

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)	Case No. 2010-1551
KATHLEEN DREAMER, ET AL.,)	
)	On Appeal from the
Appellees,)	Cuyahoga County Court of Appeals
)	Eighth Judicial District
vs.)	
)	Court of Appeals Case No. 09 CA 93949
WILLIAM MASON, CUYAHOGA)	
COUNTY PROSECUTOR, ET AL.,)	
)	
Appellants.)	

APPELLANTS' MOTION TO CORRECT MISSTATEMENT

ROGER M. SYNENBERG (0032517)
 DOMINIC J. COLETTA (0078082)
 Synenberg & Associates, LLC
 55 Public Square, Suite 1200
 Cleveland, Ohio 44113
 Tel: (216) 622-2727/Fax: (216) 622-2707
lawoffice@synenberg.com
Counsel for Appellee Kathleen Dreamer

WILLIAM D. MASON (0037540)
 DAVID G. LAMBERT * (0030273)
 * *Counsel of Record*
 CHARLES E. HANNAN (0037153)
 The Justice Center, Courts Tower, 8th Floor
 1200 Ontario Street
 Cleveland, Ohio 44113
 Tel: (216) 443-5869/Fax: (216) 443-7602
dlambert@cuyahogacounty.us
channan@cuyahogacounty.us
*Counsel for Appellants William D. Mason and
 Cuyahoga County Board of Commissioners*

ROBERT J. ROTATORI (0003346)
 RICHARD L. STOPER, JR. (0015208)
 Rotatori Bender Co., L.P.A.
 526 Superior Avenue, Suite 800
 Cleveland, Ohio 44114
 Tel: (216) 928-1010/Fax: (216) 928-1007
rjr@rotatori.com
rstoper@rotatori.com
Counsel for Appellee Jacqueline Maiden

DOMINIC VITANTONIO (0052058)
 Argie, D'Amico & Vitantonio
 6449 Wilson Mills Road
 Cleveland, Ohio 44143
Counsel for Appellee Rosie Grier

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Yesterday, on February 3, 2011, the undersigned filed a Reply Brief (“Brief”) on behalf of the Appellants in this matter. Since that time, it has come to his attention that a statement contained in that Reply Brief needs to be qualified or corrected.

Several statements in the Reply Brief refer to the fact that during the investigation and the trial of this case, and even for a very long period after those proceedings ended, neither Appellees’ nor their attorneys made a request *to the prosecutor* for the appointment of outside counsel.¹ Thus, on page 8 of the Reply Brief the undersigned stated that: “The Appellees never asked Prosecutor Mason to have outside counsel appointed to represent them – they directed their requests to the Board of Elections.” Similarly, on page 16 it is stated: “Even assuming the existence of an “ongoing wrong act” theory * * * there is no ongoing wrong when the prosecutor has not been asked to do anything by the Appellees.” Similarly, on page 19 it is stated that: “none of Appellees ever made a request to Mason that he allow them to hire private criminal attorneys at public expense...”, and on page 20 it is stated that: “Appellees never even asked Mason to make the foregoing determination...”

Under Rule 3.3 of the Rules of Professional Conduct, a lawyer may not knowingly fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. While undersigned counsel feels he has not made such a statement, out of an excess of caution he would like to clarify the aforementioned statements in this regard: In May of 2009, long after the criminal case was over, Appellee Maiden’s Attorney requested payment of attorney fees in an unspecified amount from the county prosecutor’s office for his past representation of Maiden. That request was denied. Accordingly, Appellant states that it is accurate to state that during the

¹ As opposed to requests by persons *other than* Appellees or their attorneys, and as opposed to request made not to Prosecutor Mason, but to the Board of Elections, or to the Board of County Commissioners.

pendency of the charges and during the trial of the criminal case no request *for the appointment of outside counsel* was ever made, either by Appellees or Appellees' counsel. However, Appellant concedes that in May of 2009, a request by Maiden's counsel was made to Mason's office *to pay Maiden's already incurred counsel fees*. That request was made long after the criminal case was over, and was denied on June 9, 2009 by means of a letter directed to Maiden's counsel. Counsel for Appellant does not mean, by the above-quoted statements in his brief, to deny this fact.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio

By:



DAVID G. LAMBERT * (0030273)

* *Counsel of Record*

CHARLES E. HANNAN (0037153)

Assistant Prosecuting Attorneys

The Justice Center, Courts Tower, 8th Floor

1200 Ontario Street

Cleveland, Ohio 44113

Tel: (216) 443-5869/Fax: (216) 443-7602

E-mail: dlambert@cuyahogacounty.us

channan@cuyahogacounty.us

*Counsel for Appellants William D. Mason and
Cuyahoga County Board of Commissioners*

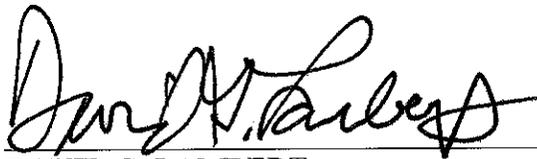
APPELLANTS' MOTION TO CORRECT MISSTATEMENT
PROOF OF SERVICE

A true copy of the foregoing *Appellants' Motion to Correct Misstatement* was served this 4TH day of February 2011 by regular U.S. Mail, postage prepaid, upon:

Roger M. Synenberg
Dominic J. Coletta
55 Public Square, Suite 1200
Cleveland, Ohio 44113
Counsel for Appellee Kathleen Dreamer

Robert J. Rotatori
Richard L. Stoper, Jr.
526 Superior Avenue, Suite 800
Cleveland, Ohio 44114
Counsel for Appellee Jacqueline Maiden

Dominic Vitantonio
6449 Wilson Mills Road
Cleveland, Ohio 44143
Counsel for Appellee Rosie Grier



DAVID G. LAMBERT
Assistant Prosecuting Attorney