

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

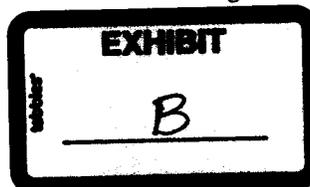
BY _____ D.C.

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,⁴ 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.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.

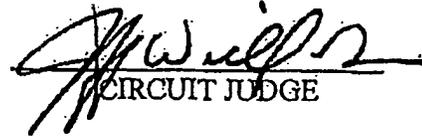
their actions are taken in concert or at the behest of the district attorney. However, the assistant district attorneys are specifically cautioned that any grand jury action or proceeding must relate to a lawful grand jury investigation and not made to serve in retaliation, in any manner, for the district 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.

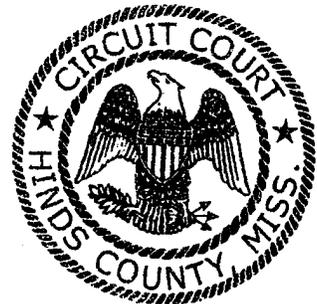
IT IS FURTHER, HEREBY ORDERED AND ADJUDGED that the circuit clerk shall publish a copy of this Order to the District Attorney, all Assistant District Attorneys and staff members via personal service and via email and a copy shall be placed on the door of the grand jury room immediately upon filing. The 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 MEC
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, 2016.
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.