

IN THE SUPREME COURT OF MISSISSIPPI**No. 2016-AP-01079****RE: DISTRICT ATTORNEY FOR THE
SEVENTH CIRCUIT COURT DISTRICT**

Hinds County Circuit Court Nos. 25CI1:16-cv-00220;
25CI1:16-cv-00355; 16-9002; 16-0-543; In the Circuit
Court of Hinds County, Mississippi, First Judicial District

**ROBERT SMITH'S MOTION TO ASSIGN ADDITIONAL CASE
(HINDS CIRCUIT COURT NO. 16-120) TO CIRCUIT JUDGE LARRY ROBERTS**

Defendant Robert Shuler Smith moves the Court to transfer Hinds Circuit Court case number 16-120 to Circuit Judge Larry Roberts. Smith shows the Court as follows:

1. On August 11, 2016, this Court (in 2016-AP-01079) entered the attached Corrected Order Appointing Special Judge, Exhibit "A," which transferred certain cases to Judge Roberts. All of the cases transferred to Judge Roberts pertain to claims of wrongdoing made against District Attorney Robert Smith. Cause No. 16-120 also involves allegations made by the Mississippi Attorney General (through Assistant Attorney General Stanley Alexander) of wrongdoing by Robert Smith.

2. This Court omitted Cause No. 16-120 from its Corrected Order, Exhibit "A," which is currently assigned to Circuit Judge Jeff Weill. On motion of Assistant Attorney General Alexander, Judge Weill ordered Cause No. 16-120 to be sealed.

3. Smith's having a complete copy of the file and of the transcript of the hearing in Cause No. 16-120 is necessary to his defense in a criminal case in which Smith has been indicted. See attached Grand Jury Indictment, Exhibit "B." The transcript of the hearing before Judge Weill contains evidence that Smith has not, in fact, committed any inappropriate actions with respect to criminal defendants, and indicates the nature of matters that Smith was lawfully investigating, to

include matters involving charges of misconduct by state officials.

4. Judge Weill's Order sealing Cause No. 16-120 prevents Smith having access to this exculpatory evidence. Under familiar principles, a criminal defendant is entitled to all evidence that is exculpatory. *Brady v. Maryland*, 373 U.S. 83, 87 (1983).

5. This Court's should assign Cause No. 16-120 to Circuit Judge Larry Roberts, along with all other cases in which wrongdoing by Smith is alleged.

6. Circuit Judge Roberts has set a hearing for September 12, 2016 on a motion to unseal files. It is in the interest of judicial efficiency for Judge Roberts to also consider whether the proceedings in Cause No. 16-120 should be unsealed.

7. Consistent with the due process clause of the United States Constitution, Amendment Fourteen, and Mississippi Constitution, Section Fourteen, Circuit Judge Weill cannot act as a judge in any case involving Robert Smith. Judge Weill is an adversarial party to Smith, since he is a complainant in a pending bar complaint against Smith. See, Exhibit "C." Additionally, Judge Weill has entered an Order stripping Smith of his duties as District Attorney. See, Exhibit "D." Because of these adversarial proceedings, "a fair minded person knowing all the facts might reasonably question [Judge Weill's] impartiality." *Buchanan v. Buchanan*, 587 So.2d 892, 897 (1991). "A fair trial in a fair tribunal is a basic requirement of due process [O]ur system of law has always endeavored to prevent even the probability of unfairness. . . . [N]o man is permitted to try cases where he has an interest in the outcome." *In Re: Murchison*, 349 U.S. 133, 136 (1955).

8. Assistant Attorney Generals Baker and Anderson have advised they do not object to Cause No. 16-120 being transferred to Judge Roberts.

ACCORDINGLY, Smith moves this Court to assign Hinds Circuit Court Cause No. 16-120 to Circuit Judge Larry Roberts.

Respectfully submitted this the 9th day of September, 2016.

ROBERT SMITH, Defendant

By: /s/ JIM WAIDE
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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:

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Honorable Tomie T. Green
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SO CERTIFIED, this the 9th day of September, 2016.

/s/ JIM WAIDE

JIM WAIDE