

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

**RALPH ARNOLD SMITH, JR.**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 16CV375WLK**

**ATTORNEY GENERAL JAMES M. HOOD III**

**DEFENDANT**

**ATTORNEY GENERAL JIM HOOD'S MEMORANDUM  
IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT**

Assuming all of the facts in the Amended Complaint to be true, Plaintiff Ralph Arnold Smith's suit seeking to have Attorney General Jim Hood removed from office must be dismissed as a matter of law. This matter presents three legal questions which are appropriately resolved on summary judgment. First, Smith has no legal authority to file a quo warranto action. Second, Smith cannot obtain a declaratory judgement in this Court regarding the alleged "loss of property and loss of liberty based on the unlawful and illegal acts of Defendant Hood . . . in at least seven (7) cases and appeals" which are pending in various chancery and circuit courts and/or are on appeal to the Mississippi Supreme Court. *See* Amended Complaint at ¶ 1. Third, even if the matter was properly before this Court, Smith's contention that the Attorney General is a judicial branch official who violated the constitution by investigating and foiling Smith's murder-for-hire plot is wrong as a matter of law. The Mississippi Supreme Court has held that the Attorney General is an executive branch official. *See Dye v. State ex rel. Hale*, 507 So. 2d 332, 346 n.20 (Miss. 1987). Moreover, Smith has already repeatedly raised this same argument in the Leflore Circuit Court where his criminal case is

pending. After denying Smith's argument on several different occasions, the Leflore Circuit Court finally sanctioned Smith's attorney for repeatedly filing this same argument. *See* Order of the Court, Ex. 1. Smith has now taken his pleading and exhibits from the Leflore criminal case and filed them anew with this Court. Smith's complaint is both legally wrong and an improper collateral attack on issues already decided in Smith's criminal case.

### **Overview and Allegations in the Amended Complaint**

Ralph Arnold Smith is the subject of criminal charges in Leflore Circuit Court stemming from his murder-for-hire plot. In connection with the finding that he is currently incompetent to stand trial for those charges, Smith has been involuntarily civilly committed to inpatient treatment at the State Hospital at Whitfield. Prior to this action, Smith had filed nineteen different – and unsuccessful – petitions or complaints in five different courts seeking to directly or indirectly derail his criminal and civil commitment proceedings or to harass the participants therein. By rough count, Smith has sought monetary damages, declaratory judgments, and/or injunctive relief against twenty-seven different respondents or defendants in those proceedings. This action represents the twentieth such filing and the first before this Court.

The Amended Complaint alleges that Smith has suffered a “loss of property and loss of liberty based on the unlawful and illegal acts of Defendant Hood . . . in at least seven (7) cases and appeals” which are pending in various chancery and circuit courts

and/or are on appeal to the Mississippi Supreme Court<sup>1</sup>. See Amended Complaint at ¶ 1, Dkt. No. 5. Smith's complaint is based on the incorrect legal premise that the Attorney General is a member of the judiciary because his office was created in Article 6 of the Mississippi Constitution which is labeled "Judiciary."<sup>2</sup> *Id.* at ¶¶ 11, 12. Based on this erroneous legal conclusion, Smith contends that the Attorney General violated the separation of powers doctrine by acting as an executive branch official in investigating

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<sup>1</sup> The cases referenced in paragraph one of the complaint include the two circuit court criminal cases pending against Smith: *State of Mississippi v. Ralph Arnold Smith, Jr. and Derrick Lacy, aka Derrick Lacey*, Leflore County Circuit Court, Cause No. 2012-0208 and *State of Mississippi v. Ralph Arnold Smith, Jr. and Cordarious Robinson*, Leflore County Circuit Court, Cause No. 2012-0209. The complaint references three chancery court civil commitment proceedings: *In re: Ralph Arnold Smith, Jr.*, Leflore County Chancery Court, Cause No. L14-0144; *In re the Commitment of Ralph Arnold Smith, Jr.*, Rankin County Chancery Court, Cause No. 61CH1:15cv01566; *In the Matter of Ralph Arnold Smith, Jr.*, Hinds County Chancery Court, Cause No. M-2015-0086. The complaint also references two appeals from the civil commitment proceedings which are pending with the Supreme Court: *Ralph Arnold Smith, Jr. v. State of Mississippi*, Supreme Court, Cause No. 2015-CA-01471-COA; *Ralph Arnold Smith, Jr v. State of Mississippi*, Supreme Court, Cause No. 2015-CA-01163. Finally, the complaint references a damages action pending in Leflore Circuit Court against Smith filed by the target of his murder-for-hire scheme. The Attorney General is neither a plaintiff nor defendant in that civil damages action.

<sup>2</sup> The Supreme Court has twice rejected such a reading of Article 6 and confirmed that the Attorney General and district attorneys are members of the executive branch. See *Dye v. State ex rel. Hale*, 507 So. 2d 332, 346 n.20 (Miss. 1987) ("the offices of Attorney General (Art. 6, § 173) and District Attorney (Art. 6, § 174) are found in the article labeled 'Judiciary,' yet these offices are commonly thought of as belonging to the Executive Department of government"); *Jackson v. State*, 311 So.2d 658, 661 (Miss. 1975) (finding that the office of district attorney, also created in Article 6, is "an officer of the executive department of government, as distinguished from the judicial department").

and foiling Smith's murder-for-hire plot in Greenwood, Mississippi.<sup>3</sup> *Id.* at ¶ 16. In relief, Smith seeks a declaration that the Attorney General is a member of the judiciary, that the Attorney General has no constitutional authority to investigate crimes, that "all law enforcement activity" by the Attorney General or his office "is void," that the statutes which explicitly authorize the Attorney General to investigate and prevent crimes are unconstitutional, and, for good measure, to remove Jim Hood from the office of Attorney General. *See id.* at ¶ 32; p. 12-15.

Even assuming all of the facts to be true, Smith's lawsuit is based on the wrong legal premise (the Attorney General has constitutional authority to investigate crime), constitutes the wrong procedure (Smith cannot pursue a private quo warranto action), and is filed in the wrong court (Smith cannot collaterally attack his indictment, the proceedings of the criminal court, or the proceedings of the civil commitment courts in this Court). Smith's suit must be dismissed.

### **Factual and Procedural Background**

Dr. Smith is the subject of pending criminal charges and civil commitment proceedings arising out of his hiring a hitman in April 2012 to kill the attorney who represented Smith's previous wife in the couple's divorce. Investigators from the Mississippi Attorney General's Office foiled Smith's murderous plot. Since April of 2012, Smith has been the subject of criminal charges pending before the Leflore Circuit Court,

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<sup>3</sup> Code Section 7-5-67 authorizes the investigators with the Attorney General's office to investigate crime, prevent crime, and make arrests "anywhere within the State of Mississippi."

civil commitment proceedings before the chancery courts of Leflore, Hinds, and Rankin counties, and appeals of those civil proceedings to the Mississippi Supreme Court. What do these cases pending in other courts have to do with this lawsuit filed in the Hinds Circuit Court? Smith, unhappy with the conduct and rulings in those seven cases, has filed this action alleging that he has suffered “loss of property and loss of liberty based on the unlawful and illegal acts of Defendant Hood . . . in at least seven (7) cases and appeals,” citing the seven above referenced cases. *See* Amended Complaint at ¶ 1. The proper courts to determine whether there has been “unlawful and illegal acts” in these “seven cases and appeals” are the courts which are presiding over those cases and appeals. This Court need progress no further before realizing that something is gravely amiss with Smith’s legal antics.

**I. Smith’s Leflore County Circuit Court criminal proceedings and subsequent involuntary civil commitment to the State Hospital.**

Reported decisions and other court filings provide the relevant background and facts for resolving this purely legal issue question.

“On April 28, 2012, Keaira Byrd and Derrick Lacy went to the law office of Lee Abraham intending to kill him.” *Smith v. Chastain*, 2015 WL 1206918, at \*1 (S.D. Miss. Mar. 17, 2015). “Agents from the Mississippi Attorney General’s Office were in Abraham’s office when Byrd and Lacy arrived. [fn - The agents were present because the Mississippi Attorney General’s Office was investigating a murder-for-hire plot against Abraham.]” *Id.* Mississippi Code Section 7-5-67 authorizes investigators with the Attorney General’s office to prevent crime, investigate crime, and make arrests

“anywhere within the State of Mississippi.” Miss. Code Ann. § 7-5-67. “The agents shot both Byrd and Lacy, and Byrd died as a result of his injuries.” 2015 WL 1206918, at \*1.

A search of Smith’s office revealed a video recording of a meeting between Smith and Byrd during which Smith offered to pay Byrd \$20,000 to kill Abraham. *Id.*; *see also id.*, at \*4 (“On the recording, Smith and Byrd discussed Smith’s paying Byrd \$20,000.00 to kill Abraham, and **Smith told Byrd he (Smith) needed proof of the kill, that Byrd should take a picture of Abraham with a bullet between his eyes.**” (emphasis supplied)).

“Smith was arrested on April 29, 2012, and charged with capital murder for Byrd’s death.” *Id.*, at \*1. “On August 29, 2012, the Leflore County Grand Jury returned two indictments against Smith.” *Id.* “The first indictment charged Smith with one Count of capitol [sic] murder for Byrd’s death, and one Count of conspiracy (with Lacy and Byrd) to murder Abraham.” *Id.* “The second indictment charged Smith with one Count of conspiracy (with Robinson) to obtain a firearm and person to murder Abraham.” *Id.*

On October 15, 2014, the Leflore Circuit Court found Smith to be incompetent to stand trial and ordered that the State proceed with civil commitment proceedings under Mississippi Code Sections 41-21-61 to 41-61-107, as U.C.C.C.R. 9.06 contemplates. *See Order to Institute Civil Commitment Proceedings* at p. 3-4, Ex. 2.

After a series of hearings, in January 2015 the Leflore Chancery Court ordered Smith to be involuntarily committed to the State Hospital at Whitfield. *See Order of Involuntary Civil Commitment, Ex. 3.*<sup>4</sup>

In February 2015, Smith requested a hearing in the Hinds Chancery Court seeking his release from involuntary civil commitment. After conducting a hearing, the Hinds Chancery Court denied Smith's request for release and issued an "Order of Continued Commitment." *See Order of Continued Commitment, Ex. 4.*

Since February 2015, the Hinds County Chancery Court has conducted multiple hearings regarding Smith's mental state and has ordered Smith to remain involuntarily committed to the State Hospital at Whitfield. *See, e.g., Order, Ex. 5.*

Smith's appeals from the Leflore and Hinds Chancery Courts are pending. *See Ralph Arnold Smith, Jr v. Mississippi Department of Mental Health*, Supreme Court, Cause No. 2016-TS-00987; *Ralph Arnold Smith, Jr v. State of Mississippi*, Supreme Court, Cause No. 2015-CA-01163.

## **II. Smith has continued to pursue a strategy of vexatious litigation**

### **A. Smith has filed numerous unsuccessful motions, petitions, and complaints seeking to disrupt his criminal and civil commitment proceedings.**

Since Smith's April 2012 arrest, Smith's counsel has filed numerous unsuccessful collateral actions in various courts seeking to disrupt his criminal and civil commitment

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<sup>4</sup> Although civil commitments are generally confidential proceedings conducted under seal, Smith asked the Hinds County Chancery Court and the Mississippi Supreme Court to issue orders unsealing these matters and making the files public. The courts agreed and entered such orders. *See Order, Ex. 6; Order Unsealing Case, Ex. 7.*

proceedings, including filing lawsuits seeking damages and injunctive relief from participants in those proceedings. *See* Appendix A. This lawsuit is merely the latest in a series of unsuccessful legal maneuvers by Smith. There are two predictable patterns to Smith's improper litigation strategy. First, Smith repeatedly raises the same unsuccessful legal arguments in multiple courts. Second, Smith seeks to harass participants in these seven state court proceedings by filing numerous collateral lawsuits seeking monetary damages from them personally, injunctions restraining their conduct, and even their removal from office. *See* Appendix A. This lawsuit follows that pattern.

**B. Smith's Amended Complaint seeks to relitigate issues pertaining to – and already decided in – Smith's criminal cases in Leflore Circuit Court.**

Given that Smith recorded himself hiring the hitman, Smith's defense to the criminal charges pending in Leflore Circuit Court has included multiple attempts to exclude the videotape evidence by alleging that Attorney General's office conducted an "unlawful" investigation. Smith has also argued that the death of the hitman (Kearia Byrd) was not connected to Smith's retention of his murderous services but was the result of an alleged "execution-style killing" ordered by Attorney General Jim Hood. Unsurprisingly, the Leflore Circuit Court and a federal court<sup>5</sup> have repeatedly rejected

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<sup>5</sup> In connection with seeking a federal court order enjoining his criminal prosecution, Smith argued to the federal court in *Smith v. Hood*, 2013 WL 208910 (N.D. Miss. Jan. 17, 2013), that his prosecution was being conducted in bad faith by state officials. The federal court found that "[t]here is no hint of any ulterior motive for the prosecution. A person Smith is accused of conspiring with to murder Abraham is now dead as a result of a gunfight at the intended victim's office. There is no reason to believe that an attempt to impose criminal responsibility for this homicide is intended to harass Smith." *Id.* at \*2.



these arguments. Now, Smith has filed those same legal arguments with this court (word-for-word) and attached to his complaint exhibits and briefs from the Leflore criminal case. *See* Amended Complaint at ¶ 1 (containing crime scene photograph and autopsy report); Amended Complaint Exhibits “C” (brief filed in Leflore Circuit Court) and “D” (“expert report” filed in Leflore Circuit Court)<sup>6</sup>. The arguments asserted in the Amended Complaint are clearly aimed at relitigating and undermining the criminal charges in Leflore Circuit Court.

For example, Smith filed a “Motion to Suppress Evidence” which argued that the Attorney General was a member of the judicial branch of government and lacked constitutional or statutory authority to investigate criminal activity. *See* Motion at ¶¶ 8, 12, 13, 16, Ex. 8. On January 10, 2013, the Circuit Court rejected the argument and denied the motion. *See* Order at 1, 2, Ex. 9.

Smith then filed a petition for interlocutory appeal with the Mississippi Supreme Court arguing that the that the Attorney General was a member of the judicial branch of government and lacked constitutional or statutory authority to investigate his criminal activity. *See* Petition for Interlocutory Appeal at 5-13, Ex. 10. On February 20, 2013, the Supreme Court denied the petition. *See* Order, Ex. 11.

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<sup>6</sup> The “expert report” was written by Michael Levine on behalf of Smith and filed in the Leflore criminal case. Mr. Levine (who has been featured on *The Colbert Report* and who co-hosts *The Expert Witness Radio Show*, with multi-instrumentalist, singer-songwriter and recording artist Mark Marshall) has not been qualified or accepted as an expert by the Leflore Circuit Court.

In July 2013, Smith filed a second motion with the Leflore Circuit Court arguing that the Attorney General was a member of the judicial branch of government, lacked constitutional authority to investigate criminal activity, and that statutes authorizing the Attorney General to investigate crimes should be declared unconstitutional. *See* Motion to Declare Code Sections 7-5-59 and 7-5-67 Unconstitutional and Void, and to Void All Law Enforcement Acts of the Attorney General's Personnel at 9-24, Ex. 12. In August 2013, the Leflore Circuit Court again rejected the argument and denied the motion. *See* Order, Ex. 12.

On January 3, 2014, Smith filed a motion asking the Leflore Circuit Court to reconsider its January 2013 and August 2013 orders on this subject. *See* Motion to Reconsider, Ex. 14. On January 31, 2014, Smith filed a "Motion to Suppress and to Void Arrest Warrant" repeating again the same arguments about the Attorney General and seeking again to declare Code Sections 7-5-59 and 7-5-67 unconstitutional. *See* Motion to Suppress, Ex. 15.

Finally, the Leflore Circuit Court had had enough. On June 24, 2014, Leflore Circuit Court sanctioned Smith's counsel \$1,359.76 for continuing to file motions asserting that the Attorney General was a member of the judicial branch of government and lacked constitutional or statutory authority to investigate criminal activity after the court has determined that the argument was without merit. *See* Sanctions Order, Ex. 1.

Having already lost these same issues before the Leflore Circuit Court, in December 2014 Smith filed a motion in the Leflore Chancery Court civil commitment proceeding which attached the same declaration of "expert" Michael Levine and argued

that the Attorney General and his office had undertaken “illegal acts.” *See* Motion to Exclude Attorney General at ¶¶ 2, 4., Ex. 16. The Leflore Chancery Court denied the motion. *See* Order Denying Motion to Exclude Attorney General, Ex. 17.

### **Argument**

#### **I. Smith’s claims are wrong as a matter of law and appropriately resolved on summary judgment.**

A motion for summary judgment may be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* Miss. R. Civ. P. 56. This matter presents three legal questions which are appropriately resolved on summary judgment. First, Smith has no legal authority to file a quo warranto action. Second, Smith cannot legally obtain a declaratory judgement in this Court for the alleged “loss of property and loss of liberty based on the unlawful and illegal acts of Defendant Hood . . . in at least seven (7) cases and appeals” which are pending in various chancery and circuit courts and/or are on appeal to the Mississippi Supreme Court. *See* Amended Complaint at ¶ 1. Third, even if the matter was properly before this Court, Smith’s contention that the Attorney General is a judicial branch official who violated the constitution by investigating and foiling Smith’s murder-for-hire plot is wrong as a matter of law.

#### **II. Smith has no standing to file a quo warranto action or to seek declaratory relief of this nature from this Court.**

##### **A. Smith fails to meet the mandatory requirements for a private or public quo warranto action.**

A quo warranto action to remove an elected official from office has only two forms: a public action and a private action. *State ex rel. Holmes v. Griffin*, 667 So. 2d 1319, 1323 (Miss. 1995). Each form has specific restriction regarding who can file such an action. Smith lacks the authority to file either type of quo warranto action and his claim must be dismissed.

A public quo warranto seeking removal from office of a public official may only be brought by the Attorney General or a district attorney. *Holmes*, 667 So.2d at 1323. Although Smith's mental psychosis may lead him to believe that he is either the Attorney General or a district attorney, he is neither. Thus, the matter before the Court cannot be considered to be a public quo warranto action.

A private quo warranto may be brought *only* by a person who is claiming that they are the rightful occupant of the office. *Holmes*, 667 So.2d at 1323. The plaintiff "in a private writ of quo warranto must stand on the strength of **his entitlement** to the office as opposed to the weaknesses of the person alleged as not properly holding the office." *Id.* (emphasis supplied). In other words, if Smith had won the election for Attorney General and Jim Hood was wrongfully refusing to turn the office over to him, Smith could bring a private quo warranto. However, because Smith cannot and does not assert any right to hold the office of Attorney General, Smith's private quo warrant is improper and must be dismissed. As the Supreme Court held in *Holmes*:

In summation, because this was not a suit to try ones's right to office or ousting a holdover person, this was properly not a private writ as was used. Instead, this case dealt with the constitutional eligibility of any person's right to hold the position of chancellor. In other words, the unlawful holding of an office because of an alleged lack of necessary requirements

was the real issue. Therefore, this was a case that should have been a public writ of quo warranto brought by the attorney general or district attorney. Rather, this case was brought under the inapplicable private writ. Thus, since the attorney general or district attorney did not bring the suit, **we find that it was properly dismissed as there was not a proper party with standing involved to pursue the claim.**

667 So. 2d at 1324-25 (emphasis supplied). Accordingly, this Court must follow the direction of the Supreme Court in *Holmes* and dismiss this quo warranto action.<sup>7</sup>

**B. Rule 57 does not permit Smith to seek a declaratory judgment in this Court which collaterally attack orders issued by, or proceedings in, other courts.**

The Amended Complaint also seeks declaratory relief for Smith's alleged "loss of property and loss of liberty based on the unlawful and illegal acts of Defendant Hood . . . in at least seven (7) cases and appeals" which are pending in various state trial courts and/or are on appeal to the Mississippi Supreme Court. *See* Amended Complaint at ¶ 1. Smith is not entitled to a declaratory judgment from this Court on those topics for two reasons. First, this Court has no authority to issue a declaratory judgment reviewing or

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<sup>7</sup> Smith will note that the Supreme Court in *Holmes* affirmed the circuit court's dismissal of the improper private quo warranto but did, itself, address the merits of the claims. That the Supreme Court considered the merits of the challenge in *Holmes* does not save Smith's complaint from dismissal by this Court. First, the Supreme Court clearly affirmed the circuit court's decision to dismiss the matter as an improper private quo warranto. 667 So.2d at 1325. Second, in *Holmes* the proper party to bring a private quo warranto action (the candidate who lost the election and who was claiming a right to the office) appeared in the *Holmes* quo warranto action. *Id.* at 1320 ("James, who was the losing candidate, 'co-signed' the complaint during the trial."). No such proper party appears in this case. Third, unlike *Holmes*, which presented a "unique first impression question," both the Mississippi Supreme Court and the Leflore Circuit Court have already found the Attorney General to be a member of the executive branch. Smith does not present a "first impression question" which requires resolution by this Court.

interfering with decisions or proceedings occurring before other courts. Second, even if this Court could review decisions or proceedings from other courts, Smith's requested relief does not fit within the limitations of Rule 57.

First, a declaratory judgment cannot be used to collaterally attack proceedings or rulings from other courts. The Amended Complaint clearly asks this Court to review alleged "unlawful and illegal acts of Defendant Hood . . . **in** at least seven (7) cases and appeals." See Amended Complaint at ¶ 1 (emphasis supplied). Proceedings **within** a case pending before another court are not properly before this Court. Smith's complaints about the Attorney General's actions "**in**" those cases must be raised in the courts presiding over those cases.

Indeed, even more troubling, Smith already raised (and lost) these same arguments in multiple motions presented to the Leflore Circuit Court and other courts. The only court that may directly or indirectly review the rulings of the Leflore Circuit Court is the Mississippi Supreme Court.<sup>8</sup> Pursuant to *Hood v. Perry Cty.*, a declaratory judgment claim which is an "attempt to make an end-run around" the "scheme for appeal" is not proper and must be dismissed. 821 So. 2d 900, 902 (Miss. Ct. App. 2002).<sup>9</sup>

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<sup>8</sup> Before filing with this Court, Smith filed a petition for interlocutory review asking the Supreme Court to review the Leflore Circuit Court's ruling on the motion to suppress and the Attorney General's constitutional authority. See Petition, Ex. 10. The Supreme Court denied the petition. See Order, Ex. 11. Now, Smith improperly asks this Court to perform that same interlocutory review.

<sup>9</sup> Without waiving the defense, the Attorney General is not asserting at this time that the decisions of the Leflore Circuit Court qualify for the doctrines of res judicata or collateral estoppel. However, res judicata and collateral estoppel do serve to bar relitigation before this Court of matters which were actually litigated or could have been

Second, even if this Court could review decisions or proceedings from other courts, Smith's requested relief does not fit within the limitations of Rule 57 governing declaratory judgments. "The purpose of Rule 57 is to create a procedure by which rights and obligations may be adjudicated in cases involving an actual controversy **that has not reached the stage at which either party may seek a coercive remedy**, or in which **the party entitled to such a remedy fails to sue for it.**" *Edwards v. Roberts*, 771 So. 2d 378, 381 (Miss. Ct. App. 2000) (quoting M.R.C.P. 57 cmt; emphasis supplied). In this matter, Smith has already litigated these same issues in his criminal cases pending in Leflore Circuit Court. A separate declaratory action in this Court is not permitted nor necessary, and must be dismissed in favor of the proceedings in the Leflore Circuit Court<sup>10</sup>. *See Edwards*, 771 So. 2d at 381 (affirming dismissal of declaratory claim and noting that the proper use of "declaratory judgment proceedings [is] when the controversy is not yet ripe for any other judicial decision. That was not the situation here, as the bankruptcy court was not only available in the abstract but had its jurisdiction already invoked.")

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litigated in the civil commitment proceedings before the Leflore, Rankin, and Hinds County Chancery Courts.

<sup>10</sup> Relatedly, this Court has the discretion to deny an otherwise proper request for a declaratory judgment when the requested "judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding." M.R.C.P. 57(a). The declaratory judgment sought by Smith would not terminate any of the seven pending cases which are the basis for Smith's alleged loss of liberty and property.

**III. Smith's separation of powers argument is wrong as a matter of law.**

Assuming it proper for this Court to entertain this collateral attack on the proceedings before the Leflore Circuit Court and other courts, Smith's constitutional claim is without legal merit.

Article 6, Sections 173 and 174 of the Mississippi Constitution established the office of the Attorney General and the offices of district attorneys. According to Smith, because Article 6 is labeled "Judiciary," all officers referenced within Article 6, including the Attorney General and district attorneys, are therefore judicial branch officers. Based on that demonstratively false conclusion, Smith then argues that the Attorney General has violated the separation of powers provision (and somehow forfeited his office) by undertaking to investigate Smith's criminal activities, such law enforcement actions are considered to be a function of the executive branch. Both the premise and conclusion of Smith's argument was rejected by the Supreme Court in *Dye v. Hale*.

Smith's entire Amended Complaint rests on the fact that Article 6 is labeled "judiciary." That label, according to Smith, is outcome determinative. However, in *Dye v. Hale*, the Mississippi Supreme Court clearly rejected that very argument when it determined that the Lieutenant Governor was a member of both the executive and judicial branches. 507 So. 2d 332, 343 (Miss. 1987). The *Dye* Court found the article labels to be of no relevance to the question of constitutional authority and separation of powers.

To be sure, the office of Lieutenant Governor is created and defined in a series of constitutional sections found in Article 5 of the Constitution. Article 5 is labeled "Executive," and this we are told places the Lieutenant



Governor exclusively within the Executive Department of government. We think the import of the constitution's article labels more modest. They are a mere **facility of convenience**, adding or detracting nothing from the content of the substantive language of the various sections of the constitution. Indeed, **the article labels carry no more significance than do the section numbers.**

*Id.* at 346, no. 20 (emphasis supplied). Even more fatal to Smith's rejected label-centric argument, the very examples used by the Supreme Court in *Dye* to demonstrate the irrelevance of article labels were the Attorney General and district attorneys.

Indeed, the article labels carry no more significance than do the section numbers.

For example, **the offices of Attorney General (Art. 6, § 173) and District Attorney (Art. 6, § 174) are found in the article labeled "Judiciary," yet these offices are commonly thought of as belonging to the Executive Department of government.** Moreover, qualifications for membership on a county board of supervisors are provided in the "Judiciary" article (Art. 6, § 176), but this does not exclude supervisors from the exercise of legislative, executive or administrative functions. Beyond this we find liberally sprinkled through Article 4, labeled "Legislative Department" duties and powers respecting executive and judicial officers.

*Id.* (emphasis supplied). Smith's theory that all officers created in Article 6 are judicial officers was also rejected in *Jackson v. State*, 311 So.2d 658 (Miss. 1975). Despite the fact that offices of district attorney are created within Article 6 labeled "judiciary," the Supreme Court held that the "district attorney, of course, would be an officer of the executive department of government, as distinguished from the judicial department." *Id.* at 661.

This Court need go no further than the holdings in *Dye* and *Jackson* to reject Smith's legal contention that the Attorney General is a member of the judicial branch.

However, should this Court proceed further, it is also clear that the Constitution has granted the Attorney General very broad executive branch authority to enforce the laws of the State. The Attorney General's office is cloaked with extensive common law authority by the Mississippi Constitution. As the Supreme Court confirmed long ago, the “creation of the office therefore by the Constitution without prescribing his powers, by implication adopted his common-law powers, none of which can be taken away from him by the Legislature.” *Dunn Const. Co. v. Craig*, 2 So. 2d 166, 175 (Miss. 1941) (Anderson, J. concurring); *Kennington-Saenger Theaters v. State ex rel. Dist. Atty.*, 18 So.2d 483, 486 (Miss. 1944) (The “creation of the office of Attorney General by the constitution vested him with these common law duties, which he had previously exercised as chief law officer of the realm.”)<sup>11</sup>. The broad common law powers of the Attorney General include, but are not limited to, the authority to enforce the criminal laws of the state by initiating and maintaining criminal prosecutions.

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<sup>11</sup> It is also true that regardless of the generalized categories of “judicial,” “legislative,” or “executive” branches, a constitutional officer who is exercising authority granted to him by the constitution cannot be said to violate the separation of powers provision of the Constitution when exercising those powers. This is because the specific provisions of the Constitution granting authority to a particular office control over any generalized provision regarding the separation of powers. “[T]here is no natural law of separation of powers. Rather, the powers of government are separate only insofar as the Constitution makes them separate.” *Dye*, 507 So. 2d at 346. As *Dye* noted, the constitution vests within the Governor “powers arguably legislative in a generic sense. He may call the legislature into extraordinary session (Art. 5, § 121), recommend legislation (Art. 5, § 122), approve legislation (Art. 4, §§ 72, 73) or veto the same (Art. 4, §§ 72, 73). No one suggests that the Governor violates separation of powers when he approves a piece of legislation even though his approval of it is as integral a part of the law-making process as is approval by the House and Senate.” 507 So. 2d at 346 n.21. Or, stated differently, Article 1, § 1 cannot be read to take away authority invested in an office by another provision in the same Constitution. *Id.* at 343.

At common law the duties of the attorney general, as **chief law officer** of a realm, were numerous and varied. He was chief legal adviser of the crown, was entrusted with the management of all legal affairs, and prosecution of all suits, criminal and civil, in which the crown was interested. He had authority to institute proceedings to abate public nuisances, affecting public safety and convenience, to control and manage all litigation on behalf of the state, and to intervene in all actions which were of concern to the general public.

*State ex rel. Patterson for Use and Benefit of Adams County v. Warren*, 180 So.2d 293, 299 (Miss. 1965) (emphasis supplied); *Gandy v. Reserve Life Ins. Co.*, 279 So. 2d 648, 649 (Miss.1973) (Attorney General has “the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the state, preservation of order and the protection of public rights”); *Dunn Const. Co.*, 2 So. 2d at 174 (noting that the Attorney General’s authority “is not confined to the enforcement of the criminal laws”). In sum, “the Attorney General has many constitutional, statutory, and common law duties, but ‘paramount to all of his duties, of course, is his duty to protect the interests of the general public.’ ” *State v. Culp*, 823 So. 2d 510, 514-15 (Miss. 2002) (quoting *State ex rel. Allain v. Miss. Pub. Serv. Comm'n*, 418 So.2d 779, 782 (Miss. 1982)).

Furthermore, the Legislature has chosen to explicitly confirm the authority of the Attorney General, as an executive branch officer, to investigate crimes and to make arrests. The Legislature enacted Code Section 7-5-67 which provides that:

Persons employed by the Attorney General as investigators in the Public Integrity Division whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal laws of this state shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi.

Miss. Code. Ann. § 7-5-67. Given that the Constitution authorizes the Attorney General to serve as the State's "chief law officer" and has cloaked him with broad authority to enforce criminal law, Code Section 7-5-67 does not violate any provision of the Constitution and confirms the Attorney General's legal authority to have investigated and foiled Smith's murder-for-hire criminal plot.<sup>12</sup>

### **Conclusion**

For the reasons set forth above, Smith's claims for relief fail as a matter of law and the Amended Complaint must be dismissed.

This the 27<sup>th</sup> day of July, 2016.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI

/s/Harold E. Pizzetta, III  
HAROLD E. PIZZETTA, III, MSB NO. 99867  
ASSISTANT ATTORNEY GENERAL

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<sup>12</sup> Smith's contention that an alleged violation of the separation of powers provision results in the immediate forfeiture of one's constitutional office merits only a footnote of discussion. Article 1, § 2 provides that a person's "acceptance of an office in" one branch of government shall operate to vacate any office held by the person in a separate branch of government. See Miss. Const. art 1, § 2. The Attorney General has accepted no other "office" in a separate branch of government. Even if Smith was correct that the Attorney General lacked the constitutional authority to investigate crimes, such an error by the Attorney General and the legislature would still not be the "acceptance of an office" in another branch of government.

Office of the Attorney General  
Civil Litigation Division  
Post Office Box 220  
Jackson, Mississippi 39205-0220  
Telephone: (601) 359-3816  
Facsimile: (601) 359-2003  
hpizz@ago.state.ms.us

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this day filed the above and foregoing document with the Court's MEC system, which will automatically send notice to all counsel of record.

This, the 27<sup>th</sup> day of July, 2016.

/s/ Harold E. Pizzetta, III  
Harold E. Pizzetta, III