

Baker Botts signs on as co-counsel in federal lawsuit against Montgomery County

By Jennifer Summer, jennifer.summer@hcnonline.com Published 8:14 pm, Friday, February 16, 2018

Photo: Michael Minasi, Staff Photographer



Judge Wayne Mack, Precinct 1 Justice of the Peace, presides on Tuesday, Jan. 30, 2018, at the Montgomery County West Annex.

As the federal lawsuit progresses against Montgomery County on invocations in courtrooms, the county recently entered into an agreement with an additional law firm that will serve as co-counsel.

Montgomery County Attorney J D Lambricht announced the agreement between the county and Baker Botts, a nationwide law firm with an office in downtown Houston, during Commissioners Court Tuesday.

"I received a call a few weeks ago from an attorney with Baker Botts stating their interest in joining us with this suit as co-counsel," Lambricht said. "The only monies that will be spent on this is out-of-pocket costs, but we do not perceive this costing us any money. We handle federal lawsuits all of the time, so it's not that we can't handle this case; we just wanted additional brainpower."

The addition of Baker Botts will be of no charge to the county since they will work pro bono alongside the County Attorney.

Plaintiffs with the Freedom of Religion Foundation originally filed suit against Precinct 1 Justice of the Peace Wayne Mack in March 2017 before clarifying their intentions, stating they were suing Mack in his official capacity as a justice of the peace.

"If anybody sues a county individual in their official capacity, that's the same thing as bringing a suit against the county," Lambricht said.

"We filed a motion to dismiss because of Mack's judicial immunity," said Hiram Sasser, deputy general counsel with First Liberty Institute, which represented Mack. "He was dismissed from the suit in a personal capacity. The main issue with this suit is whether it is under or not under the Supreme Court ruling in a previous case that an authority can order Mack to alter his policy on how he runs the courtroom."

In the suit, two attorneys and another person who was in Mack's courtroom on official business claim they felt prejudiced by Mack during separate dockets in 2014. The Freedom from Religion Foundation believes the religious prayer practice Mack initiated in his court violates the Establishment Clause of the First Amendment to the U.S. Constitution.

According to Lambright, the suit now only has two plaintiffs as the third was dismissed because there was no standing.

In his courtroom, Mack allows for voluntary chaplains to open ceremonies with an invocation and the Pledge of Allegiance. The volunteer chaplaincy program includes leaders from multiple faiths, such as Christian, Buddhist, Hindu and Mormon religious leaders.

"Our last time in court, we filed a motion to dismiss, which if the judge had allowed that, this would all go away and we'd have no lawsuit. But it will continue to proceed," Lambright said.

In two separate cases – Marsh v. Chambers (1983) and Town of Greece v. Galloway (2014) – the Supreme Court found that invocations before government meetings are fully consistent with the Constitution and an important part of America's history and tradition.

"This is not a slam dunk case by any means," Lambright said. "Eventually, a court could rule what Mack does in the courtroom is unconstitutional. We know for a fact the judge hearing our case doesn't like what Mack does and the one thing that sets this case off is the difference of legislative prayer and judicial prayer."

The case is set to be heard by the judge in January 2019.