

# Exhibit D State Commission on Judicial Conduct

PO Box 12265  
Austin, TX 78711-2265  
Tel. (512) 463-5533 · Toll Free: (877) 228-5750

For SCJC use only.

### Complaint Form

- If you are filing a complaint about more than one judge, please use a separate form for each judge.
- You may complete this form online before printing.
- Send the completed form and any additional pages or related documents to SCJC.

\* Indicates required fields. Please note that faxed complaints will NOT be accepted.

\*Your name: Samuel T. Grover, Esq.

\*Judge: Wayne L. Mack

\*Mailing Address: P.O. Box 750

\*Court Number: JP Precinct 1

\*City, State Zip: Madison, WI 53701

\*City and County: Montgomery, TX / Montgomery County

\*Date of Birth: 11/08/1985

Your Phones: Day ( 608 ) 256-8900

Evening (      )                     

Cell/Other (      )                     

Best time to call you: 9AM - 5PM  A.M.  P.M.

#### If your complaint involves a court case, please provide the following information:

Cause Number: _____	Status of your case: <input type="checkbox"/> Pending <input type="checkbox"/> Concluded <input type="checkbox"/> On appeal
Your attorney: _____	Opposing Attorney: _____
Address: _____	Address: _____
City/Zip: _____	City/Zip: _____
Phone Number(s): _____	Phone Number(s): _____

PLEASE FILL IN ALL INFORMATION AVAILABLE FOR ANY WITNESSES (attach additional pages as needed)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

What did this person witness?

What did this person witness?

**If you are submitting documents, please provide copies, not originals.**

*I understand that as part of the Commission's investigation the judge may be provided a copy of this complaint. Please note - the Commission will do its best to maintain your confidentiality, if you so request. However, it may not be possible for us to pursue our investigation without revealing your identity at some point. If it is necessary to reveal your identity directly to the judge, we will advise you before proceeding.*

\*I request that my identity be kept confidential.  Yes  No

\*Signature: 

\*Date: 10/17/2014

How did you hear about the State Commission on Judicial Conduct? (please select one)  State Bar of Texas

Another State agency  News media  Attorney  Friend  Other: web search

## Details of Complaint

Please type or print the factual details of your complaint in the space provided below. **Please include the date(s) of the alleged misconduct.** If more space is needed, attach additional sheets. Please sign and date each additional sheet. Your complaint should be as specific as possible, PLEASE DO NOT CITE CASE LAW IN YOUR COMPLAINT.

\*Date(s) of Alleged Misconduct of Judge: August 2014 - present

**\*Factual Details of your complaint against Judge:**

In August, 2014 Judge Wayne L. Mack—Justice of the Peace, Precinct 1, Montgomery, Texas—opened a court session with a bible reading lead by a pastor, followed by a Christian prayer. It is believed that Judge Mack regularly opens court sessions with similar religious rituals.

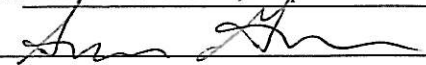
I am writing on behalf of the Freedom From Religion Foundation (FFRF), a national nonprofit organization. A local Montgomery County resident who had business before Judge Mack contacted us after witnessing this inappropriate religious ritual. I have enclosed a copy of the original email sent to FFRF by the local resident, describing the situation in full, with redactions as requested by the resident, who wishes to remain anonymous (enclosure #1). The essential details as reported to FFRF are that Judge Mack began the day's court session with the statement, "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." After that announcement, we understand that he introduced a pastor who read from the bible for more than five minutes. While the pastor was reading, our complainant says, "I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference, etc. I definitely felt that our cases would be affected by our reactions [to the bible reading]." Our complainant further says, "Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language."

Our complainant's email further reveals how the complainant's experience of the court proceeding that followed was tainted by the opening prayer and general demeanor of Judge Mack.

Upon receiving this information, FFRF sent a letter of complaint to Judge Mack on September 18, 2014. A copy of that letter is enclosed (#2). We explained to Judge Mack that as a Justice of the Peace it was inappropriate and illegal for him to use his power and prestige to advance his personal, private religious views. As of today, October 17, 2014, FFRF has not received a response to our letter.

We understand that on October 10, 2014, Judge Mack sent a mass email addressed "Dear Pastors & People of Faith," in which he indicates that he will address FFRF's letter at his October 23rd Prayer Breakfast. A version of that email's contents is enclosed (#3) and a copy of the original can be found at [www.scribd.com/doc/243151122/Eagle-Forum-Mack-Letter](http://www.scribd.com/doc/243151122/Eagle-Forum-Mack-Letter). In the email, Judge Mack doubles down on his commitment to endorsing religion while acting in his official capacity. The email strongly indicates that Judge Mack will not end his prayer practice and will seek to further entangle his personal religious beliefs with his judicial office. He has demonstrated indifference for how his actions undermine public confidence in his impartiality.

\*Printed Name: Samuel T. Grover, Esq.

\*Signature: 

\*Date: 10/17/2014

Enclosure #1

*AmA* 10/17/2014

Email from complainant to FFRF sent in August 2014

Description: While in the courtroom of our newly elected Justice Of The Peace I witnessed an obvious C/S violation. Our new JP, Wayne Mack, Montgomery County, Texas Precinct 1 JP, announced that all present in the court should remain standing after rising for his entrance. He then stated "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." Following this announcement he instructed us to remain standing while he discussed his new program that he was very proud of in which his court now has 50 Chaplains "on staff". (I don't know if that means that they are paid.) who alternate showing up at accident scenes and other incidents where the JP is involved to "pray with the families and offer guidance in times of tragedy." He then spent a few minutes introducing "today's visiting pastor", discussing his credentials, announcing which Church he was from and where it was located. The pastor then stood and announced that he was going to read from the Bible. He read a Bible passage (about 5-8 min) and while he was reading it, I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference etc. I definitely felt that our cases were to be affected by our reactions or lack of. I know I was not alone. Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language. I was in court for a [REDACTED] and my attorney (also a non religious person) had already made a deal with the ADA for [REDACTED] a \$ [REDACTED] fine, which I reluctantly agreed to [REDACTED]. Although I did not leave as instructed "if I was offended", no one in their right mind would have, I did not bow my head for prayer and instead watched the JP, who also did not bow his head, scan the courtroom, it is my feeling that he was watching for reactions. Afterwards, he instructed us all to, again, remain standing, while we recited both the Pledge Of Allegiance, and the Texas Pledge, both including the statements "Under God". [REDACTED]

[REDACTED]. When he called us up he immediately said "I only have one problem with this." while scratching out the agreed upon \$ [REDACTED] fine and writing in \$ [REDACTED] [a higher fine]. I have very little doubt that my apathy for the religious process in court had very much to do with this. I [REDACTED] decided to go on with a jury trial. (the jury was present in the courtroom the entire prayer session as well.)

[REDACTED]. [Subsequently, the original fine amount was agreed to.] I am not sure if all this is relevant to you but as far as I am concerned I was not only forced into a religious ceremony in court, I felt that I was singled out and the outcome of my case depended on my participation in the religious ceremony. I don't know if it matters or not but the JP most certainly had an attitude of "I know this is against the law and that it's a constitutional violation but that's just too bad. If you don't like it you can leave cause I'm the boss and I hold your future in my hands." [REDACTED]

[REDACTED] I hope that this is something that your organization is interested in pursuing. [REDACTED]

[REDACTED] Thank you for your time. [REDACTED]

## FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

September 18, 2014

SENT VIA U.S. MAIL AND FAX: (936) 788-8379

Judge Wayne L. Mack  
Justice of the Peace, Precinct 1  
19380 Highway 105 West, Ste 507  
Montgomery, Texas 77356

Re: Prayer during open court

Dear Judge Mack:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to a constitutional violation that occurred in your courtroom. FFRF is a national nonprofit organization with more than 21,000 members across the country, including over 900 members in Texas. Our purpose is to protect the constitutional principle of separation between state and church.

We understand that in August you opened one of your court sessions with a Christian prayer. We believe that this is a regular practice in your courtroom. A concerned Montgomery County resident who had business before you contacted us to report that after you entered the courtroom you stated, "We are going to say a prayer. If any of you are offended by that you can leave into the hallway and your case will not be affected." After that announcement, we understand that you introduced a pastor who read from the bible for more than five minutes. While the pastor was reading, our complainant says, "I felt that the Judge was watching for reactions from the courtroom; bowed heads, indifference, etc. I definitely felt that our cases would be affected by our reactions [to the bible reading]." Our complainant further says, "Once the Bible reading was over we were then asked to bow our heads to pray. I was very uncomfortable and certainly felt that I was being coerced into following this ritual and that the outcome of my case depended upon my body language."

We write to ask that you end payers at future court sessions.

It is a fundamental principle of Establishment Clause jurisprudence that the government may not in any way promote, advance, or otherwise endorse religion. *See McCreary County, Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985)). Moreover, "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992)).

At least one federal court has specifically held that a state judge's practice of opening court proceedings with prayer violates the Establishment Clause. *N.C. Civil Liberties Union Legal Found. v. Constangy*, 947 F.2d 1145, 1153 (4th Cir. 1991). The Christian prayer delivered in

Enclosure #2 (2)

 10/17/2014

your courtroom was given during business hours on courthouse property, and you announced this prayer while acting in your official capacity as a Justice of the Peace. Therefore, it would appear to any reasonable observer that the Montgomery County judicial system was endorsing religion in general, and Christianity in particular. This is exactly the type of government endorsement that is prohibited by our Constitution.

Please note that we are not claiming that you are actually biased against those who choose not to participate in your courtroom prayers. The quotes from our complainant included above are meant to demonstrate that the prayer practice creates the *appearance* of bias within your courtroom. Under the Texas Code of Judicial Conduct, Canon 2. A., "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Your courtroom prayer practice does not promote public confidence or create the appearance of impartiality.

Citizens are compelled to come before you on a variety of legal matters. Opening your court sessions with prayer sends a message to non-Christians that they are that they "are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). While acting as a Montgomery County Justice of the Peace, you must refrain from lending your power and prestige to Christianity, amounting to a governmental endorsement that excludes the 19% of the American population that is nonreligious.<sup>1</sup>

Inevitably, most government prayers are Christian, but this does not mean that they are inclusive of all Christians. Many Christians recognize that Jesus condemned public prayer as hypocrisy. *See Constangy*, 947 F.2d at 1152 ("[B]y placing its imprimatur on the particular kind of belief embodied in any prayer, the state necessarily offends the sensibilities not only of nonbelievers but of devout believers among the citizenry who regard prayer 'as a necessarily private experience.'"). During the Sermon on the Mount, Jesus discourages public prayer: "And when you pray, do not be like the hypocrites, for they love to pray standing in the synagogues and on the street corners to be seen by others. . . . When you pray, go into your room, close the door and pray to your Father who is unseen." Matthew 6:5-6. Any public prayer practice violates this biblical mandate and will offend those Christians who observe it.

We request that you immediately end the practice of opening court sessions with prayer. Please reply in writing indicating the steps you are taking to avoid future violations of the Constitution so that we may inform our complainant.

Sincerely,



Sam Grover  
Staff Attorney

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<sup>1</sup> "Nones on the Rise: One-in-Five Adults Have No Religious Affiliation," Pew Research Center, The Pew Forum on Religion & Public Life (October 9, 2012), available at [www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx](http://www.pewforum.org/Unaffiliated/nones-on-the-rise.aspx).

Enclosure #3

*Am Mack* 10/17/2014

**I need your help to take a stand....**

October 10, 2014

**Dear Pastors & People of Faith,**

I need you to call on your congregation to stand with us and our Chaplaincy Program on October 23rd.

Since we started our Chaplaincy Program and prayer in the opening ceremonies of our Court, we have come under national and local attack from those that believe that God & Faith has no place in public lives and service. Among them I have been put on notice by the staff attorney for the *Freedom From Religion Foundation in Madison Wisconsin*. I will be addressing their demand that we "immediately end the practice of court prayer" at the Oct 23rd Prayer Breakfast. I am not seeking the potential controversy, as I will have to respond to these groups as well. We are on strong moral and legal ground.

I want to make a statement to show those that feel what we are doing is unacceptable, that not only is it acceptable to our community, but show them that God has a place in all aspects of our lives and public service, during times of tragedy and conflict, when we as a community need to bring peace to the storm. That it is reflected in how we as a community respond and treat each other during these times of tragedy .

I have a strong belief that we are doing the right thing for the right reasons. A strong showing from you & your members will help establish that we are operating in the community interest, and in the interest of those that we serve.

**I am asking that you invite your members and friends to commit to come.** We will get you the tickets or have them waiting at will call, but we need the commitments next week to get food service prepared. **I need you** to reach out and connect with us on this effort.

**(CLICK HERE to read complaint letter to stop Court prayer)**

Thank you again for your prayers and support. Please call me if you have any questions.

For more information - [www.WayneMack.org](http://www.WayneMack.org)

Judge Wayne L. Mack