

**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**MOTION NUMBER:** 2013-4-1908

**FILED**

**Trial Court Cases:**

**State of Mississippi vs. Ralph Arnold Smith, Jr.  
Circuit Court of Leflore County, Mississippi  
Cause Numbers 2012-0208 and 2012-0209**

**NOV 08 2013**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**Albert Lee Abraham, Jr. vs. R. Arnold Smith, Jr., M.D. and  
North Central Mississippi Regional Cancer Center  
Circuit Court of Leflore County, Mississippi  
Cause Number 2012-0053**

**IN RE: WILLIAM C. BELL**

**PETITIONER**

**PETITION FOR EXTRAORDINARY WRIT**

COMES NOW William C. Bell, pursuant to Rule 21 of the *Mississippi Rules of Appellate Procedure* and files this, his *Petition for Extraordinary Writ* and in so doing, respectfully requests that this Court issue its Writ granting the following relief:

1. Order that the trial court's November 5, 2013 Order imposing sanctions is void;
2. Vacate the trial court's November 5, 2013 sanctions order.

**Facts**

3. William C. Bell, as counsel for the defendant in two (2) criminal cases and one (1) civil case pending in the Circuit Court of Leflore County, Mississippi, filed a *Motion for Recusal of Judge* on October 25, 2013 in all three (3) cases. Certified copies of the three (3) recusal motions are attached to this Petition collectively as Exhibit "A".

4. Counsel served the motions by email and first class mail on Friday, October 25, 2013.

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5. Included in the October 25, 2013 emails to the trial court judge and other counsel was a request that the court hold a hearing on the recusal motions with at least ten (10) days notice, so that counsel could subpoena witnesses. Certified copies of the filed October 25, 2013 emails are attached collectively as Exhibit "B".

6. The trial court signed two (2) Orders on October 30, 2013, some three (3) business days after service of the recusal motions. The trial court filed the Orders November 5, 2013 and provided copies to counsel in the courtroom prior to a discovery hearing in the civil case. Certified copies of both Orders are attached collectively as Exhibit "C".

7. The Orders denied the recusal motions without a hearing, claiming that the recusal motions were meritless.

8. The trial court did not hold any hearing regarding sanctions prior to signing and entering the November 5, 2013 sanctions Orders.

9. The trial court judge did not provide any notice of the trial court judge's *sua sponte* sanctions orders.

### Law

10. The Fifth and Fourteenth Amendments to the *Constitution of the United States* guarantee that a court cannot deprive a person of life, liberty or property without due process of law. Article 3, §14 of the *Mississippi Constitution* guarantees the same due process rights.

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11. Due process requires notice and an opportunity to be heard. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965).

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12. "...Notice, whether of the time and place of a hearing, the contents of a complaint, or of the specific nature of a criminal charge, is the essence of due process." *Johnson v. Weston Lumber & Bldg. Supply Co.*, 566 So.2d 466, 469 (Miss.1990).

13. “Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that ‘The fundamental requisite of due process of law is the opportunity to be heard.’ *Grannis v. Ordean*, 234 U.S. 385, 394; 34 S.Ct. 779, 783 (1914). This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.”

*Mullane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314; 70 S.Ct. 652 (1950).

14. No notice of a hearing is a denial of due process. *Graves v. State*, 66 So.3d 148, ¶25 (Miss.2011).

15. “A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process.”

*Adams v. Mississippi State Oil & Gas Board*, 80 So.3d 869, ¶15 (Miss.Ct.App.2012).

16. “A judgment against one who was not given notice in the manner required by law of the action or proceeding in which judgment was rendered lacks all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is fairly administered.” *First Jackson Securities Corporation v. B.F. Goodrich Company*, 176 So.2d 272, 276 (Miss.1965) (citing 42 Am.Jur. Process, section 4 (1942)).

17. “It must be conceded that without process upon a proper party the proceedings of any court are void.” *First Jackson Securities Corporation* at 176 So.2d 276.

18. “It is universally recognized that no judgment, order or decree is binding upon a party who has had no notice of the proceeding against him.” *First Jackson Securities Corporation* at 176 So.2d 275-276.

19. “A party may point out at any time that a given judgment is void...”. *Hamm v. Hall* 693 So.2d 906, 912 (Miss.1997).

Conclusion

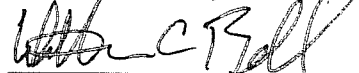
The trial court judge's orders imposing sanctions against the defendant's attorney (William C. Bell) are void for lack of due process. The trial court failed to provide notice of any possible sanctions, failed to provide notice of any hearing and failed to conduct any hearing whatsoever. The trial court's actions in issuing the sanctions orders are totally devoid of due process. This Court should find and order that the trial court's sanctions orders are void and vacate the orders.

WHEREFORE, PREMISES CONSIDERED, William C. Bell prays that this Court will issue its Writ finding and ordering that the trial court judge's November 5, 2013 sanctions orders are void; and further, issue its Writ vacating the trial court's November 5, 2013 sanctions orders.

William C. Bell respectfully requests that the Court treat this Petition as an emergency matter, and grant such other relief that the Court deems appropriate in the premises, including any relief in favor of the petitioner which the Court deems appropriate under Rule 21 of the *Mississippi Rules of Appellate Procedure*.

Respectfully submitted, this 8<sup>th</sup> day of November, 2013.

William C. Bell, Petitioner



William C. Bell, Bar No. 9328

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CERTIFICATE OF SERVICE

I, William C. Bell, Petitioner, do hereby certify that I have this day served the foregoing *Petition For Extraordinary Writ*, by United States mail with postage prepaid, and via email, as indicated, on the following:

Honorable L. Breland Hilburn  
PO Box 2114  
Jackson, MS 39225  
Also via email

Timothy H. Jones  
Assistant District Attorney  
PO Box 253  
Greenwood, MS 38935  
Also via email

H. Scot Spragins  
Hickman, Goza & Spragins, PLLC  
PO Drawer 668  
Oxford, MS 38655-0668  
Also via email

Ralph Chapman  
Chapman, Lewis & Swan  
PO Box 428  
Clarksdale, MS 38614  
Also via email

Jim Hood, Mississippi Attorney General  
c/o Harold Pizzetta, Esq.  
PO Box 220  
Jackson, MS 39205  
Also via email

This, the 8<sup>th</sup> day of November, 2013.



William C. Bell  
Simmons Law Group, PA  
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Bar No. 9328