

Serial: **198401**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-M-00397

***IN RE: OFFICE OF THE HINDS
COUNTY PUBLIC DEFENDER***

EN BANC ORDER

The Hinds County Public Defender’s Office (“HCPDO”) has filed motions for the recusal of Circuit Judge Jeff Weill Sr. in fifty-five cases, and for writs of prohibition or mandamus precluding Judge Weill from excluding Assistant Public Defender Alison Kelly from Judge Weill’s cases. The Court, after considering the submissions and briefs of the parties and of the amicus curiae, finds and orders as follows:

Appointment and Removal of the Hinds County Public Defender

Mississippi Code Section 25-32-9, which addresses the appointment of public defenders to represent indigent defendants, provides that:

When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the public defender shall represent said person unless the right to counsel be waived by such person.¹

So, according to the statute, by operation of law, the HCPDO became counsel for each of the fifty-five defendants whose cases are before us today because they signed affidavits stating that they were “indigent and unable to employ counsel.” These defendants—and all

¹ Miss. Code Ann. § 25-32-9(1) (Rev. 2010) (emphasis added).

Hinds County defendants in the future who have met the statute’s requirements—already were represented by the HCPDO when they appeared before Judge Weill, without any necessity of an appointment.

Under certain circumstances, a circuit judge may remove a public defender and appoint separate counsel for indigent defendants. Section 25-32-13 provides that when:

the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15, . . .²

By its specific language, this statute allows the circuit judge to remove the public defender upon a finding of “conflicts of interest” or “other good cause shown.” When a circuit judge removes a public defender from a case pursuant to this statute, we hold that the circuit judge shall, upon request of the defendant or by the public defender so removed, state on the record all facts and circumstances that support the removal of the public defender from the representation.

In his submission in response to the petitions before us today, Judge Weill informs us that he has found good cause “for not utilizing the services of the public defender’s office as a whole,” and that “the current circumstances prohibit the appointment of any HCPDO staff in [his] court,” and that the potential assignment of Kelly “disqualifies the HCPDO as a whole until remedial action is taken by [Hinds County Public Defender] Purvis-Harris.”

² Miss. Code Ann. § 25-32-13(1) (Rev. 2010).

Judge Weill’s reasons may be divided into two categories: first, his view that Kelly is incompetent to practice law, and second, his allegation that Kelly has committed incidences of sanctionable conduct.

Competency to Practice Law

Most of Judge Weill’s allegations concern the first reason—his view that Kelly is not competent to practice law. It is true that Section 25-32-13’s reference to “good cause” may, in extreme circumstances, involve particular, articulable acts of incompetence in a certain case. And so long as Judge Weill—upon request of the removed public defender—provides evidence of alleged incompetence displayed in the case sufficient to reach the level of “good cause,” we will not disturb his decision.

But Section 25-32-13 is not a substitute for the bar complaint process. An adjudication of incompetency to practice law is within the exclusive province of this Court.³ And, absent a finding through the bar complaint process that Kelly is incompetent to practice law, Judge Weill is without authority to deny Kelly the right to practice law before him, based on his belief that she generally is incompetent. Additionally, it would be inappropriate and premature for this Court to review the merits of Judge Weill’s allegations concerning

³ See Miss. R. Discipline Grounds for Discipline (“The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.”); Miss. R. Prof’l. Conduct 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”); Miss. R. Discipline 1(a) (“The Supreme Court of Mississippi (the Court) has exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys, and hereafter such proceedings shall be conducted in accordance with these rules.”).

Kelly’s general competency to practice law, as those allegations have not reached this Court through the proper channels. Therefore, we decline at this time to address Judge Weill’s allegation that Kelly is incompetent to practice law.

Sanctionable Conduct

Judge Weill also alleges that Kelly previously has engaged in numerous acts of sanctionable misconduct, and that the accumulation of that misconduct supports “good cause” to exclude her from representing indigent defendants before him. We have reviewed carefully each of the incidences alleged by Judge Weill, and we do not find them sufficient—either individually, or taken as a whole—to merit the extreme sanction of excluding Kelly from appearing before Judge Weill.

Allegations of a particular attorney’s contemptuous misconduct in the trial court may be subject to a finding of civil or criminal contempt and sanctions, provided that all due process requirements are satisfied in the contempt proceedings, and further providing that the differing burdens and procedures associated with civil and criminal contempt allegations are recognized.⁴

For our purposes today, we have observed in Judge Weill’s allegations several incidences that—had they been properly developed, and assuming all of Kelly’s due process rights had been properly protected—very well may have justified some level of sanction. But for the most part, these alleged incidences occurred with no hearing, no finding of contempt, and no issuance of any sanction. And while individual sanctions may have been within Judge

⁴ See, e.g., *Purvis v. Purvis*, 657 So. 2d 794 (Miss. 1994) (discussing the difference between civil and criminal contempt).

Weill's discretion in some of the incidences, we are not persuaded that Judge Weill's allegations of inappropriate conduct justify the extreme sanction of excluding Kelly from representing indigent defendants in all future cases before him.

The Remedy

The HCPDO requests us to reassign to it the fifty-five cases Judge Weill assigned to private counsel. In the interest of the efficient administration of justice, we deny those motions, as the cases are in various stages of development, and the best interests of justice may be served by leaving them as they are. However, we do find it appropriate for the HCPDO, should it so desire, to inform each of its previous clients in the fifty-five cases before us, that they may choose to continue with the private counsel Judge Weill has appointed to represent them, or they may choose to have the HCPDO reassume their representation.

We reject the view expressed by Justice Kitchens in his separate statement that these potential communications—as authorized by this Court to merely inform the defendants of their rights—would be inappropriate. To the contrary, such communications under the circumstances before us would be quite appropriate. We do wish to make it clear, however, that the content of any such communication should include no more than this Court's determination that the defendant may choose whether to proceed with their current counsel or change their representation to the HCPDO, as provided by statute.

Recusal

The HCPDO also asks this Court to order Judge Weill’s recusal in all cases in which it appoints Kelly to represent the indigent defendant. The test for recusal is whether “it appears that the judge’s impartiality might be questioned by a reasonable person knowing all the circumstances.”⁵ While we find the animosity and vitriol that exists between Judge Weill and Kelly currently to be at a fairly high level, we also note that the stress, pressure, and aggressive atmosphere associated with criminal litigation often results in lawyers and judges skirting the line of appropriate conduct.

As to the matters before us today, we make no judgments on which party is more at fault, nor do we find a sufficient basis for ordering Judge Weill’s recusal in any pending or future case. In future cases in which the Hinds County Public Defender or a particular assistant public defender believes Judge Weill—or any circuit judge—should recuse from a particular case, he or she may file with that judge an appropriate motion to recuse, setting forth the particular facts and circumstances that suggest the circuit judge cannot preside impartially over the case.⁶

We urge all the parties before us—Judge Weill as a member of the judiciary; Purvis-Harris as a member of the Bar and as the Hinds County Public Defender; and Kelly, as a member of the Bar—to carefully examine the issues and to consider ways to ameliorate the problems that exist, so the judiciary may achieve the orderly administration of justice, the public may have confidence in the judicial process, and so that when Purvis-Harris appoints

⁵ URCCC 1.15.

⁶ *Id.*

Kelly to represent an indigent defendant before Judge Weill, the defendant, the victims, and their families will not be deprived of fairness or justice due to personal issues between the parties that are unrelated to the case.

The Court finds that the Motions for Leave to File Briefs of Amicus Curiae should be granted. Except to the extent provided otherwise in the foregoing findings and orders, all other motions pending in this matter are denied.

The Court further finds that this order should be filed in each of the following Cause Numbers:

Richard Epps v. State of Mississippi, 2015-M-00267
Calvin Williams, Jr. v. State of Mississippi, 2015-M-00268
Tramaine Callahan v. State of Mississippi, 2015-M-00269
Lawrence Luster v. State of Mississippi, 2015-M-00270
Eric Weston v. State of Mississippi, 2015-M-00271
Jeremy Thompson v. State of Mississippi, 2015-M-00272
Cedric Hawkins v. State of Mississippi, 2015-M-00273
Edward Samuel v. State of Mississippi, 2015-M-00274
John F. Gross a/k/a John Felix Gross v. State of Mississippi, 2015-M-00275
Earnest Ray Brown v. State of Mississippi, 2015-M-00276
Reginald Jackson v. State of Mississippi, 2015-M-00277
Jeremy Myers v. State of Mississippi, 2015-M-00278
Timothy Powell v. State of Mississippi, 2015-M-00279
Solomon McNulty v. State of Mississippi, 2015-M-00280
Antwan Smith v. State of Mississippi, 2015-M-00281
Larry Dunn v. State of Mississippi, 2015-M-00282
Theresa McDonald v. State of Mississippi, 2015-M-00283
Kenton Hurst v. State of Mississippi, 2015-M-00284
Jalesa Holt-Ball v. State of Mississippi, 2015-M-00285
James Pierre Williams v. State of Mississippi, 2015-M-00286
Troylanden Harris v. State of Mississippi, 2015-M-00287
Dewayne Thompson v. State of Mississippi, 2015-M-00288
Olajuwan Clement v. State of Mississippi, 2015-M-00289
Cedrick Jones v. State of Mississippi, 2015-M-00290
Ronnie Wayne Carpenter v. State of Mississippi, 2015-M-00291
LaQuita Richardson v. State of Mississippi, 2015-M-00292

Gerry Lewis v. State of Mississippi, 2015-M-00293
Victor Austin v. State of Mississippi, 2015-M-00294
Lorenzo Moore v. State of Mississippi, 2015-M-00295
Ervin Potts v. State of Mississippi, 2015-M-00296
Cameron Travelsted v. State of Mississippi, 2015-M-00303
William Mays v. State of Mississippi, 2015-M-00304
Kenneth Johnson v. State of Mississippi, 2015-M-00305
Jarvis Harper v. State of Mississippi, 2015-M-00306
Andre Luckett v. State of Mississippi, 2015-M-00307
Brandan Baham v. State of Mississippi, 2015-M-00308
Robert Simpson v. State of Mississippi, 2015-M-00309
Eric Clowers v. State of Mississippi, 2015-M-00310
Thomas McDaniel v. State of Mississippi, 2015-M-00311
Ben Hawkins v. State of Mississippi, 2015-M-00312
Rodriguez Paige v. State of Mississippi, 2015-M-00313
Ryan Cooper v. State of Mississippi, 2015-M-00314
Erica Johnson v. State of Mississippi, 2015-M-00315
April Alford v. State of Mississippi, 2015-M-00316
Mary Hicks v. State of Mississippi, 2015-M-00317
Malcolm Horton v. State of Mississippi, 2015-M-00318
Scott Foster v. State of Mississippi, 2015-M-00319
Cortaia Washington v. State of Mississippi, 2015-M-00320
David Thomas v. State of Mississippi, 2015-M-00321
Ladedrica Thomas v. State of Mississippi, 2015-M-00322
Chris Harrell v. State of Mississippi, 2015-M-00323
Joseph White v. State of Mississippi, 2015-M-00324
Jeffery Wesley v. State of Mississippi, 2015-M-00325
Octavius Booker v. State of Mississippi, 2015-M-00326
Matthew Jackson v. State of Mississippi, 2015-M-00327

SO ORDERED, this the 20th day of May 2015.

/s/ Jess H. Dickinson

JESS H. DICKINSON, PRESIDING JUSTICE

AGREES IN RESULT ONLY: COLEMAN, J.

KITCHENS, J., AGREES IN PART AND DISAGREES IN PART WITH SEPARATE WRITTEN STATEMENT JOINED IN PART BY KING, J.

CHANDLER, J., AGREES IN PART AND DISAGREES IN PART WITH SEPARATE WRITTEN STATEMENT JOINED IN PART BY KITCHENS AND KING, JJ.

KING, J., AGREES IN PART AND DISAGREES IN PART WITH SEPARATE WRITTEN STATEMENT JOINED BY KITCHENS, J.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-M-00397

***IN RE: OFFICE OF THE HINDS
COUNTY PUBLIC DEFENDER***

**KITCHENS, JUSTICE, AGREEING IN PART AND DISAGREEING IN
PART WITH SEPARATE WRITTEN STATEMENT:**

¶1. In general, I agree with Presiding Justice Dickinson’s analysis of the unseemly imbroglio which has come to us from the courtroom over which one of our circuit judges presides. However, I disagree that we should not order the recusal of Judge Weill from cases assigned to him in which Alison Kelly is an attorney of record, at least until the disciplinary matters they have filed against each other are resolved.

¶2. Judge Weill filed with this Court, under seal, more than seven hundred pages of documents, among them a copy of a Bar complaint that he has lodged against Ms. Kelly and a Judicial Performance Complaint which Ms. Kelly has lodged against Judge Weill.

¶3. As a threshold matter, I believe that everything in this case that has been filed under seal should be unsealed and subjected to public scrutiny, save and except the content of the Bar Complaint and the Judicial Performance Complaint. Under our Mississippi Rules of Court, the parties to such proceedings are entitled to confidentiality, and I do not believe that these parties should be treated any better, any worse, or any differently than others similarly situated. *See* Miss. R. Discipline 15(a); Miss. Comm’n on Judicial Performance R.4.

¶4. For a lawyer, to be the subject of a Bar complaint is one of the most serious and troubling events than can occur in one’s professional life. It is, in most instances, deeply

personal and emotionally disturbing, and it can be dominant in the accused lawyer's thinking until it is resolved and, in many cases, far beyond the time of its resolution. It would be unusual for an accused attorney not to harbor strong resentment for having been subjected to a Bar complaint, especially if the lawyer felt the complaint to be unwarranted.

¶5. Similarly, a complaint against a sitting Mississippi judge filed with our state's Judicial Performance Commission, in almost all instances is, to the judge, a deeply disturbing and highly personal occurrence, second only in seriousness to a judge's being indicted for a crime. Such a complaint can result in the judge's suspension, in his or her removal from office, in financial sanctions, or in public censure. In Mississippi, where the judiciary, for the most part, is elected by the people, the political consequences can be substantial and, perhaps, disastrous.

¶6. Today, a majority of the Mississippi Supreme Court tells a lawyer and a judge who have filed competing complaints against each other to return to the courtroom, together, and "make nice." Given the level of animus between the judge and the lawyer, which is evident from the filings before us, the majority's approach to the dysfunctionality that this tempestuous clash has produced may amount to little more than wishful thinking on this Court's part. The majority may have ordered a noble experiment that will fail with the result that the present problems will return to us at some future date, worse, perhaps, than they are now.

¶7. But even if the experiment succeeds, even if Judge Weill and Ms. Kelly can summon forth their best professional instincts and rise with dignity and decorum to the task of

conducting themselves in a civilized, polite manner while they are about the business of justice, what is the public to think?

¶8. The majority has correctly cited the controlling rule on judicial recusals, but in my judgment, has incorrectly applied it to the present problems.⁷ The “reasonable person” envisioned by the rule is, obviously, a member of the public, one who is not, as are we on the Supreme Court, a judicial insider. The rule assumes that this imaginary citizen has access to “all the circumstances.” To me, it is significant to note that, in this case, the public *does not* have such access, because we have chosen to deny it by keeping under seal almost all of the material filed by Judge Weill.

¶9. But on the basis of the information available to our reasonable person—the outsider trying to look in—what member of the public would, under existing circumstances, look in on a criminal trial over which Judge Weill was presiding and in which Ms. Kelly was

⁷Any party may move for the recusal of a judge of the circuit or county court if it appears that the judge’s impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or the party’s attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B.

representing the accused and have confidence that the judge, no matter how politely he conducted himself, could make rulings without thinking, and being influenced by, the knowledge that the lawyer has filed a judicial performance complaint against him? Would intelligent parents want their son or daughter to be represented by Ms. Kelly in a trial conducted by Judge Weill at this point in time? The answer is obvious: of course not!

¶10. This Court ought to interpret the recusal rule, indeed, all rules, in a practical and common-sense way. It simply is not prudent for this Court to permit trials to proceed, at this time, with Judge Weill on the bench and Ms. Kelly at counsel table. This is not to say that Judge Weill ought to be prohibited from presiding over cases in which Ms. Kelly participates as a means of punishing or penalizing him. Rather, it is to say that we, as the ultimate guardians of justice in this state, should not invite a lack of public confidence in the integrity of judicial proceedings when we have the means—and, I believe, the obligation—to avoid it. In this instance, the way to avoid it is to order Judge Weill’s recusal in Ms. Kelly’s cases.

¶11. While I agree with much of the majority’s order, I would require Judge Weill’s recusal in Ms. Kelly’s cases, and I would not have the public defender initiate contact with those of its former clients who now are represented by other lawyers. I agree with Justice King that such contacts should be made by the judiciary and not by attorneys.

KING, J., AGREES IN PART WITH THIS SEPARATE WRITTEN STATEMENT.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-M-00397

***IN RE: OFFICE OF THE HINDS
COUNTY PUBLIC DEFENDER***

**CHANDLER, JUSTICE, AGREEING IN PART AND DISAGREEING IN
PART WITH SEPARATE WRITTEN STATEMENT:**

¶12. I appreciate that the tone and admonitions of Presiding Justice Dickinson’s order cast the proper light on this situation. We have two people who are entangled in a tremendous personality conflict. Much of the fingerpointing between them is without basis. Some of the fingerpointing by both may be supported by the facts. I agree with Justice Dickinson that Section 25-32-13 is not a substitute for the bar complaint process and that this Court should therefore decline at this time to address Judge Weill’s allegation that Kelly is incompetent to practice law. I also agree with Justice Dickinson that, having reviewed each of the incidences alleged by Judge Weill, they are not sufficient—individually or taken as a whole—to merit the extreme sanction of excluding Kelly from appearing before Judge Weill. I also agree with Justice Dickinson’s position that, at this stage, there is insufficient evidence to compel Judge Weill’s recusal.

¶13. I must disagree, however, with Justice Dickinson’s position that these fifty-five cases should remain assigned by default to the private attorneys assigned by Judge Weill absent individual decisions by respective defendants to return to Hinds County Public Defender’s Office (HCPDO). “The efficient administration of justice” is not the correct standard governing such appointments. Judge Weill’s authority to appoint such outside counsel,

counsel ultimately paid for by Hinds County outside of HCPDO's budget, is tied to a finding of good cause, and this Court is finding that good cause is not apparent from the information before us.

¶14. I also take the position that all of the exhibits in this case should be removed from under seal (with the exception of the respective complaints against Kelly and Judge Weill). The citizens of Hinds County who are footing the bill for all of this behavior have no way of knowing the entirety of what has transpired. I see no evidence that unsealing the documents would create a possible danger to the parties or anyone else. While I appreciate the idea of not wanting to release additional fodder for a public spectacle, lack of transparency creates the danger of inaccurate public inference and speculation.

KITCHENS AND KING, JJ., AGREE IN PART WITH THIS SEPARATE WRITTEN STATEMENT.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-M-00397

***IN RE: OFFICE OF THE HINDS
COUNTY PUBLIC DEFENDER***

**KING, JUSTICE, AGREEING IN PART AND DISAGREEING IN PART
WITH SEPARATE WRITTEN STATEMENT:**

¶15. This Court has been asked to resolve a conflict between Hinds County Circuit Court Judge Jeff Weill, Sr. and the Hinds County Public Defender’s Office and Assistant Public Defender Alison Kelly. On January 14, 2015, after becoming aware that private counsel had been appointed for indigent defendants for whom she had already been appointed counsel at the county or municipal court level, Ms. Kelly filed at least one motion for clarification of representation. On January 15, 2015, Judge Weill wrote a letter to the Hinds County Board of Supervisors, noting that Ms. Kelly had been assigned by Michele Purvis Harris, the Hinds County Public Defender, to Judge Weill’s courtroom to represent indigent defendants. Judge Weill stated that “among many other problems with Ms. Kelly which I will not detail here, I have recently been informed that Ms. Kelly is engaged in the private practice of law” He also claimed that Ms. Kelly resides outside of Hinds County. Thus, he concluded that “good cause” under Mississippi Code Section 25-32-13 had been found to assign indigent defendants separately appointed counsel, something he had begun doing “recently.” On the same day, Judge Weill sent a letter to Ms. Purvis Harris complaining of Ms. Kelly’s conduct and stating that Ms. Kelly would “not be permitted to act as counsel for any indigent defendant on my docket in any capacity going forward.” He stated that if Ms. Purvis Harris

declined to reassign Ms. Kelly's pending cases on his docket, he would reassign all of Ms. Kelly's cases to separately appointed counsel. On or around January 20, 2015, Ms. Kelly and Ms. Purvis Harris filed motions for recusal in fifty-five cases on Judge Weill's docket. On or about January 28, 2015, they filed motions for stay of proceedings and requests for hearing until the motion for recusal was resolved. On or about February 10-13, 2015, Judge Weill denied the motions for recusal and removed or threatened to remove the Public Defender's Office as counsel for the cases. On or about February 17, 2015, the Public Defender's Office moved for reconsideration in several of the cases, which Judge Weill denied on or about February 18, 2015.

¶16. On February 24, 2015, the Public Defender's Office filed fifty-five petitions for judicial review and motions for writ of prohibition pursuant to Mississippi Rule of Appellate Procedure 48B, arguing that Judge Weill should recuse in these cases. It asked this Court to issue a Writ of Prohibition "staying all proceedings . . . pending a hearing on the recusal and other motions filed" and to enjoin "Judge Weill from appointing future indigent defendants to private counsel without at in-court hearing on 'good cause' where the HCPDO is properly noticed and in attendance." It also asked this Court to vacate the orders denying the motions for recusal. On February 26, 2015, Ms. Purvis Harris filed a letter with this Court clarifying the relief for which the Public Defender's Office asked. It desired "an immediate stay to prevent Judge Weill from appointing private counsel to these indigent clients rather than the Hinds County Public Defender (when there is no ethical conflict) until this Court has an opportunity to review and resolve this matter." It also explained the three categories of cases

involved. On February 27, 2015, Judge Weill filed with this Court a letter to which he attached an “confidential” exhibit under seal. The exhibit essentially asks this Court to trust Judge Weill that Ms. Kelly violates court rules and is unprofessional, without providing specific evidence or examples.

¶17. On March 6, 2015, Judge Weill filed twenty-seven orders removing the Public Defender’s Office as counsel and appointing private counsel for the defendants. Subsequently, on March 9, 2015, the Public Defender’s Office filed an “Emergency Petition for Writ of Extraordinary Relief” asking this Court to vacate those orders and order the cases at issue to be stayed pending a hearing by this Court. On March 19, 2015, the Public Defender’s Office filed a motion for writ of prohibition asking this Court to enjoin Judge Weill from assigning certain defendants to private counsel, and a motion for consolidation of the cases. On March 25, 2015, Judge Weill filed a response to the motion for writ of prohibition and motion to consolidate, opposing consolidation.

¶18. On April 2, 2015, this Court ordered Judge Weill “to submit to the Court a detailed account of the factual basis or bases, including any transcripts, affidavits, or other documents in support, for his decision to refuse to allow Allison Kelly, Esq., to appear in court before him, and to provide any additional legal argument supporting his right, if any, to do so” and we also gave Ms. Kelly five days to submit a response thereto. Judge Weill filed his response on April 10, 2015. Judge Weill argues that he “has *not* ‘banned’ APD Kelly from court.” Given Judge Weill’s January 15, 2015, representation to Ms. Purvis Harris that Ms. Kelly would “not be permitted to act as counsel for any indigent defendant on my docket in

any capacity going forward,” that argument is intellectually irreconcilable. While no formal court order has been entered, Judge Weill has clearly attempted to ban Ms. Kelly from his courtroom. He then attempts to justify the ban with legal arguments and approximately seven hundred pages of documentation of Ms. Kelly’s allegedly improper conduct. Ms. Kelly and the Public Defender’s Office filed a response on April 15, 2015, in which it argued, among other things, that Judge Weill had not demonstrated the “good cause” required by statute to remove Ms. Kelly and/or the Public Defender’s Office from its representation of these indigent clients. Ms. Kelly and the Public Defender’s Office thus ask this Court to hold that Judge Weill has failed to demonstrate that Ms. Kelly is incompetent or unqualified, that Judge Weill’s ban of Ms. Kelly from his courtroom must be rescinded, and that the Public Defender’s failure to assure Judge Weill that Ms. Kelly will not be assigned to represent defendants in his courtroom is not “good cause” that allows him to prohibit the Public Defender’s Office from representing defendants in his courtroom.

¶19. Having reviewed Judge Weill’s voluminous submission and the response of Ms. Kelly and the Public Defender’s Office, this Court finds that Judge Weill improperly banned Ms. Kelly from appearing in criminal cases assigned to his docket, and, as a result, improperly banned the entire Public Defender’s Office from appearing in criminal cases assigned to his docket. Having so found, this Court has directed the Public Defender’s Office to contact the defendants in the fifty-five cases at issue and inform them that, should they desire, the defendants may be represented by the Public Defender’s Office, or they may continue to be represented by the private counsel appointed for them by Judge Weill. In my view, the

responsibility to ascertain the desires of these fifty-five defendants should be placed upon Judge Weill rather than the Public Defender's Office. That process of ascertaining which counsel the defendants wish to represent them should occur on the record and in open court.

¶20. This Court's order also states that "we find the animosity and vitriol that exists between Judge Weill and Ms. Kelly to be at a fairly high level," yet then states "that the stress, pressure, and aggressive atmosphere associated with criminal litigation often results in lawyers and judges skirting the line of appropriate conduct." Having offered this justification for the animosity and vitriol, the majority declines to direct recusal in any of the fifty-five cases that are being addressed in today's order. The majority also states that "it would be inappropriate and premature for this Court to review the merits of Judge Weill's allegations concerning Ms. Kelly's general competency to practice law, as those allegations have not reached this Court through the proper process." While this Court may well have preferred that the allegations of Ms. Kelly's competency had reached the Court by a different process, they have nonetheless been placed squarely before this Court.

¶21. The apparent level of animosity and vitriol reflected herein appears to exceed "the stress, pressure, and aggressive atmosphere associated with criminal litigation." Because this Court has (1) found that Ms. Kelly and the Public Defender's Office were improperly banned from appearing in criminal cases on Judge Weill's docket, (2) found that the defendants in the fifty-five cases addressed by today's order must be given the right to choose between representation by the Public Defender's Office or representation by current appointed private counsel, and (3) found "the animosity and vitriol that exists between Judge Weill and Ms.

Kelly to be at a fairly high level,” the issue of recusal should be determined in these fifty-five cases. Moreover, this issue of recusal cannot be fairly adjudicated *without* addressing the merits of Judge Weill’s allegations of Ms. Kelly’s incompetency. Given this Court’s finding of a fairly high level of animosity and vitriol between Judge Weill and Ms. Kelly, where Judge Weill’s allegations of incompetency either appear to be or are determined to be without merit or shallow or trivial, Mississippi Rule of Appellate Procedure 48B would seem to require this Court to order the recusal of Judge Weill, rather than merely urging the parties to play nice.

¶22. Additionally, Mississippi Rule of Appellate Procedure 48A(c) states that “where parties shall file documents physically under seal with the clerk of the appellate courts, such documents shall remain sealed until the appellate court by order removes the seal.” The documents filed under seal, with the exception of the competing complaints, should be unsealed and made a part of the public record. Further, this Court should direct the recusal of Judge Weill in any of the fifty-five cases in which the defendants decide to be represented by the Public Defender’s Office and in which the Public Defender’s Office then assigns Alison Kelly to that case.

KITCHENS, J., AGREES WITH THIS SEPARATE WRITTEN STATEMENT.