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“New lawyer means delay in Barnes suit”

The group fighting the proposed move to the Parkway now has its legal brief due Feb. 29.

by Diane Mastrull

Montgomery County Court Judge Stanley R. Ott yesterday gave the Friends of the Barnes Foundation an extra 60 days to file a brief supporting its contention that the Barnes' art collection should be forced to stay in Lower Merion Township, its home since it was begun.

The group of local residents and art enthusiasts filed a lawsuit in August seeking to halt the famed institution's controversial move to Philadelphia. Its written arguments, originally due by the end of this month, now must be submitted to Ott by the close of business Feb. 29.

The postponement was prompted by a change in counsel for the Friends, which parted ways with lawyer Mark Schwartz in a dispute over fees and the brief he had been preparing. On Tuesday, the group hired Eric F. Spade, who has a one-person practice in Philadelphia.

This was the second time that Schwartz and a client had severed ties in the decade-long debate over the proposed relocation of Albert C. Barnes' art collection from Latches Lane in Merion to the Benjamin Franklin Parkway.

Schwartz represented Montgomery County in the Barnes case, filing a lawsuit on the county's behalf to block the move. He resigned in August after county officials told him they intended to fire him for failing to disclose that he had a conflict of interest by also working for the Friends of the Barnes.

"It's like the curse of the Barnes," Schwartz said this week of his two truncated representations.

His split with the Friends, he said, arose from a standoff: He would not show the group the brief he was preparing to file at the end of this month because the group would not pay his fee.

While noting that he works for a number of clients in need, Schwartz said he does not consider the Friends a charity case.

Both sides agree that Schwartz is owed about \$100,000.

Friends spokesman Jay Raymond yesterday declined to discuss the group's reasons for not paying Schwartz's bill.

The decision to get a new lawyer in mid-litigation, he said, is "certainly a situation I would have preferred to have avoided, but it became necessary. . . . I believe we now have somebody that can make the strongest case possible on our behalf."

Spade, who had asked Ott for a 90-day extension during a conference call, would not comment when reached yesterday. Ralph Wellington, an attorney for the Barnes

Foundation, said he told Ott that he preferred that any extension be limited to 30 days "to keep things moving."

After years of litigation, Ott ruled in December 2004 that Barnes' art collection could go to a new home - contrary to a trust Barnes set up 30 years before he died, in which he decreed that his collection should never be broken up or removed from the Merion site. The art school would remain there.

The Friends' lawsuit contends that the Barnes board of trustees misled Ott by claiming financial troubles that only a relocation could remedy. The board, according to the lawsuit, did not inform the judge that the state had put \$107 million into the capital budget to help finance a move to Philadelphia.

Montgomery County has asked Ott to order the Barnes board to reconsider the county's offer to buy the Latches Lane mansion and its grounds. Under that deal, the art would stay put and the Barnes Foundation would pay rent to the county by investing the profits from the sale.

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