

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

**RALPH ARNOLD SMITH, JR.,  
EX REL. THE STATE OF MISSISSIPPI**

**PLAINTIFF/RELATOR**

**VS.**

**CIVIL ACTION NUMBER: 16-cv-375-WLK**

**JAMES M. HOOD, III,  
WHO PURPORTS TO BE ACTING AS THE  
ATTORNEY GENERAL FOR THE STATE  
OF MISSISSIPPI**

**DEFENDANT**

**AMENDED COMPLAINT FOR QUO WARRANTO AND  
FOR DECLARATORY JUDGMENT**

COMES NOW Ralph Arnold Smith, Jr. (“Dr. Smith”), through counsel, individually and on behalf of the State of Mississippi (ex rel. the State of Mississippi), pursuant to Mississippi Code Sections 11-39-1, et seq. (Title 11, Chapter 39--Quo Warranto), and files this, his *Amended Complaint for Quo Warranto and for Declaratory Judgment* against James M. Hood, III (“Defendant Hood”), who purports to be acting as the Attorney General for the State of Mississippi, and in support of this *Amended Complaint for Quo Warranto and for Declaratory Judgment*, respectfully shows to this Court the following:

**PARTIES**

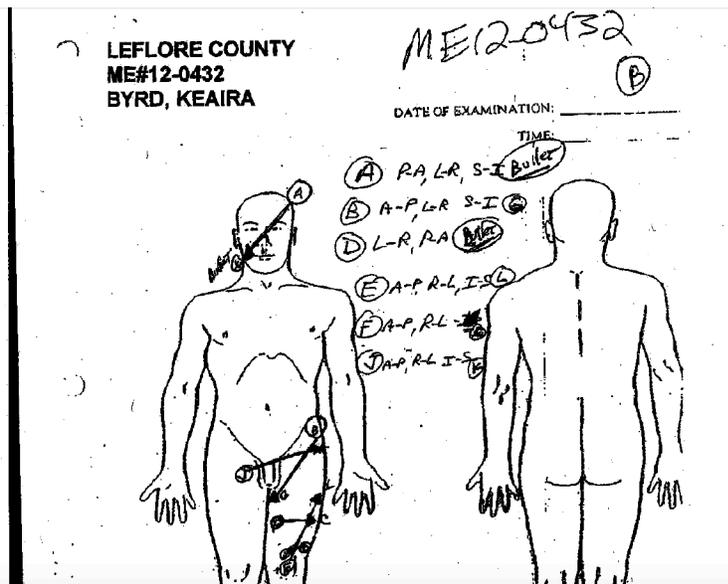
1. Ralph Arnold Smith, Jr. (“Dr. Smith”) is a resident citizen of the state of Mississippi. Defendant Hood’s illegal and unlawful acts as set out in this Amended Complaint have directly and adversely impacted Dr. Smith, including loss of property and loss of liberty based on the unlawful and illegal acts of Defendant Hood, in which Defendant Hood and others from the Attorney General’s Office claim to be acting as the Attorney General for the State of Mississippi in at least seven (7) cases and appeals:

-Civil commitment case in Leflore Chancery Court: case number 2015-M-0144

- Civil commitment case in Rankin Chancery Court: case number 15-1566
- Civil commitment case in Hinds Chancery Court: case number M-15-0086
- Criminal cases in Leflore Circuit Court: case numbers 2012-0208 and 2012-0209
- Civil case filed by Albert Lee Abraham, Jr. in Leflore Circuit Court: case number 2012-0053
- Mississippi Supreme Court: appeal of Leflore Chancery Court case, docket number 2015-CA-1163-SCT
- Mississippi Court of Appeals: appeal of Rankin Chancery Court case, docket number 2015-CA-1471-COA

Defendant Hood’s unlawful and illegal actions include participating in an illegal undercover police operation that resulted in the execution-style killing of Keaira Byrd. Defendant Hood, in his claimed capacity as Attorney General, and as part of an illegal cover-up, falsely and illegally claims that the killing of Keaira Byrd was in the “necessary self-defense of our law enforcement officers.” The autopsy diagram and head shot crime scene photos are set out below in support of the claims in this Amended Complaint:

**Autopsy diagram showing execution-style head shot “A” that Defendant Hood falsely claims was “necessary self-defense”:**



**Crime scene photo showing Keaira Byrd at the threshold of Lee Abraham’s office, with the head shot bullet that was fired into the top of Mr. Byrd’s head. The fatal head shot bullet is lodged in Mr. Byrd’s neck below the right ear. The best evidence shows that the fatal head shot was fired after Keaira Byrd was already on the ground.**



Defendant Hood’s illegal and unlawful use of the office of Attorney General to deprive Dr. Smith of his property and his liberty gives Dr. Smith standing to file this civil action, and the court has jurisdiction to grant the relief requested in this action. See the attached expert report of retired DEA Agent Michael Levine, which is attached as Exhibit “G” and which is incorporated into this action in support of all claims as if copied in full herein.

2. Dr. Smith has standing to file this Amended Complaint. Defendant Hood's illegal and unlawful acts also directly impact many other Mississippi residents and citizens all over the state of Mississippi. Defendant Hood illegally purports to be acting as a statewide public official (Attorney General), even though Defendant Hood vacated and forfeited the office.

3. Dr. Smith has been diagnosed with a major mental illness, and has been adjudicated as not competent and not restorable. Dr. Smith's wife, Mary K. Smith, in her capacity as next friend and power of attorney for Dr. Smith, has authorized counsel for Dr. Smith to file and pursue this action.

4. The state of Mississippi is a real party in interest. All citizens and residents of Mississippi have an interest in the outcome of this quo warranto action. This action can also be deemed to be an action in the nature of quo warranto.

5. The District Attorney for Hinds County, Mississippi, Robert Shuler Smith, has standing and authority to join in this action if he deems it appropriate.

6. Pursuant to Rule 17(a) of the Mississippi Rules of Civil Procedure, the Court should allow a reasonable amount of time for one or more district attorneys in the state of Mississippi to join in this action as a real party in interest on behalf of the state of Mississippi.

7. The Attorney General cannot be a relator or plaintiff, and has no standing to join in this action as a plaintiff because, for reasons set out in this Amended Complaint, the Attorney General has vacated the constitutional office of Attorney General that is established by Article 6, §173 of the *Mississippi Constitution*.

8. James M. Hood, III, (Defendant Hood), who purports to be the Attorney General for the State of Mississippi, is the defendant in this action. Mr. Hood may be served with process

at the office of the Attorney General for the State of Mississippi at 550 High Street, Jackson, Mississippi 39201, which is in the First Judicial District of Hinds County, Mississippi.

### **JURISDICTION AND VENUE**

9. This Court is the proper venue for this action under Mississippi Code §11-39-3 (the venue statute for Quo Warranto actions). Defendant Hood purports to be acting as Attorney General for the State of Mississippi at the Sillers Office Building at 550 High Street, Jackson, Mississippi, in the First Judicial District of Hinds County, Mississippi.

10. This Court has subject matter jurisdiction over the claims set out in this *Amended Complaint for Quo Warranto and for Declaratory Judgment* pursuant to Mississippi Code §11-39-1, including the following subsections of §11-39-1:

**First:** Whenever any person unlawfully holds or exercises the functions of any public office, civil or military, or franchise, or any office in any corporation, city, town, or village, and to try the right to any such office.

**Second:** Whenever any public officer has done or suffered to be done, or has omitted to do any act, the doing or omission of which works a forfeiture of office.

*See:* §11-39-1.

### **BACKGROUND AND FACTS**

11. The *Mississippi Constitution* of 1890 establishes the constitutional office of Attorney General in the judicial branch of government at Article 6, §173:

#### ARTICLE 6 JUDICIARY

SECTION 173. There shall be an attorney-general elected at the same time and in the same manner as the governor is elected, whose term of office shall be four years and whose compensation shall be fixed by law. The qualifications for the attorney-general shall be the same as herein prescribed for judges of the circuit and chancery courts.

The drafters of the constitution aligned the qualifications of the Attorney General with the qualifications “as herein prescribed for judges of the circuit and chancery courts.” This alignment of qualifications with other members of the judicial branch clearly shows the intent of the drafters that the Attorney General is part of the judicial branch of government.

12. Article 6 of the *Mississippi Constitution* establishes the various offices of the judicial branch of government for the state of Mississippi, including Attorney General.

13. Article 5 of the *Mississippi Constitution* (Executive Branch) does not establish the Attorney General as an officer of the executive branch of government.

14. Article 1, §1 of the *Mississippi Constitution* establishes the three branches of state government:

The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

15. Article 1, §2 of the *Mississippi Constitution* prohibits any person in the judicial branch from performing any power that belongs to the executive branch, and mandates that acceptance of an office in another branch “at once” vacates any and all offices in the other branch of government:

No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of the said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

16. Agents and employees of Defendant Hood represent themselves as law enforcement officers and investigators, including but not limited to Attorney General Investigators Tony Green, Larry Ware, Jerry Spell, Charles Rubisoff, Jr., and Leland McDivitt. A true and correct

copy of Leland McDivitt's June 22, 2016 void "Affidavit" against Robert Shuler Smith is attached as Exhibit "A" (showing that Leland McDivitt purports to be a "criminal investigator with the office of the Mississippi Attorney General").

17. Leland McDivitt, an employee of the Attorney General's Office, who purports to be acting as a "criminal investigator with the office of the Mississippi Attorney General," served an Arrest Warrant on Hinds County District Attorney Robert Shuler Smith on June 22, 2016. The Arrest Warrant (an executive branch law enforcement document) was illegally and unlawfully created by the "Office of the Attorney General"—which is part of the judicial branch of state government. The Arrest Warrant against Robert Shuler Smith that was illegally generated and served by the "Office of the Attorney General" is null and void under the separation of powers doctrine, as set out in this Amended Complaint. A true and correct copy of the void Arrest Warrant against Robert Shuler Smith is attached as Exhibit "B."

18. Defendant Hood, by and through Harold E. Pizzetta, III, who purports to act as a duly appointed Assistant Attorney General, has clearly taken the position in a court of record in Mississippi that "The Attorney General is a member of the Executive Branch of Government." *See:* attached Exhibit "C", page 11 (pleading filed in the Circuit Court of Leflore County, Mississippi by Harold E. Pizzetta, III, showing that, as of January 9, 2014, Jim Hood was already claiming to be in the executive branch of state government). Defendant Hood clearly takes the position in his January 9, 2014 Leflore County Circuit Court pleading that "...The Attorney General is not a member of the judicial branch of government..."

*See:* Exhibit "C", page 12. Defendant Hood, by his own admission, has abandoned, vacated, and forfeited the judicial branch office of Attorney General.

THE LAW

19. The separation of powers doctrine of the *Mississippi Constitution* (Article 1, §1 and §2) prohibits the exercise of any power properly belonging to either of the other two branches of government.

20. Article 1, §2 of the *Mississippi Constitution* provides the mandatory remedy that is justiciable and ripe for the court to address in this action: “The acceptance of an office in either of said departments **shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments**” (emphasis added).

21. Citing this very same separation of powers doctrine, Defendant Hood issued Opinion Number 2008-00694, clearly recognizing that accepting a position in another branch of government vacates the original position:

Therefore, if any person holding one position in one branch of government that is subject to the separation of powers doctrine then accepts a position in another branch of government that is also subject to the separation of powers doctrine, **he thereby vacates the position he originally held** (emphasis added).

See: Jim Hood, by Reese Partridge, AG Opinion Number 2008-00694, attached as Exhibit “H”.

By accepting a position in the executive branch of government, while at all times being in the judicial branch of government, Defendant Hood vacated the office of Attorney General.

22. Importantly, the Attorney General was not placed in the executive branch when Mississippi became a state in 1817. The original Mississippi Constitution of 1817 placed the Attorney General in the judicial branch, where the Attorney General has remained since 1817.

See: Exhibit “I”--1817 *Mississippi Constitution*, Mississippi Department of Archives and History: Article 5, Section 14 (establishing the Attorney General in the “Judicial Department”).

23. James M. Hood, III, by accepting a position in the executive branch of state government, has vacated the judicial branch office of Attorney General for the State of Mississippi that is established by Article 6, §173 of the *Mississippi Constitution*.

24. As a matter of law, and by operation of law under Article 1, §2 of the *Mississippi Constitution*, there is no person serving in the judicial branch of government in the office of Attorney General that is established by Article 6, §173 of the *Mississippi Constitution*.

25. Defendant Hood will claim that there is binding case law that places the Attorney General in the executive branch of government. One case, *Dye v. State ex rel. Hale*, 507 So.2d 332, 346, footnote 20 (Miss.1987) states in dicta in a footnote that the Attorney General is “commonly thought of as belonging to the Executive Department of government.” Any reliance on this dicta by Defendant Hood is misplaced, because the Constitution, including the separation of powers doctrine, is “...superior to all legislation, to the legislature, to the judiciary.” *Chevron U.S.A. v. State*, 578 So.2d 644, 648, n.1 (Miss.1991). It matters not what anyone “thinks”—what counts is the constitution, and the constitution of the state of Mississippi clearly places the office of Attorney General in the judicial branch of government. There is no authority or language anywhere in the *Mississippi Constitution* that allows the Attorney General to engage in any law enforcement activity.

26. Defendant Hood’s false construction of the Constitution can never be the law:

We have not so learned the law as to ignore the Mississippi Constitution. We will not be deterred from declaring these principles because of any administrative construction and practice to the contrary. If such practice has grown up under a mistaken conception of the law, it should be at once abandoned. **No false construction of the Constitution by any administrative department, however long continued, can ever ripen into law** (emphasis added).

*Myers v. City of McComb*, 943 So.3d 1, ¶28 (Miss. 2006) (internal citation omitted).

27. The National Association of Attorneys General (NAAG) acknowledges in its very own publication that the authority for the office of Attorney General in Mississippi emanates from Article 6, §173 of the *Mississippi Constitution*. Source: *State Attorneys General Powers and Responsibilities*, “Table of Authority” pages 423-433 (2013).

28. The separation of powers doctrine, which dates back at least to the writings of Montesquieu in 1748, prohibits the judicial branch Attorney General from performing any executive branch law enforcement function:

"If men were angels, no government would be necessary." The Federalist No. 51, at 349 (James Madison). However, "[i]n framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to controul the governed; and in the next place, oblige it to controul itself." Id. at 351. Therefore, "[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47, at 324 (James Madison) (emphasis added). "The preservation of liberty requires, that the three great departments of power should be separate and distinct." Id. See also 12 C.J. § 234, n. 96 (1917) (quoting Montesquieu) ("When the legislative and executive powers are united in the same person, or the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.").

*Myers v. City of McComb*, 943 So.3d 1, ¶13 (Miss. 2006) (Honorable Michael K. Randolph).

“Sections 1 and 2 (of the *Mississippi Constitution*) exist to preclude the commingling of different powers in the same hands and the attendant improper concentration of power.”

*Myers v. City of McComb*, at ¶28. “Article 1, Section 2 of the Mississippi Constitution prohibits the exercise of “any power” belonging to one branch by a member of another branch.”

*Myers v. City of McComb*, at ¶11 (emphasis in original Supreme Court opinion).

29. Defendant Hood admits that law enforcement officers with law enforcement authority exercise executive branch powers. “The Mississippi Supreme Court has stated that a law enforcement officer exercises core powers of the executive branch of government.” Attorney General Opinion Number 2005-0013. A true and correct copy of Attorney General Opinion Number 2005-0013 is attached as Exhibit “D.”

30. An opinion from former Attorney General Mike Moore also recognizes that the separation of powers doctrine prohibits a person from serving in two branches of government at the same time: “It is therefore inescapable that a person cannot be a member of two branches of government at the same time” (citing *In re Anderson*, 447 So.2d 1275 (Miss. 1984)). Attorney General Opinion Number 1988-0421. A true and correct copy of Attorney General Opinion Number 1988-0421 is attached as Exhibit “E.”

31. Defendant Hood admits that an investigator who investigates criminal activity is part of a law enforcement agency (which would include Leland McDivitt, who claims the title of “criminal investigator with the office of the Mississippi Attorney General”). Attorney General Opinion Number 2013-0394. A true and correct copy of Attorney General Opinion Number 2013-0394 is attached as Exhibit “F.”

32. By engaging in prohibited executive branch law enforcement activity, all law enforcement activity by Defendant Hood and by any agent of the judicial branch Attorney General’s Office is void, and has no effect and no validity. “...No act prohibited by it (the constitution) can be given effectuality and validity.” *Chevron U.S.A., Inc. v. State*, 578 So.2d 644, 648-49 (Miss.1992).

33. Criminal investigations, criminal affidavits, and arrest warrants can only be generated by executive branch law enforcement officers. All criminal affidavits, arrest

warrants, searches, and criminal investigations generated by any agent of the Attorney General are void:

...In all cases in which the acts of any department of government are brought in question, it must be shown that these acts are authorized by it (the constitution), **or they will be void**... The legislative, judicial and executive powers of government of this State are vested in separate and distinct departments. And each department is prohibited from the exercise of powers pertaining to the others (emphasis added).

*Howell v. State*, 300 So.2d 774, 778 (Miss.1974).

### **THE REMEDY**

34. Defendant James M. Hood, III claims to be in the executive branch of Mississippi government. *See*: Exhibit “C”, page 11. By claiming to be in the executive branch, and by claiming that Defendant Hood is not in the judicial branch of government, Defendant Hood forfeited and vacated the Article 6, §173 office of Attorney General. Article 1, §2 of the *Mississippi Constitution* mandates that, by operation of law, Defendant Hood vacated the constitutional office of Attorney General. Pursuant to Mississippi Code §11-39-19, this court should enter a final judgment removing James M. Hood, III from office as Attorney General for the state of Mississippi, debar Defendant Hood from the office of Attorney General, and debar Defendant Hood from performing any claimed act as Attorney General.

35. Prior to a final decision in this case, and during the pendency of this action, the court should enjoin Defendant Hood and anyone acting directly or indirectly at his direction from performing any duties in any purported role as Attorney General for the State of Mississippi. *See*: Mississippi Code §11-39-15 (permitting orders preventing damage or injury to the plaintiff, before the case is decided). During the pendency of this case, the state of

Mississippi and its citizens should not be subjected to the ongoing illegal, unlawful, and unconstitutional acts of Defendant Hood and his agents.

### **DECLARATORY JUDGMENT**

36. Dr. Smith incorporates all previous paragraphs and exhibits into this claim for a declaratory judgment.

37. Pursuant to Rule 57 of the Mississippi Rules of Civil Procedure, the court should enter a declaratory judgment finding and ordering as a matter of law that the constitutional office of Attorney General for the state of Mississippi is in the judicial branch of government, as set out in Article 6, §173 of the *Mississippi Constitution*.

38. The Court should enter a declaratory judgment finding and ordering that Defendant Hood vacated the Article 6, §173 office of Attorney General at such time as the facts show that Defendant Hood and any person under Defendant Hood's control first began exercising any executive branch law enforcement function or power.

39. The statutes under which Defendant Hood purports to exercise executive branch law enforcement powers are void under the separation of powers doctrine. As a member of the judicial branch, the Attorney General is prohibited from exercising any law enforcement power under the separation of powers doctrine. §7-5-59, §7-5-67, and any other statutes that purport to authorize the Attorney General to exercise any law enforcement power are unconstitutional and void under the separation of powers doctrine.

WHEREFORE, PREMISES CONSIDERED, the plaintiff, relator, and any other real party in interest who may join in this action pray that upon a trial by jury, the Court will enter a judgment granting the following relief:

1. Removing and debarring James M. Hood, III from the office of Attorney General for the state of Mississippi, pursuant to Mississippi Code §11-39-1, et seq. and pursuant to Article 1, §1 and §2 of the Mississippi Constitution;
2. Enter a declaratory judgment recognizing that, as a matter of law, the Attorney General for the State of Mississippi has been a member of the judicial branch of state government since 1817;
3. Enter a declaratory judgment recognizing that Defendant Hood vacated the Article 6, §173 office of Attorney General at such time as the facts show that Defendant Hood and any person at the Attorney General's Office first exercised any law enforcement function or power;
4. Enter a declaratory judgment recognizing that Mississippi Code §7-5-59, §7-5-67, and any other statutes that purport to provide any law enforcement power to the Attorney General are unconstitutional and void under the separation of powers doctrine;
5. Enter an order during the pendency of this action enjoining James M. Hood, III and anyone acting in privity with Defendant Hood from performing any act as Attorney General for the state of Mississippi; and
6. The plaintiff, relator, and any other party in interest pray for such other relief that the court deems appropriate, including ordering Defendant Hood to pay all costs.

Pursuant to Rule 38 of the Mississippi Rules of Civil Procedure, and Article 3, §31 of the Mississippi Constitution, Dr. Smith hereby requests a jury trial for all claims set out in this civil action.

Respectfully submitted, this 6<sup>th</sup> day of July, 2016.

Ralph Arnold Smith, Jr., Plaintiff and Relator,  
Ex rel. the State of Mississippi

By: /s/ William C. Bell  
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**Certificate of Service**

I, William C. Bell, attorney for Ralph Arnold Smith, Jr., do hereby certify that I have this day filed this Amended Complaint with the court through the Court's MEC filing system, and that I will serve a true and correct copy of the Amended Complaint on the Defendant at 550 High Street, #1200, Jackson, Mississippi, on the next business day.

This, the 6<sup>th</sup> day of July, 2016.

/s/ William C. Bell  
Attorney for Ralph Arnold Smith, Jr.