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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
2016-~~M~~-1079

AP

IN RE: ROBERT SHULER SMITH

**TRIAL COURT'S STATEMENT IN RESPONSE TO ROBERT SHULER SMITH'S
MOTION TO ASSIGN HINDS COUNTY CAUSE NO. 251-16-120 TO JUDGE LARRY
ROBERTS**

COMES NOW, Judge Jeff Weill, Sr., Hinds County Circuit Court Judge, and files this response to the September 9, 2016 motion of Hinds County District Attorney Robert Shuler Smith ("Smith") to have Hinds County Cause No. 251-16-120 assigned to Special Judge Larry Roberts, who has been appointed to preside over Smith's felony indictments and matters related thereto. Smith continues to make allegations in the media about 251-16-120 that seem to be unsupported by the actual documents and hearing transcript. First, the undersigned trial court judge has absolutely no objection to the unsealing of the entire file and transcript, as Smith has repeatedly sought. However, prior to any unsealing, this Court should be aware of several important issues related to the proceedings. Accordingly, the trial court responds as follows and attaches the sealed transcript as Exhibit A so this Court can be fully informed as to the proceedings:

Important Factual and Procedural Considerations

Circuit Court No. 251-16-120 is a sealed case which was randomly assigned to the docket of the undersigned judge, Judge Jeff Weill, Sr., on February 27, 2016. When it was assigned to the undersigned, the case file had already been placed under seal by Senior Circuit Judge Tomie Green by way of an Order signed on February 19, 2016. Judge Green prudently ordered the file to be sealed, as the initial filing was a motion by the Office of the Attorney General to present certain individuals for investigation to the Hinds County Grand Jury, due to an alleged conflict of

interest of the Hinds County District Attorney. All grand jury issues are required to be sealed and confidential per URCCC 7.04. Mr. Smith was a party to the sealed case file and a recipient of all sealed filings, but he has continuously failed to include relevant detail in his numerous motions urging the seal to be lifted. Further, Mr. Smith has made blatant public misrepresentations about the nature of these sealed proceedings in his public statements to the media.

The proceedings in 251-16-120 arguably relate to the original misdemeanor charges against Smith. However, those were dismissed, and a three (3) count indictment was issued against Smith on September 7, 2016, related only to Smith's alleged conduct with Christopher Butler, a criminal defendant who Smith was prosecuting until he recently agreed to disqualify himself. Even as recently as September 8, 2016, one day following the indictment focused only on Butler, *The Clarion Ledger* reported as follows: "Smith believes sealed court procedures, including a hearing containing testimony of an FBI agent, could be favorable toward his case." The very next sentence quoted Smith: "'There's a reason why ... they've resisted the release of the hearing, while knowing what it contains,' he said." Jimmy E. Gates, Mollie Bryant, *Hinds County district attorney and assistant DA Indicted*, THE CLARION LEDGER, September 8, 2016. Given that *Smith* knows what the transcript contains, but he continues to misrepresent the contents including an ongoing mischaracterization of the sworn testimony of an FBI agent, this court is of the opinion that the interests of justice may in fact favor lifting the seal. Despite being in attendance at the hearing, and after even being provided with a copy of Special Agent Culpepper's testimony, Smith continues to publicly and misleadingly infer that the circuit court is intentionally hiding court transcripts which would exculpate him. Smith's ongoing attempt to malign the circuit court, simply because it furthers his own personal interests, should not be

permitted, and his continued efforts to equate the lawful sealing of grand jury documents by the Hinds County Circuit Court as evidence of some intent to bamboozle Smith could be mitigated by lifting the seal. However, prior to any unsealing, several procedural facts should be considered.

First, prior to any order unsealing cause no. 251-16-120, certain redactions may be required. During the sealed hearing Smith made numerous allegations which are very similar in nature to allegations he made in a February 12, 2016 press conference regarding conditions imposed in certain cases for release on bond. It is this court's understanding that Smith's statements at the press conference are now the subject of bar disciplinary proceedings. Thus, it may be necessary to redact those portions so as to avoid giving Smith an additional opportunity to continue to engage in public accusations against a sitting senior circuit court judge, especially while the disciplinary proceedings concerning the very same public accusations are ongoing. Redaction of those portions should be of no consequence to Smith, since these bond issues are entirely unrelated to the charges that Smith had an allegedly improper relationship with Defendant Christopher Butler. If that portion of the transcript related to bond release orders is not entirely redacted, then the undersigned judge submits that, at the very least, Senior Circuit Judge Tomie Green, who granted approval for the initial sealing of 251-16-120 pursuant to applicable grand jury confidentiality rules, should be given the opportunity to review the sealed transcript and offer her position as to the propriety of unsealing the portion of the proceedings that relate to the corresponding disciplinary proceedings initiated on her behalf by the Mississippi Bar against Smith. Further, and as explained in detail below, at least one redaction to the filings and transcript would be required under Mississippi law due to several brief references to the identity of a person under indictment which has been issued but not yet served.

The indictment remains sealed pending service upon that individual, per Miss. Code Ann. §97-9-53.

Second, the proceedings in 251-16-120 concern a motion seeking to prosecute two individuals based on an alleged conflict of Smith. One Defendant had already been indicted, but the indictment remains unserved. The hearing primarily involved the second individual, who is undisputedly a former client of Smith's and the father of two children of an employee on Smith's office staff. During the hearing, Smith conceded that he had an ethical conflict that would preclude him from prosecuting his former client, and he announced that he had no objection to another prosecuting agency proceeding, since he would recuse given their prior attorney client relationship. Accordingly, Smith should not be entitled to have any further involvement in a matter in which he admits he is ethically prohibited from all participation. This is even more significant, given the direct familial relationship between Smith's employee and his former client, who had been arrested and charged with violent criminal conduct.

Third, while the undersigned does not have any objection whatsoever to the assignment of this cause to Judge Roberts, the trial court felt compelled to clarify that sealed file 251-16-120 does not relate to any of the charges set forth in the September 7, 2016 indictment against Smith. While the proceedings did partially relate to the initial misdemeanor charges against Smith, those have since been dismissed, and the current indicted charges have no relationship to the proceedings in 251-16-120. Given that Judge Roberts is already tasked with presiding over numerous circuit court case files related to Smith's prosecution, it would be a disservice to Judge Roberts to task him with reviewing an unrelated matter. For this reason, the undersigned has included a copy of the sealed transcript with Judge Roberts' copy of the subject response, in the

event he wants to evaluate the relatedness of the sealed proceedings to the allegations in the indictment.

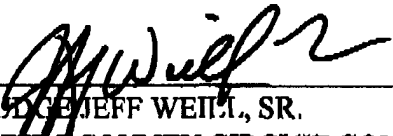
Finally, it is important to recognize that Smith was a party to *each and every* filing and proceeding in 251-16-120. Smith received every sealed document filed in 251-16-120, and he personally attended and participated in the only hearing held in the matter. Despite being a participant in the hearing, Smith and his current counsel (who was not present) misleadingly continue to publically infer that this trial court is hiding proceedings which could exonerate Smith. This public pandering should not be permitted, in view of URCCC 9.01, which prohibits pre-trial publicity. Even if Smith's public comments were permissible by the pre-trial publicity rules, they are prohibited by the rules of professional conduct, because they are misleading and intended to malign this court without any basis. MRPC 8.2; MRPC 8.4.

Conclusion

The undersigned trial court judge files this response simply to clarify that contrary to the misperception urged by Smith in the media, this judge has absolutely no objection to the unsealing of 251-16-120, as Smith requests. In fact, the unsealing would put an end to Smith's ongoing public misrepresentations concerning the nature and relevance of these proceedings to his criminal prosecution, which would benefit the Hinds County Circuit Court. The continuous misrepresentations by Smith continue to mar our criminal justice system as the circuit court judges attempt to conduct regular court business in the wake of the criminal charges against the county's top prosecutor. However, prior to the release of the documents, the trial court requests that this Court afford Senior Circuit Judge Tomie Green an opportunity to review the hearing transcript and respond, given the related bar proceedings pending against Smith. Further, Mississippi law requires the redaction of the identity of an unserved indictee from the

proceedings, so the identity of the unserved criminal defendant should be redacted throughout the transcript prior to its release. Finally, this circuit judge has no objection to cause no. 251-16-120 being reassigned to Judge Larry Roberts. However, because nothing remains to be determined beyond the sealing issue, and since that issue is addressed at length herein, reassignment may not be necessary. The undersigned, however, leaves that within the discretion of Senior Circuit Judge Tomie Green, Judge Larry Roberts, and this Honorable Court. To aid the analysis of Judges Green and Roberts and of this Honorable Court, the undersigned has provided a copy of the sealed transcript to each.

Respectfully submitted, this the 12th day of September, 2016.



JUDGE JEFF WEILL, SR.
HINDS COUNTY CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I, Jeff Weill, Sr. the undersigned judge, do hereby certify that one true and correct copy of the foregoing, along with the exhibits hereto, has been this day forwarded to the following persons via electronic mail:

Senior Status Judge Larry Roberts
lroberts_judge@yahoo.com
(including enclosure of sealed transcript)

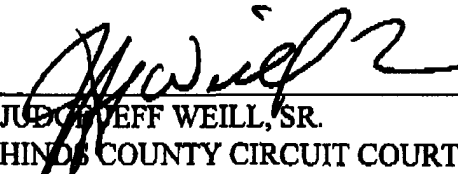
Senior Circuit Judge Tomie Green
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This the 12th day of September, 2016.



JUDGE JEFF WEILL, SR.
HINDS COUNTY CIRCUIT COURT JUDGE

HINDS COUNTY CIRCUIT COURT

Kelli Roberson Degnan
Court Administrator
Judge Jeff Weill, Sr.

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TO: Ms. Muriel Ellis
Mississippi Supreme Court Clerk
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FROM: Kelli R. Degnan

DATE: September 12, 2016

RE: *In re: Robert Shuler Smith*
2016-M-1079

COMMENTS: Enclosed please find the trial court's response to Mr. Smith's September 9, 2016 Motion to Assign Hinds Co. Cause No. 251-16-120 to Judge Larry Roberts. The original response and the sealed exhibit will be hand delivered to your office today.