill:

I represent Robert Smith regarding the Administrative Order of Immediate Temporary Disqualification of the Hinds County District Attorney and in the criminal charges pending against him in County Court.

In order to contest your Order, and to defend the criminal prosecution, the defense needs transcripts of all sealed proceedings and all documents filed in the sealed cases.

Additionally, in order to know the "nature of the charge" against Mr. Smith, we need a copy of the sealed Order entered by Judge Green and a copy of the sealed report of Special Master Amy Whitten.

Accordingly, I am enclosing a copy of the Motion to Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings and a proposed Order allowing me to have copies of these documents. If you find the Motion to be well taken, would you be so kind as to execute the enclosed Order and return to me in the envelope I have enclosed for your convenience?

With kindest regards, I am

Sincerely,

/s/ Jim Waide
Jim Waide

JDW/pbn

Enclosures

cc: Attorney General Jim Hood (jhood@ago.state.ms.us)
Assistant Attorney General Stanley Alexander (salex@ago.state.ms.us)

Patricia Nowlin

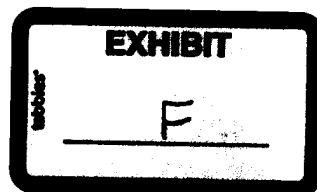
From: Patricia Nowlin
Sent: Thursday, June 30, 2016 2:15 PM
To: 'mpriester@co.hinds.ms.us'
Cc: 'weillslawclerk@co.hinds.ms.us'; 'jhood@ago.state.ms.us'; 'salex@ago.state.ms.us'; Karen Dempsey; 'roycesmith1@aol.com'; Jim Waide
Subject: State v. Robert Smith Case No. 16-624
Attachments: Robert Smith Motion to Be Provided Transcripts of Sealed Proceedings . . . (00301013).pdf

Dear Judge Priester:

Mr. Zack Wallace has informed me that the attached Motion to be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings cannot be filed in Hinds Circuit Court under Cause no. 14-9004, but must be filed in your court.

In accordance with this instructions, I have filed the attached motion in your court.

With kindest regards
Jim Waide
(via)
Patricia Nowlin
Paralegal
Waide and Associates, P.A.
P. O. Box 1357
Tupelo, MS 38802
662-842-7324
662-842-8056 (fax)
pnowlin@waidelaw.com



IN THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CRIMINAL ACTION NO.: 16-624

ROBERT SHULER SMITH

DEFENDANT

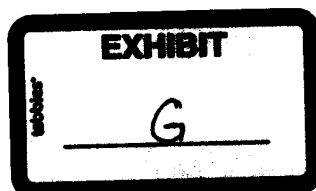
**SECOND MOTION TO BE PROVIDED TRANSCRIPTS OF SEALED PROCEEDINGS
AND COPIES OF DOCUMENTS FILED IN SEALED PROCEEDINGS**

Robert Smith (hereinafter "Smith"), moves the Court to direct Hinds County Circuit Court court reporter, Tesa Barrett, to provide Smith with a transcript of the hearing held on March 30, 2016 in sealed Cause No. 251-16-120. In support of his motion, Smith shows the following:

1. On March 30, 2016, a hearing was held before Circuit Court Judge Jeff Weill, Sr., in which an Assistant Attorney General alleged that Smith was aiding criminal defendants. Over Smith's objection, and upon request of an assistant attorney general, Circuit Court Judge Weill sealed the hearing.

2. The hearing produced exculpatory evidence in the form of testimony by FBI Agent Culpepper. "[T]he suppression of prosecution of evidence favorable to the accused upon request violates due process. . . ." *Brady v. Maryland*, 373 U.S. 83, 87 (1983). The hearing is improperly sealed in violation of the guidelines ordered by the Mississippi Supreme Court in *Gannett River State Publishing Co. v. Hand*, 571 So.2d 941, 945 (Miss. 1990).

ACCORDINGLY, Defendant Smith requests that this Court direct the court reporter, Tesa Barrett, to furnish his attorney, Jim Waide, with the transcription of the proceedings concerning him in Cause No. 251-16-120.



Respectfully submitted this the 15th day of July, 2016.

ROBERT SMITH, Defendant

By: /s/ Jim Waide
Jim Waide, MS Bar No. 6857
waide@waidelaw.com
WAIDE & ASSOCIATES, P.A.
332 North Spring Street
Tupelo, MS 38802-3955
Post Office Box 1357
Tupelo, MS 38802-1357
(662) 842-7324 / Telephone
(662) 842-8056 / Facsimile

ATTORNEYS FOR ROBERT SMITH

CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Defendant has this day filed the above and foregoing with the Clerk of the Court, utilizing this Court's electronic case data filing system, which sent notification of such filing to the following:

Attorney General Jim Hood
P. O. Box 220
Jackson, Mississippi 39205
jhood@ago.state.ms.us

Assistant Attorney General Robert Anderson
P. O. Box 220
Jackson, Mississippi 39205
rande@ago.state.ms.us

Assistant Attorney General Larry Baker
P. O. Box 220
Jackson, Mississippi 39205
lbake@ago.state.ms.us

Assistant Attorney General Shaun Yurtkuran
P. O. Box 220
Jackson, Mississippi 39205
syurt@ago.state.ms.us

Assistant Attorney General Patrick Beasley
P. O. Box 220
Jackson, Mississippi 39205
pbeas@ago.state.ms.us

Assistant Attorney General Stanley Alexander
P. O. Box 220
Jackson, Mississippi 39201
salex@ago.state.ms.us

Honorable Jeff Weill, Sr.
Circuit Court Judge
P O Box 22711
Jackson, MS 39225
weillslawclerk@co.hinds.ms.us

Tesa Barrett, Court Reporter
PO Box 22711
Jackson, Mississippi 39225

SO CERTIFIED, this the 15th day of July, 2016.

/s/ Jim Waide
JIM WAIDE

Motions25CO1:16-cr-00624 State of Mississippi v. SMITH**Mississippi Electronic Courts****Hinds County Circuit Court****Notice of Electronic Filing**

The following transaction was entered by Waide, Jim on 7/15/2016 at 2:41 PM CDT and filed on 7/15/2016

Case Name: State of Mississippi v. SMITH

Case Number: 25CO1:16-cr-00624

Filer: Dft No. 1 - ROBERT SHULER SMITH

Document Number: 15

Docket Text:

Second MOTION To Be Provided Transcripts of Sealed Proceedings and Copies of Documents Filed in Sealed Proceedings by ROBERT SHULER SMITH. (Waide, Jim)

25CO1:16-cr-00624-1 Notice has been electronically mailed to:

Jim D Waide , III waide@waidelaw.com, jwaide@waidelaw.com, kdempsey@waidelaw.com

Larry Gus Baker lgbsaag@cableone.net, lbake@ago.state.ms.us

25CO1:16-cr-00624-1 Notice will be delivered by other means to:

25CO1:16-cr-00624-1 Parties to the Case:

SMITH, ROBERT SHULER (Defendant)

State of Mississippi (Plaintiff)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:00301577.PDF

Electronic document Stamp:

[STAMP dcecfStamp_ID=1090522767 [Date=7/15/2016] [FileNumber=838947-0]
[03245dcf22d396b15a966c77a5b64c8c915a84669f35abf745005f36a3e4696e42c1
1087cabccbb9562b1587fc3938118032a03e51918ebdcb92899584ecf99f]]

Robert Smith

From: Amy at thewhittengroup.com <amy@thewhittengroup.com>
Sent: Tuesday, January 19, 2016 8:51 PM
To: Robert Smith; asnyd@ago.state.ms.us; Greens Staff Attorney; David K. Fletcher Staff Attorney for Judge Tomie Green ; LouAnn Jackson
Subject: Proceedings in "In Re Grand Jury Proceedings" - all related correspondence and paperwork to be placed under seal.... Confidential Communication to Counsel for the Parties

Good evening. As you know, I have been appointed by Judge Green to consider the above Motion (and related motions), filed by the Attorney General on behalf of Hon. Jeff Weill, Special Assistant Attorney General [REDACTED], Department of Corrections employees [REDACTED] and [REDACTED], and Investigator [REDACTED] Office of the Attorney General. [REDACTED]

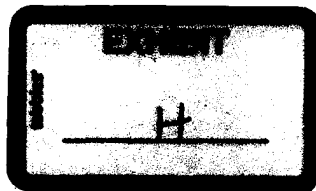
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amy Whitten
601-259-3228
amy@thewhittengroup.com



WAIDE & ASSOCIATES, P.A.
ATTORNEYS AND COUNSELORS AT LAW

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EMAIL: waide@waidelaw.com

STREET ADDRESS:
332 NORTH SPRING STREET
TUPELO, MISSISSIPPI 38804-1357

July 15, 2016

VIA FEDERAL EXPRESS

Mississippi Supreme Court
450 High Street
Carroll Gartin Building
Jackson, MS 39201

Re: In Re: Robert Shuler Smith

Dear Sir/Madam:

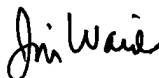
Please find enclosed an Original and four (4) copies of Smith's Motions for Writ of Prohibition and Mandamus with Respect to Order Stripping Him of His Duties as District Attorney.

I have also enclosed our office account check in the amount of \$50.00, which is the fee for filing this document.

Consistent with my Certificate, I have mailed a copy of same to all counsel.

With kindest regards, I am

Sincerely,



Jim Waide

JDW/pbn

Enclosures

cc: Jim Hood, Attorney General
Robert Anderson, SAAG
Larry Baker, SAAG
Shaun Yurtkuran, SAAG
Patrick Beasley, SAAG
Stanley Alexander, SAAG
Honorable Jeff Weill, Sr.
Tesa Barrett
Robert Smith