

**SUPREME COURT OF MISSISSIPPI
(COMPLAINT TRIBUNAL)**

THE MISSISSIPPI BAR

COMPLAINANT

v.

FILED

JUL 26 2016

Cause No. 2016-B-1062

ROBERT SCHULER SMITH

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

RESPONDENT

FORMAL COMPLAINT

THE MISSISSIPPI BAR (“the Bar”) files this Formal Complaint against Robert Schuler Smith (“Mr. Smith”) pursuant to Rule 8 of the Rules of Discipline for the Mississippi State Bar (“MRD”) for the following reasons:

1. The Supreme Court of Mississippi has exclusive jurisdiction over all matters dealing with discipline of lawyers admitted to practice law in the State of Mississippi pursuant to Rule 1, MRD.

2. Mr. Smith is an active member in good standing with the Bar. He has been admitted to practice law in the State of Mississippi since 1996. Mr. Smith’s last known address is 407 E. Pascagoula Street, Jackson, Mississippi.

3. The Bar is a designated disciplinary agency of the Supreme Court of Mississippi. Its address is Post Office Box 2168, Jackson, Mississippi.

4. This Formal Complaint is filed pursuant to a directive issued by the Committee on Professional Responsibility as provided in Rule 7(b)(iii), MRD.

COUNT I

5. On April 13, 2016, Adam B. Kilgore, in his capacity as General Counsel of the Mississippi Bar, filed an informal [Bar] complaint against Mr. Smith. The Bar complaint was filed in accordance with Rule 5.1, MRD, based on information received from Hinds County Court Judge Melvin V. Priester. A copy of the Bar complaint is attached as **Exhibit 1**.

6. On March 3, 2016, Mr. Smith appeared in Judge Priester's courtroom during a preliminary hearing in the matter of the State of Mississippi v. Christopher Butler; Cause No. 16-50-AG ("the Butler matter").

7. Mr. Butler was charged with false pretenses and mail fraud. The State of Mississippi is represented by the Attorney General's Office in the Butler matter.

8. Mr. Smith interrupted the proceedings and accused the Attorney General's Office of misconduct in an unrelated investigation.

9. Judge Priester ultimately postponed the preliminary hearing in the Butler matter due to Mr. Smith's conduct.

10. Therefore, Mr. Smith violated the following Mississippi Rules of Professional Conduct ("MRPC"):

- a. Rule 3.5(d), MRPC, which prohibits a lawyer from engaging in conduct intended to disrupt a tribunal
- b. Rule 8.4(a) and (d) of the ("MRPC"), which provides that it is professional misconduct for a lawyer to violate or attempt violate the rules

of professional conduct or engage in conduct that is prejudicial to the administration of justice.

COUNT II

11. On May 19, 2016, Adam B. Kilgore, in his capacity as General Counsel of the Mississippi Bar, filed an informal [Bar] complaint against Mr. Smith. The Bar complaint was filed in accordance with Rule 5.1, MRD, based on information received from Hinds County Circuit Court Judge Tomie T. Green. A copy of the Bar complaint is attached as **Exhibit 2**.

12. On January 11, 2016, the Hinds County Grand Jury was empaneled.

13. The Attorney General petitioned to quash certain grand jury subpoenas issued by Smith (“the grand jury subpoena matter”).

14. Judge Green appointed Amy Whitten as special master in the grand jury subpoena matter.

15. Smith attempted to contact the special master ex parte requiring Judge Green to issue an order clarifying that ex parte communication with the special master was prohibited.

16. On February 12, 2016 Mr. Smith conducted a press conference during which he alleged that Judge Green had improper ex-parte communications with other lawyers, improperly set bond and dismissed criminal cases “behind his back.”

17. Therefore, Mr. Smith violated the following Mississippi Rules of Professional Conduct (“MRPC”):

- a. Rule 3.5 (a), MRPC, which prohibits a lawyer from communicating ex parte with judge or other officer during a proceeding;
- b. Rule 3.5(d), MRPC, which prohibits a lawyer from engaging in conduct intended to disrupt a tribunal;
- c. Rule 3.6(a), MRPC, which prohibits a lawyer from making extrajudicial statements that a reasonable person would expect to be disseminated by public communication if the lawyer knows or reasonable should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding;
- d. Rule 8.2, MRPC, which prohibits a lawyer from making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.
- e. Rule 8.4(a) and (d) of the (“MRPC”), which provides that it is professional misconduct for a lawyer to violate or attempt violate the rules of professional conduct or engage in conduct that is prejudicial to the administration of justice.

18. Mr. Smith’s violations of the MRPC enumerated in the preceding paragraphs constitute cause for imposing discipline pursuant to the MRD.

19. The Bar has incurred costs and expenses associated with the investigation of the Bar complaints in the amount of \$60.00.

20. The Bar has incurred and will continue to incur costs and expenses associated with the prosecution of this matter.

21. The costs and expenses incurred to date and to be incurred in the future with regard to this matter are taxable to Mr. Smith pursuant to Rule 27, MRD.

WHEREFORE, the Bar requests the Complaint Tribunal to impose appropriate discipline on Mr. Smith, to order him to reimburse the Bar for all costs and expenses that have been incurred or will be incurred, and for all other such relief that the Complaint Tribunal deems proper.

Dated this 24th day of July 2016.

THE MISSISSIPPI BAR

By: 

Adam B. Kilgore
General Counsel

Adam B. Kilgore (MB #100039)
General Counsel
The Mississippi Bar
Post Office Box 2168
Jackson, MS 39225-2168
(601) 948-0568

*Docket No. 15-330-2

COMPLAINT
READ INSTRUCTIONS CAREFULLY BEFORE
COMPLETING PRINT OR TYPE IN BLACK INK LIST
ONLY ONE ATTORNEY PER FORM

PART ONE: I, Adam B. Kilgore, in my capacity as General Counsel of The Mississippi Bar
Post Office Box 2168, Jackson, MS 39225 (601) 948-0568
(your name, address, and phone number)

do hereby file with The Mississippi Bar a complaint against Attorney

Robert Schuler Smith, Post Office Box 22747, Jackson, MS 39225-2747
(Attorney's name and address)

PART TWO: Can any person testify about what was said, done, not done or agreed upon by you and the attorney?

No

"Yes" or "No"

PART THREE:

(A) The specific thing or things I am complaining about is or are: See attached for possible
violations of Rule 8.4(d), MRPC.

(B) In support of those things listed above, the facts of my complaint are:

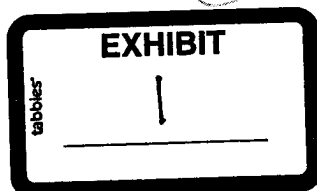
This Bar Complaint is being filed as a result of the Committee on Professional Responsibility receiving
information from a judge pursuant to his or her obligation under Canon 3(d)(2) of The Mississippi Code of
Judicial Conduct. Upon receipt of this information by the Office of General Counsel for The Mississippi
Bar, it was forwarded to the Committee for its consideration and direction as to whether it articulates a
possible violation of the Mississippi Rules of Professional Conduct and warrants the filing of a Bar
Complaint. Your response should address the issues articulated in the attached document(s).

PART FOUR: The facts in this complaint are true and correct to the best of my knowledge.

PART FIVE: I hereby certify that I have read the explanatory booklet that I have been provided.
I do not have any questions with regard to any information included in the booklet.

4-13-16
(Date)

[Signature]
(Your Signature)





MELVIN V. PRIESTER
HINDS COUNTY JUDGE

RCVD OGC MS BAR
RECEIVED MAR 16 2016

March 14, 2016

VIA HAND DELIVERY

Adam Kilgore
Office of General Counsel
MS Bar Association
643 North State Street
Jackson, Mississippi 39202

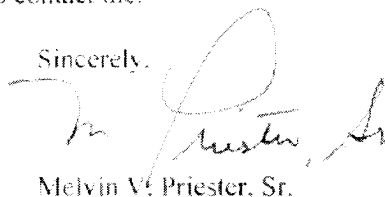
**Re: Mandatory Reporting of Attorney Conduct under Canon 3D(2) of the Code of
Judicial Conduct**

Dear Mr. Kilgore:

Pursuant to the reporting requirements of Cannon 3D(2) of the Cannon of Judicial Ethics, it pains me to report that on March 3, 2016, Mr. Robert Smith, District Attorney for Hinds County, appeared before me in my courtroom and proceeded to act irrational, manic, and virtually out of control. Further, he could not stand still for any period of time and continuously moved back and forth from his seat, to the podium or up and down in his seat, even as other attorneys were addressing the bench. I have attached hereto a copy of the transcript for the sake of time; and while recognizing you cannot get an emotional flavor from this document that nevertheless, it must be taken into consideration.

Again, while I regret having to file this report, Mr. Smith's behavior was so bizarre, I am required to do so. Should you have any questions, concerns, or requests for additional information, please do not hesitate to contact me.

Sincerely,



Melvin V. Priester, Sr.

MVP/cmf
Enclosure

1 IN THE COUNTY COURT OF THE FIRST JUDICIAL
2 DISTRICT OF HINDS COUNTY, MISSISSIPPI
3

4 STATE OF MISSISSIPPI

5 VERSUS

CAUSE NO.: 16-50-AG

6
7 CHRISTOPHER BUTLER

DEFENDANT

8
9 * * * * * * * * * * * * * * *

10 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN
11 THE PRELIMINARY HEARING OF THE ABOVE-STYLED AND
12 NUMBERED CAUSE BEFORE THE HONORABLE MELVIN V.
13 PRIESTER, SR., HINDS COUNTY COURT JUDGE, ON THE
14 3RD DAY OF MARCH, 2016.

15 * * * * * * * * * * * * * * *

16 APPEARANCES:

17 Present and Representing the State:

18 HONORABLE SHAUN YURTKURAN
19 HONORABLE PATRICK BEASLEY
 ATTORNEY GENERAL'S OFFICE

20 Present and Representing the Defendant:

21 HONORABLE SANFORD KNOTT
22 ATTORNEY AT LAW

23 Also Present:

24 Honorable Robert S. Smith
25 Hinds County District Attorney

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1 BY THE COURT: ~~State of~~
2 *Mississippi v. Christopher Butler.*
3 This is his preliminary hearing.

4 There are several issues,
5 obviously, that need to be dealt with
6 before we actually get to a prelim.
7 Mr. Knott, since you are there, why
8 don't you outline what your issues
9 are.

10 BY MR. KNOTT: Very good, Your
11 Honor. Judge, good morning.

12 BY MR. SMITH: I'm sorry. Let me
13 just interrupt for one second.

14 BY MR. KNOTT: Yes.

15 BY MR. SMITH: Your Honor, I think
16 the AG's Office is here to present the
17 case against Mr. Butler. And I
18 personally would like to know what
19 that is. I mean, I'm not trying to
20 interfere with the proceedings. I'm
21 just wanting to see what this is
22 about.

23 BY THE COURT: Personally you
24 would like to know what?

25 BY MR. SMITH: What the evidence

1 is. I think they are here to present
2 evidence in this case.

3 BY THE COURT: And you obviously
4 have a problem with that?

5 BY MR. SMITH: Well, we'll get
6 to-- yes, sir. But as far as the
7 presentation, I would like to hear
8 from them.

9 BY THE COURT: Well, as far as the
10 presentation, I want to hear from Mr.
11 Knott as to what his issues are.

12 BY MR. SMITH: Yes, sir.

13 BY MR. KNOTT: Your Honor, Mr.
14 Butler reported to court on two
15 affidavits that I received as of
16 yesterday. One of which is one
17 affidavit for false pretenses and the
18 other is for mail fraud. Does the
19 Court have a copy of the affidavits?

20 BY THE COURT: I do.

21 BY MR KNOTT: Upon first looking
22 at the affidavit, I notice that the
23 affidavit is not only being prosecuted
24 by the AG's Office but it's also being
25 signed by the AG's Office.

1 It's our position, Your Honor,
2 that the AG's Office does not have the
3 authority to prosecute Mr. Christopher
4 Butler on these charges, given that
5 these cases are cases arising out of
6 Hinds County; and there is simply no
7 authority for them to intervene at
8 this point in time.

9 This is not a case that has not
10 been decided before; that is, these
11 issues. These very same issues have
12 already been decided back in 2013 by
13 our Supreme Court in the case of
14 *Harvey Williams v. The State of*
15 *Mississippi*; a copy of which I have
16 given to counsel opposite and a copy
17 which, if I may, approach to give to
18 the Court.

19 BY THE COURT: (Examines
20 documents)

21 BY MR. KNOTT: Of the issues that
22 were presented in that case-- and if I
23 can just give a little bit of
24 background in that case. Harvey
25 Williams was indicted by the Hinds

1 County grand jury and charged with
2 murder arising out of an incident that
3 happened in the nightclub in 2003.

4 His case proceeded to trial in
5 2007, from which he was convicted by a
6 Hinds County jury. The case was
7 appealed. It was reversed and
8 remanded back to the lower court for
9 trial.

10 Upon receiving the remand order,
11 the District Attorney's Office
12 exercised its lawful discretion and
13 requested the case be dismissed. They
14 found out there was some additional
15 evidence that came up which had a
16 tendency to clear Mr. Williams, and so
17 they moved for the case to be
18 dismissed.

19 It was dismissed by the Honorable
20 Judge Hilburn. However, within a few
21 days after dismissing the case, Judge
22 Hilburn set that aside. Within months
23 after that-- I think Judge Hilburn may
24 have retired at that point in time--
25 Judge Weill took over the case,

1 disqualified the District Attorney's
2 Office and appointed the AG's Office
3 to prosecute Mr. Harvey Williams.

4 Now, at that point and at all
5 times therein, the District Attorney's
6 Office had not moved to be
7 disqualified nor did they have a
8 conflict of interest, but it exercised
9 their independent discretion to not
10 prosecute Mr. Williams because of
11 their independent investigation.

12 And, so, this case went up on
13 appeal. And in 2013 the Supreme Court
14 of Mississippi indicated and ruled
15 that the AG's Office did not have the
16 authority to intervene against the
17 will of the District Attorney to
18 prosecute Mr. Williams.

19 Now, the Supreme Court made it
20 very very clear-- and I will direct
21 the Court's attention to page 8 of
22 that opinion. At the bottom of page 8
23 where it starts "Under the applicable
24 statute," the Court reviewed the
25 statute that permitted the AG's Office

1 to get involved. That's Mississippi
2 Code Annotated Section 7-5-53.

3 And I quote, "Under the applicable
4 statute only two scenarios permit the
5 involvement of the Attorney General.
6 Number one, when required by public
7 service or, number 2, when directed by
8 the governor in writing. If one of
9 those applies, the Attorney General is
10 to assist the local District Attorney
11 in the discharge of his or her duties.

12 Here, the Court said District
13 Attorney Smith did not request or
14 require assistance. He decided, in
15 his discretion, not to prosecute this
16 case. That decision duly was ratified
17 by the order of the circuit judge;
18 namely, Judge Hilburn."

19 And, Judge, at the bottom of that
20 opinion-- let me direct the Court's
21 attention to paragraph 23. Paragraph
22 23 basically indicates when the AG's
23 Office could be appointed to prosecute
24 in this jurisdiction. And it says
25 that, and I quote,

1 "If at the time of impaneling the
2 grand jury in any circuit court the
3 District Attorney be absent or unable
4 to perform its duties, or if after
5 impaneling the grand jury the District
6 Attorney be absent or unable to
7 perform his duties or be disqualified,
8 the Court shall forthwith appoint some
9 attorney at law to act for the State
10 in the place of the District Attorney
11 during his absence or inability or
12 disqualification. And the person
13 appointed shall have the power to
14 discharge all the duties of the office
15 during the absence or inability or
16 disqualification of the District
17 Attorney."

18 And, so, the Court goes on to
19 summarize that in the case of Mr.
20 Williams there is no directive by the
21 governor. There was no finding that
22 it was required by public service.
23 There was no motion to recuse other
24 District Attorneys' Office to-- that
25 it could not handle this case. And

1 because of those things, among others,
2 the Supreme Court found that the AG's
3 Office could not intervene in this
4 case.

5 Now, that case is no different
6 from this case. After finding out and
7 reviewing the affidavit, this morning
8 I went and visited with the District
9 Attorney's Office and ask the question
10 specifically "did the District
11 Attorney's Office request the
12 assistance of the Attorney General to
13 prosecute Mr. Butler?" And the answer
14 was no. And the District Attorney is
15 here in person to confirm that.

16 So, based upon the clear law that
17 we now have, which, incidentally,
18 arose out of this jurisdiction back in
19 2013, this case and these affidavits
20 that were filed against Mr. Butler
21 were not filed because they had
22 permission and were not filed because
23 they had authorization by the
24 governor. They were not filed because
25 Mr. Smith and his office had recused

1 himself or otherwise been
2 disqualified.

3 They were filed against Mr. Butler
4 as an attempt to, I take it, intervene
5 in this case and, in essence, overrule
6 the District Attorney's Office. And
7 so, therefore, Judge, based upon this
8 case alone and the law that is cited
9 therein, these affidavits should be
10 dismissed.

11 BY THE COURT: Thank you, Mr.
12 Knott. Mr. Smith, would you like to
13 be heard now?

14 BY MR. SMITH: After the AG's
15 Office.

16 BY THE COURT: You were just kind
17 of--

18 BY MR. SMITH: Well, they brought
19 the case.

20 BY THE COURT: Come to the podium,
21 please, and tell me what your position
22 is.

23 BY MR. SMITH: Well, first all, I
24 do agree with counsel. The AG's
25 Office is well aware of *Harvey*

1 *Williams v. State*. That was a case
2 that went all the way to the Supreme
3 Court that clarified existing law that
4 says they cannot prosecute cases in
5 Hinds County at their discretion. I
6 was actually one of the respondents in
7 that matter.

8 I think that they have brought
9 this case, which is on July 19th-- I
10 don't even know whose-- can I approach
11 the bench, Your Honor?

12 BY THE COURT: (Gestures for him
13 to come forward.)

14 BY MR. SMITH: --whose signature
15 that is at the bottom. I don't
16 recognize it. I just want to identify
17 that signature at the bottom.

18 BY THE COURT: (Examines document)
19 It looks like Judge Morton.

20 BY MR. SMITH: That's one of the
21 things that I was going to allow the
22 Attorney General's Office to
23 authenticate, is this affidavit. And
24 then I'll respond.

25 (No response from the Attorney General's

1 Office.)

2 BY MR. SMITH: I would just like
3 the record to reflect that today's
4 date is March 3, 2016, and that the
5 Attorney General's Office is present
6 in the courtroom. Shaun Yurtkuran and
7 Patrick Beasley, representing the
8 Attorney General's Office in court
9 today, along with other employees of
10 the AG's Office.

11 I wanted the record to reflect
12 that they are present here today.

13 BY THE COURT: The record will so
14 reflect.

15 BY MR. SMITH: Thank you.

16 BY THE COURT: Particularly since
17 I'm going to ask one of you to come
18 forward and tell me what your position
19 is now. When I say "your" position, I
20 mean the Attorney General's Office.

21 BY MR. YURTKURAN: Yes, Your
22 Honor. May I approach?

23 BY THE COURT: Please.

24 BY MR. YURTKURAN: Your Honor, of
25 course, we were here for a preliminary

1 hearing. That's what was scheduled
2 for today. We have just been hit with
3 this case, I guess is what Mr. Knott
4 explained.

5 So let me just-- from what I
6 understand. I know of the *Harvey*
7 *Williams* case as the facts scenario
8 being completely different than this
9 case. In that case that District
10 Attorney's Office, under Faye
11 Peterson, had actually indicted that
12 case. Later Mr. Smith assumed office
13 and then he attempted to, I believe,
14 nol pros the case. Judge Weill tried
15 to transfer it to the Attorney
16 General's Office and the Court said
17 that he couldn't do that. That's what
18 I believe the case does say.

19 Mr. Knott's argument is that
20 essentially that the Attorney General
21 of the State of Mississippi doesn't
22 have the authority to prosecute any
23 case in the entire state without the
24 consent of the District Attorney of
25 each corresponding district.

1 Your Honor, I think that position
2 is wrong. I don't see how it's
3 possible. And again, in this case
4 specifically, there's a code section
5 7559 which gives the Attorney General
6 authority to investigate white collar
7 crimes, including wire fraud for which
8 the defendant is charged in this case.

9 Your Honor, if this were the case,
10 that the District Attorney has to
11 agree to every prosecution that the
12 Attorney General engages in-- has the
13 District Attorney objected to every
14 single one in the past, or has he
15 agreed to every one in the past? I
16 think that needs to be explained to
17 the Court as well.

18 And finally, Your Honor, this
19 seems a more appropriate argument for
20 after this defendant has been
21 indicted, not for a preliminary
22 hearing. Thank you, Your Honor.

23 BY THE COURT: Defendant has not
24 been indicted yet?

25 BY MR. YURTKURAN: No, Your Honor.

1 This is his preliminary hearing.

2 BY THE COURT: This is his
3 preliminary hearing.

4 BY MR. YURTKURAN: He has been
5 indicted in other cases that the DA's
6 Office is handling.

7 BY MR. KNOTT: It matters not that
8 the defendant has been indicted, Your
9 Honor. If the AG's Office has the
10 authority, they have the authority.
11 If they don't have the authority, then
12 they don't have the authority. It
13 matters not about indicting.

14 In the *Harvey Williams* case, at
15 the time Judge Weill got the case--
16 it's in the opinion-- he agreed that
17 when Judge Hilburn had set aside the
18 order of dismissal that Judge Hilburn
19 was in error and said the case should
20 have been dismissed.

21 At that point Judge Weill,
22 nevertheless, said, okay. AG's
23 Office, you can intervene at this
24 point in time and you can prosecute.
25 In other words, they had to go back

1 through the original steps of doing
2 it.

3 So it matters not that he has been
4 indicted or not because the case was
5 dismissed in the *Harvey Williams* case.
6 Judge Weill was wrong, with all due
7 respect to the Court, according to our
8 Supreme Court.

9 Before the AG can get involved,
10 they have to have the statutory
11 authority to do so. And that's why
12 the Supreme Court went through such
13 great pains in outlining for the bench
14 and the bar exactly what their
15 responsibilities are and their
16 authority--

17 BY THE COURT: Let me cut you off
18 just for the sake of time.

19 BY MR KNOTT: Sure.

20 BY THE COURT: If he hasn't been
21 indicted and this is his preliminary
22 hearing, which group is--

23 BY MR. SMITH: They can present it
24 and I'll join them.

25 BY THE COURT: You have no problem

1 with joining their--

2 BY MR. SMITH: I'm not joining
3 with them but they can proceed. They
4 can continue their preliminary
5 hearing, but I do have a response
6 after they present this.

7 BY THE COURT: Well, you are
8 saying they can continue it. Mr.
9 Smith, to my knowledge, it hasn't been
10 started.

11 BY MR. SMITH: Your Honor, I'll
12 just get right to it.

13 BY THE COURT: Thank you. I
14 appreciate it.

15 BY MR. SMITH: On the 19th of
16 January Mr. Yurtkuran, who is seated
17 over here in the courtroom, and
18 Patrick Beasley were subpoenaed. A
19 subpoena was issued to them by the
20 District Attorney's Office. They were
21 supposed to show up on the 19th of
22 January. Okay.

23 When they did not show up, of
24 course, there was ex parte
25 communications with the circuit judge,

1 Tomie Green, and she issued an order
2 to set these subpoenas aside
3 temporarily, and then she recused
4 herself and appointed another judge.
5 On the same day that that happened,
6 while we were inside the hearing, they
7 filed this affidavit on Mr. Butler.

8 Now, these two gentlemen were in
9 the District Attorney's Office; know
10 about Mr. Butler's case, know that
11 it's under investigation, know that
12 the charges against Mr. Butler on the
13 drug charges were-- and I do believe
14 that the Court did hear the forfeiture
15 hearing where the agents seized a
16 videotape. And that videotape was
17 seized by that agency and obstructed
18 justice so that no one would see what
19 was on that videotape which would show
20 that Mr. Butler was framed twice.
21 They know that.

22 BY THE COURT: Well, I personally
23 take issue with that in that I sat
24 through watching that video for
25 approximately 12 to 16 hours, and

1 there was nothing to show.

2 BY MR. SMITH: Well, we have an
3 expert who corroborates the fact that
4 it was tampered with.

5 BY THE COURT: Well, that's a
6 little different than what you said.

7 BY MR. SMITH: Right. So--

8 BY MR. YURTKURAN: Your Honor, for
9 the record, I've never seen the video.
10 I just wanted that clear.

11 BY THE COURT: But I have seen the
12 video.

13 BY MR. SMITH: They are still
14 under subpoena. They have been
15 running around trying to avoid it.
16 But they still have to show up at the
17 next hearing.

18 So, on the day that they were
19 supposed to show up and didn't, they
20 filed this charge at 5:00 with no
21 hearing, neither did the Court have a
22 hearing on the subpoenas to be quashed
23 which is required, and then jumped off
24 the case and set a special master on a
25 criminal case.

1 BY THE COURT: They filed a
2 request for a subpoena to be quashed,
3 you said?

4 BY MR. SMITH: Well, they did it
5 ex parte, yes, sir. And once the
6 order was delivered to me around
7 almost 5:00, Mr. Butler then gets
8 arrested for this, knowing that the
9 subject matter of the testimony was
10 about Christopher Butler's
11 indictments. They know that.

12 BY THE COURT: The subject matter
13 of their testimony for which you had
14 subpoenaed?

15 BY MR. SMITH: Yes, sir.

16 BY THE COURT: All right.

17 BY MR. SMITH: So it's
18 interesting-- I'd like to hear what
19 they have to say about that.

20 BY THE COURT: Well, Mr. Smith,
21 I'm going to have to ask you to stay
22 at the podium until I tell you to sit
23 down; because it seems like every time
24 you're walking away and we haven't, in
25 my opinion, sufficiently finished our

1 discussion.

2 BY MR. SMITH: Okay.

3 BY THE COURT: Obviously, by way
4 of some of the allegations you've made
5 just now--

6 BY MR. SMITH: I can prove every
7 last one of them. Yes, sir.

8 BY THE COURT: Fine. But you know
9 what? I don't care.

10 BY MR. SMITH: Okay.

11 BY THE COURT: All right. If this
12 is how we're going to deal with each
13 other, we'll deal with each other this
14 way.

15 BY MR. SMITH: Yes, sir.

16 BY THE COURT: I don't care what
17 you feel you can prove. What I care
18 about is the fact that there's an
19 initial appearance scheduled for today
20 on this defendant for specific
21 charges. And I'm not going to inject
22 myself into the cloak and dagger
23 issues between the DA's Office and the
24 senior circuit judge and whatever
25 judge or whoever it was that took the

1 case. That's way over my pay grade
2 right now. Okay.

3 BY MR. SMITH: I understand that,
4 yes, sir.

5 BY THE COURT: What they did or
6 didn't do on whatever day you said
7 was, I really don't care because I
8 don't think it has one ounce of impact
9 on a preliminary hearing.

10 BY MR. SMITH: Well, may I say
11 this? *Harvey Williams v. State* has an
12 impact on this matter, and that went
13 to the Supreme Court. I'm finished
14 with my discussion for now unless you
15 have questions for me. And I'll let
16 the AG's Office present their case.

17 BY MR. BEASLEY: Your Honor, may I
18 be heard very briefly?

19 BY THE COURT: Very briefly.

20 BY MR. BEASLEY: I believe what
21 Mr. Knott-- and Mr. Knott, please
22 correct me if I'm wrong. What he's
23 basically saying is that we don't have
24 jurisdiction to proceed in this
25 matter. If that's his position, I

1 would ask the Court, if the Court is
2 going to rule on that, then to go
3 ahead and make that ruling; and then
4 we'll respect the Court's ruling and
5 basically go back to the office.

6 This suggestion that we be allowed
7 to put on a preliminary hearing and
8 then the District Attorney make a
9 decision or give a dissertation on his
10 position at that point, we would
11 object to.

12 BY THE COURT: It's clearly your
13 position, Mr. Smith, that the Hinds
14 County DA have the authority to go
15 forward on this initial appearance and
16 not the Attorney General's Office? Is
17 that basically correct?

18 BY MR. SMITH: That's my
19 understanding of the Supreme Court
20 case.

21 BY THE COURT: I'm asking you
22 that.

23 BY MR. SMITH: Maybe I just didn't
24 understand you. You asked me was that
25 what *Harvey Williams v. State*

1 represents?

2 BY THE COURT: I'm asking you what
3 the position of the Hinds County
4 District Attorney's Office is relative
5 to the Attorney General's Office of
6 the State of Mississippi presenting
7 this initial appearance.

8 BY MR. BEASLEY: Preliminary
9 hearing.

10 BY THE COURT: Excuse me.
11 Preliminary hearing.

12 BY MR. SMITH: Well, they can
13 present it, but at the same time, Your
14 Honor-- I'm allowing them to present
15 it for a different reason that you say
16 was above your pay grade. But I think
17 that they understand *Harvey Williams*
18 *v. State*, and they know not to
19 intervene in Hinds County cases.

20 BY THE COURT: All right. Let's
21 get down to brass tacks.

22 BY MR. SMITH: Okay.

23 BY THE COURT: Are you prepared to
24 present this?

25 BY MR. SMITH: They filed it.

1 BY THE COURT: Are you prepared to
2 present this?

3 BY MR. SMITH: I'm prepared to
4 listen to what they are going to
5 present.

6 BY THE COURT: Are you-- and all I
7 want is a yes or no-- prepared to
8 present this right now?

9 BY MR. SMITH: I'm prepared to
10 enforce the subpoenas that I served on
11 these two who have evaded process for
12 the last month. That's what I'm
13 prepared to do. But I cannot present
14 a case that I didn't bring.

15 BY THE COURT: So your answer is
16 no, you're not prepared to present
17 this?

18 BY MR. SMITH: Your Honor, it's
19 very clear.

20 BY THE COURT: No, no. I don't
21 want to hear anything--

22 BY MR. SMITH: It's very clear
23 that I'm not presenting it.

24 BY THE COURT: I want to hear an
25 answer to my question first.

1 BY MR. SMITH: It's very clear--

2 BY THE COURT: I want to hear an
3 answer to my question first.

4 BY MR. SMITH: I have answered it.

5 BY THE COURT: No, you haven't.

6 BY MR. SMITH: And I have said--

7 BY THE COURT: You haven't
8 answered it satisfactorily.

9 BY MR. SMITH: That I did not have
10 the case.

11 BY THE COURT: You have not
12 answered it satisfactorily.

13 BY MR. SMITH: I did not present
14 the case. I did not file this
15 affidavit.

16 BY THE COURT: So the answer to my
17 question is you do not at this point
18 in time stand ready to present this
19 matter today?

20 BY MR. SMITH: Not until they
21 confer with my office like the Supreme
22 Court said they should.

23 BY THE COURT: All right. I
24 assume you have witnesses to present,
25 Mr. Knott?

1 BY MR. KNOTT: Well, for purposes
2 of the prelim, we do not have
3 witnesses, unless we have to have a
4 prelim and then we have to have a
5 bond-- unless the subject of bond
6 comes up.

7 BY THE COURT: Okay. I guess I
8 should say, do you have any witnesses?

9 BY MR. KNOTT: We do. For
10 purposes of bond. That's correct,
11 Your Honor. However, again, we submit
12 to the Court for a ruling.

13 BY THE COURT: I'm getting there.

14 BY MR. KNOTT: I understand.
15 Because he does have a half million
16 dollar bond.

17 BY THE COURT: The Court finds
18 that there is no entity prepared to
19 prosecute, if you will, this initial
20 appearance; therefore, bond will
21 remain at \$500,000 until such time as
22 Mr. Smith gets--

23 BY MR. SMITH: No, sir. There are
24 attorney generals present in the
25 courtroom who filed this affidavit.

1 They made the arrest. Of course, it's
2 not my case, yet. It's their case.
3 They are here to present evidence in
4 this case, and the Court knows that.

5 Why are they able to sit over on
6 the sidelines on this case when they
7 are here to present evidence in the
8 matter.

9 BY THE COURT: Mr. Smith, if you
10 have a beef with the Attorney
11 General's Office, you deal with the
12 Attorney General's Office.

13 BY MR. SMITH: I will. May I be
14 seated?

15 BY THE COURT: That is the Court's
16 order. It is so ordered. Do you want
17 to say something?

18 BY MR. KNOTT: I do, Your Honor.

19 BY THE COURT: Actually, the gavel
20 has fallen.

21 BY MR. KNOTT: I know. With all
22 due respect to the Court's ruling and,
23 of course, the lack of gavel, you
24 mentioned about initial appearance
25 and, of course, this is a preliminary

1 hearing.

2 BY THE COURT: Preliminary
3 hearing.

4 BY MR. KNOTT: Right. Judge, if
5 you find that no entity is prepared to
6 go forward, I think, by way of
7 reference, you must be then sustaining
8 our motion. Because, again, based
9 upon this opinion, the AG's Office
10 does not have that authority. And by
11 you saying they don't have the
12 authority, the case really should be
13 dismissed at this point in time.

14 So, by the Court's finding that
15 there was no authority able to
16 prosecute, the affidavits that were
17 filed against Mr. Butler in January
18 must go away; because the affidavits
19 were filed by the AG's Office.

20 BY THE COURT: Okay. Anything
21 else?

22 BY MR KNOTT: No, Your Honor.

23 BY THE COURT: Is there something
24 else?

25 BY MR. KNOTT: In addition, of

1 course, because this was set for a
2 preliminary hearing and no facts have
3 gone forth, based upon the Court
4 saying there's no authority who is
5 able to go forward, then he should be
6 discharged. Even if the affidavits
7 are not dismissed, he should be
8 discharged because there is no
9 probable cause finding.

10 BY THE COURT: All right. Having
11 heard the argument of the defendant,
12 the Court finds that what has happened
13 here this afternoon is nothing more
14 than a power struggle between entities
15 other than the Court. And based on
16 the totality of the circumstances,
17 that being the major circumstance, the
18 Court will not take this up today.

19 Had there been a different
20 presentation, Mr. Knott, you would be
21 absolutely right. But based on what I
22 find to be just the absolute lack of
23 respect for the Court by officers of
24 the court, I'm ruling this to be a
25 total nullity.

1 Nothing happened here of any
2 consequence today other than two
3 agencies argued. So, my ruling stands
4 as it is. Now I can say that is my
5 ruling.

6 BY MR. BEASLEY: Your Honor, for
7 purposes of the record, I just want
8 the Court to know that we-- at least
9 the Attorney General's Office-- did
10 not come here to argue, nor at any
11 time did we mean to show the Court any
12 disrespect. The reason I make that
13 comment is in light of what the Court
14 just said.

15 We showed up here today in good
16 faith to go forward with the
17 preliminary hearing. We understand
18 that the Court has ruled that-- at
19 least it's our understanding, and I
20 would like to get some clarification
21 on this matter-- that we do not have
22 the authority to initiate proceedings
23 in this type of matter without the
24 permission of the District Attorney.
25 Is that the Court's finding?

1 BY THE COURT: I don't think it
2 was without the permission of the
3 District Attorney but rather without
4 the request of the District Attorney
5 or-- excuse me. The factors are "when
6 required by a public service or when
7 directed by the governor in writing."
8 I'm taking that from *Williams v.*
9 *State*.

10 BY MR. BEASLEY: Thank you, Your
11 Honor.

12 BY THE COURT: Did you have
13 something else, Mr. Knott?

14 BY MR. KNOTT: If you will allow
15 me to say something. Would the Court
16 entertain, or at least consider--
17 given the Court's decision, I'm just
18 having difficulty getting to the other
19 part of the Court's decision; that is,
20 to keep him in custody on a half
21 million dollar bond versus dismissing
22 the case.

23 Despite what the Court has seen,
24 my client is caught in the middle.

25 BY THE COURT: I understand that,

1 and I take that into consideration in
2 terms of coming to this conclusion.

3 It does not please me to leave
4 someone down in Raymond-- or in
5 custody, I should say.

6 BY MR. KNOTT: Sure.

7 BY THE COURT: But nor does it
8 please me to be put in the middle of
9 something else under the guise of this
10 man's preliminary hearing. And that's
11 what I believe has happened today.
12 Therefore, we'll simply hear it on
13 another day. It will not be heard
14 today. The Court has issued its
15 order. We stand adjourned.

16
17 * * * PRELIMINARY HEARING CONCLUDED * * *
18
19
20
21
22
23
24
25

1 COURT REPORTER'S CERTIFICATE

2
3 STATE OF MISSISSIPPI

4 COUNTY OF HINDS

5 I, Sara G. Sims, Official Court Reporter for
6 the Hinds County (County) Court, do hereby
7 certify that the foregoing 34 pages, and
8 including this page, constitute a true and
9 correct transcript of the proceedings had upon
10 the Preliminary Hearing in the aforesaid-styled
11 and numbered cause before the Honorable
12 Melvin V. Priester, Sr., Hinds County Court
13 Judge, on March 3, 2016

14 I do further certify that my certificate
15 annexed hereto applies only to the original and
16 certified transcript. The undersigned assumes
17 no responsibility for the accuracy of any
18 reproduced copies not made under my control or
19 direction.

20 Witness my signature, this the 5th day of
21 March, 2016.

22
23 

24 SARA G. SIMS
25 Official Court Reporter
CSR 1118

*Docket No. 15-378-2

COMPLAINT
READ INSTRUCTIONS CAREFULLY BEFORE
COMPLETING PRINT OR TYPE IN BLACK INK LIST
ONLY ONE ATTORNEY PER FORM

PART ONE: I, Adam B. Kilgore, in my capacity as General Counsel of The Mississippi Bar

Post Office Box 2168, Jackson, MS 39225 (601) 948-0568
(your name, address, and phone number)

do hereby file with The Mississippi Bar a complaint against Attorney

Robert Schuler Smith, Post Office Box 22747, Jackson, MS 39225-2747
(Attorney's name and address)

PART TWO: Can any person testify about what was said, done, not done or agreed upon by you and the attorney?

No

"Yes" or "No"

PART THREE:

(A) The specific thing or things I am complaining about is or are: See attached for possible
violations of Rules 3.5, 3.6, 8.2, and 8.4(d), MRPC.

(B) In support of those things listed above, the facts of my complaint are:

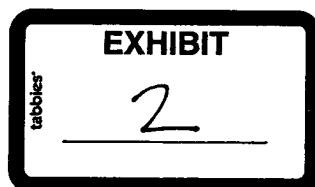
This Bar Complaint is being filed as a result of the Committee on Professional Responsibility receiving
information from a judge pursuant to his or her obligation under Canon 3(d)(2) of The Mississippi Code of
Judicial Conduct. Upon receipt of this information by the Office of General Counsel for The Mississippi
Bar, it was forwarded to the Committee for its consideration and direction as to whether it articulates a
possible violation of the Mississippi Rules of Professional Conduct and warrants the filing of a Bar
Complaint. Your response should address the issues articulated in the attached document(s).

PART FOUR: The facts in this complaint are true and correct to the best of my knowledge.

PART FIVE: I hereby certify that I have read the explanatory booklet that I have been provided.
I do not have any questions with regard to any information included in the booklet.

5-19-16
(Date)

[Signature]
(Your Signature)





TOMIE T. GREEN

CIRCUIT JUDGE

POST OFFICE BOX 327

JACKSON, MISSISSIPPI 39205

(601) 968-6658 (Office) (601) 714-6270 (Fax)

**7th CIRCUIT COURT
DISTRICT
HINDS COUNTY**

COURT ADMINISTRATOR
Frances C. Ashley, CCA

February 17, 2016

COURT REPORTERS
Kimberly P. Smith
Estella Wren

VIA HAND DELIVERY

BAILIFFS
Rod Thompson
Bill Queen

TO: Robert S. Smith

STAFF ATTORNEY
David K. Fletcher, Esq.

FROM: Tomie Green, Senior Circuit Judge

RCVD OGC MS BAR
AM08:59 FEB 22 2016

Dear Mr. Smith,

I am appalled at your malicious and unprofessional statements made during a February 12, 2016 news conference. Your conduct was intentional, retaliatory and improperly coercive at a time when I had under advisement an issue dealing with the impropriety of subpoenas you issued. Consequently, your accusations caused my family and I to endure unflattering, destructive and dangerous repercussions from the public. Your statements were intentional, and you knew or should have known they would evoke unwarranted outrage by Hinds County citizens.

I demand that you publicly retract your allegations that this Court had improper ex parte communications with Atty. Faye Peterson and/or other attorneys, and that I improperly set bond for Timothy Owens or any other person. Further, I demand that you retract accusations that I dismissed criminal cases "behind your back".

You publicly violated, at least, Rule 9.1 of the UCCRR, and Rules 3.5, 3.6 and 8.4 of the Mississippi Rules of Professional Conduct and DR7-106(C)(6) of the Disciplinary Rules. I charge that your actions were also unethical as district attorney. You were deceptive and dishonest. Overall, your false accusations are prejudicial to the administration of justice and impede the orderly progression and disposition of criminal cases in our district.

c: Bill Waller, Chief Justice - Mississippi Supreme Court
Darlene Ballard, Executive Director - Mississippi Commission on Judicial Performance
Adam Kilgore, General Counsel - Mississippi Bar



7th CIRCUIT COURT
DISTRICT
HINDS COUNTY

COURT ADMINISTRATOR
Frances C. Ashley, CCA

COURT REPORTERS
Kimberly P. Smith
Estella Wren

BAILIFFS
Rod Thompson
Bill Queen

STAFF ATTORNEY
~~Seneca Tubwell~~

David Fletcher

TOMIE T. GREEN

CIRCUIT JUDGE

POST OFFICE BOX 327

JACKSON, MISSISSIPPI 39205

(601) 968-6658 (Office) (601) 714-6270 (Fax)

RCVD OGC MS BAR
AM18:23 MAR 04 2016

February 24, 2015

Dear Adam,

I'm attaching other documents that preceded our DA's news conference on 2/12/16. I had under consideration grand jury subpoena that were challenged by the Atty Gen & his staff, the MDOC Marshall Fisher and staff (formerly of MBN). I appointed Amy Whitten as special master. The DA attempt to contact and harass her. I issued a Clarification order prohibiting ex parte contact by him or any other party. He never ceased.

On 2/9/16, the DA slipped a handwritten note under my office door trying to get me to meet with his Mother. I know of his mother, but have no personal relationship

with Alice Smith. I emailed him to let him know the note and request was odd and improper.

The next day his Mom left a voicemail at my office. She said it was left in response to me, but I never talked to her. She was a bit irate and demanded respect and said she knew "what to do." I can email you the voice mail for review. Then came the news conference after

Amy Whitten's recommendation and my acceptance of the name.

Call me or email me if you need further info.

Thanks,

Tomie Zee

zee929@aol.com

601-955-0354 (cell)

Feb. 09, 2016

Judge Green:

I am trying to set an appointment
for my mother, Alice Smith. She would
like to speak to you about some matters.
Thanks.

Robert S. Smith

Tomie Green

From: Tomie T Green <zee929@aol.com>
Sent: Wednesday, February 24, 2016 5:32 PM
To: Tomie Green
Subject: Fwd:

Sent from my iPhone

Begin forwarded message:

From: Tomie Green <tgreen@co.hinds.ms.us>
Date: February 9, 2016 at 7:12:03 PM CST
To: Robert Smith <rsmith@co.hinds.ms.us>
Cc: LouAnn Jackson <louannjackson@co.hinds.ms.us>, Frances Ashley
<fashley@co.hinds.ms.us>, Greens Staff Attorney <greenstaffattorney@co.hinds.ms.us>

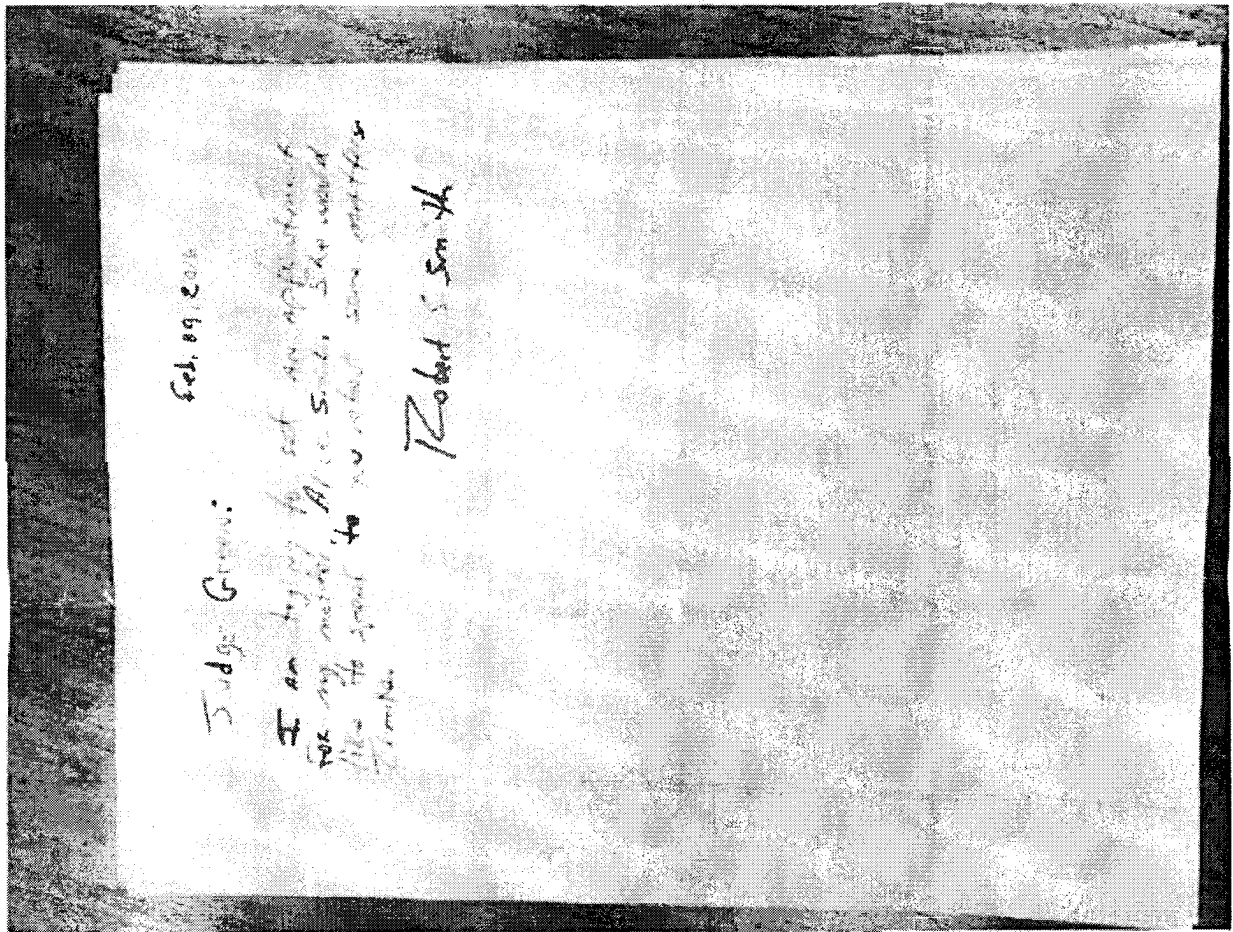
Dear DA Smith,

The attached note was slipped under my door late this afternoon. It appears to be written by you, however, I am puzzled about why you would want me to meet with your mother. Such a request is quite odd, to say the least. Moreover, it is improper for me to meet with you or your Mother About specific or unspecified matters.

Tomie T. Green, Senior Circuit Judge
7th Circuit Court District - State of MS
P.O. Box 327
Jackson MS 39295

From: Tomie T Green [zee929@aol.com]
Sent: Tuesday, February 09, 2016 6:47 PM
To: Tomie Green
Subject:

This E-mail may contain legally privileged and/or confidential information intended only for the individual or entity named in the message. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution or copying of this communication is prohibited. If this communication was received in error, please notify us by reply E-mail and delete the original message.



Sent from my iPhone

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

JAN 21 2016

IN RE: GRAND JURY SUBPOENAS.
JANUARY 2016 TERM

ZACK WALLACE, CIRCUIT CLERK

NO. 16-26

BY J.C.
ORDER OF CLARIFICATION BY COURT

THIS MATTER originally came on to be heard on the Petition of the Attorney General on behalf of persons subpoenaed for appearance before the January 2016 term of the Hinds County Grand Jury, and for permission to file pleadings under seal. Having reviewed the submission and otherwise being advised in the premises, the Court has SEAL all proceedings and pleadings in the matter. Also, the Court has ordered a stay of the subpoenas' compliance until all issues regarding the known or similar subpoenas have been resolved. Further, the Court clarifies as follows:

On January 11, 2016, the Court empaneled the Hinds County Grand Jury for the January 2016 term of Court. The Grand Jury was properly charged by this Court and advised in accordance with law. The current grand jury shall serve until at least the May 2016 term of Court or until a subsequent grand jury is empaneled. There is sufficient time to resolve the subpoenas issues well before the Grand Jury is dismissed in May of 2016.

The Court has not recused in this matter, nor does the Court, by the appointment of a Special Master, imply any conflict of interest regarding issues before the empaneled January 2016 Grand Jury or any Grand Jury for that matter, who seek review of procedure or law.

Subpoenas issued for the appearances of persons before the Grand Jury are administrative matters for this Court. A case filing was directed in order to maintain an orderly docket of secreted Grand Jury matters, which may be subject to subsequent review.

Due to the need for expediency, this Court has appointed a Special Master (Hon. Amy Whitten) to timely and generally review issues involving all related subpoenas issued by the Hinds County District Attorney Robert Smith, that seek to present testimony before the Grand Jury regarding an unknown indictment.. Presumably, the matters before the Grand Jury are related to an indictment, vel non, of a specific person(s).

It is improper for any party to communicate or attempt to communicate with the Court or the appointed Special Master, without the presence or expressed approval of all opposing parties. Any attempted at ex parte communication is subject to sanctions by the Court. Nothing precludes the Special Master from contacting parties regarding administrative matters, hearing times, dates, supporting law, and etc or other issues unrelated to the merits of these matters.

SO ORDERED AND ADJUDGED this the 21st day of January 2016


Tomie T. Green, Senior Circuit Judge