

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Relator,

v.

Marc Dann

Respondent.

CASE NO. 2011-2026

RESPONDENT'S OBJECTIONS TO BOARD REPORT

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**IN THE SUPREME COURT OF OHIO**

Disciplinary Counsel	:	
	:	CASE NO. 2011-2026
Relator,	:	
	:	
v.	:	
	:	
Marc Dann	:	
	:	
Respondent.	:	

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**RESPONDENT'S OBJECTIONS TO BOARD REPORT**

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**I. STATEMENT OF THE CASE**

This matter arises from a complaint alleging that Marc Edward Dann violated Prof. Cond. R. 8.4 (h) [conduct adversely reflecting on fitness] during his tenure as Ohio Attorney General, based on two misdemeanor convictions. Mr. Dann served as Ohio Attorney General from January, 8, 2007, until May 14, 2008. *See*, Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Board Report), Appendix I. On April 2, 2008, the Ohio Ethics Commission commenced an investigation into Mr. Dann's conduct in office. On May 14, 2008, Mr. Dann resigned his position as the Ohio Attorney General.

On May 7, 2010, almost two years after resigning his office, Mr. Dann was charged in a two-count misdemeanor criminal complaint filed in the Franklin County Municipal Court. Mr. Dann was charged with violating R.C. 2921.43(A)(1) and R.C. 102.02(D), both misdemeanors of the 1<sup>st</sup> degree. Mr. Dann entered pleas on both counts, and was found guilty.

Mr. Dann took ethical responsibility for his misdemeanors, self-reporting them to Disciplinary Counsel. With respect to these disciplinary proceedings, Mr. Dann attempted to resolve this matter by “consent agreement,” where he would have received a six-month stayed license suspension. Unfortunately, the proposed agreement was rejected by the Board. On November 3, 2011, the hearing panel convened an evidentiary hearing. The parties stipulated that Mr. Dann violated the Ohio Rules of Professional Conduct based on Relator’s allegations. During the hearing, Mr. Dann expressed considerable remorse for his misconduct. Mr. Dann also, while explaining his conduct, took complete responsibility for failing to follow the public ethics laws that governed his conduct as the Ohio Attorney General.

Even though Mr. Dann and Disciplinary Counsel both recommended stayed license suspensions, the Board recommends a six-month actual license suspension. Mr. Dann objects on that basis.

## **II. STATEMENT OF FACTS**

The underlying facts of the Franklin County Municipal Court case formed the basis of the Prof. Cond. R. 8.4(h) violation. Mr. Dann’s stipulated that he hired Anthony Gutierrez as Director of General Services at the Ohio Attorney General’s office, and Leo Jennings as the Communications Director at the Ohio Attorney General’s office. Board Report at 3. He provided Gutierrez, through “Dann for Ohio Committee,” free rental housing and related expenses totaling \$7,178. Gutierrez also received a \$5,000 loan through “Marc Dann OAG Transition Corp.” *Id.* Mr. Dann provided Jennings, through “Dann for Ohio Committee” and “Marc Dann OAG Transition Corp.,” with free rental

housing and associated expenses totaling \$30,000. *Id.* The payments for Gutierrez and Jennings terminated prior to May 2, 2008. *Id.* Both were employed by the Ohio Attorney General's office during relevant periods. *Id.*

As the law requires for public officials, Mr. Dann filed an annual Financial Disclosure Statement (FDS) with the Ohio Ethics Commission in April 2007 and April 2008. However, he failed to disclose that the "Dann for Ohio Committee" was a source for reimbursement for 15 checks, totaling \$17,540.86, for hotel rooms, parking, mileage, food, supplies, insurance for the campaign vehicles and other related expenses. *Id.* at 4. Mr. Dann also failed to disclose that he attended the Democratic Attorney General Association (DAGA) seminar in Arizona on a private jet owned by a campaign contributor. *Id.* There is no evidence to suggest Mr. Dann conferred any benefit to the campaign contributor. *Id.*

In mitigation, Mr. Dann and Disciplinary Counsel stipulated that Mr. Dann provided full and free disclosure and cooperation to disciplinary authorities. *Id.* at 5. Mr. Dann likewise presented positive character and reputation evidence, and received other penalties and sanctions through the criminal justice system. *Id.*

Mr. Dann also offered significant mitigating testimony and evidence regarding the hundreds of hours he has spent providing pro bono legal representation on foreclosure cases, since his misconduct occurred. *Id.* at 5-6. According to Mary Beth McConville, Mr. Dann's work on behalf of the Cleveland Legal Aid Society far exceeded the court ordered community service and continues to this day. Tr. 29-37. Additionally, two of

Mr. Dann's clients observed the significant assistance Mr. Dann has given them on their legal matters, free of charge.

James Douglass, a lawyer with whom Mr. Dann has shared office space praised Mr. Dann for his tremendous work ethic and his commitment to help homeowners facing foreclosure. Tr. 22-28.

Mr. Dann received numerous character letters, further evidencing the ongoing restoration of his reputation. *See*, attached Appendix II.

Mr. Dann's prior disciplinary history of receiving a public reprimand is the sole aggravating factor. *See*, Board Report at 5.

As discussed below, taking into account the myriad of mitigating factors and the sole aggravating factor, and the precedent of this Court and other jurisdictions, the appropriate sanction is a six-month stayed suspension from the practice of law.

Alternatively, the one-year stayed license suspension recommended by Disciplinary Counsel is an appropriate sanction for Mr. Dann's misconduct.

### **III. ARGUMENT**

#### **PROPOSITION OF LAW NO. I: GIVEN THE STRONG MITIGATING FACTORS PRESENT, THE BOARD ERRED IN RECOMMENDING AN ACTUAL SIX-MONTH SUSPENSION OF MR. DANN'S LICENSE TO PRACTICE LAW.**

For an elected official, resignation from office due to misconduct is an extraordinary event which restores the public's confidence in government. Mr. Dann resigned from office on May 14, 2008, self-imposing a significant sanction. Two years later, Mr. Dann faced misdemeanor criminal charges. Rather than contesting the criminal matters, Mr. Dann entered a plea bargain agreement, which resulted in his misdemeanor

convictions. Significantly, one of Mr. Dann's misdemeanor convictions resulted in his being precluded from seeking elected office for seven years – another factor that should mitigate the sanction imposed by this Court.

Mr. Dann's resignation from elected office and his acceptance of criminal responsibility represent significant factors which should mitigate the disciplinary sanction in this case. Indeed, this court has recognized that lawyers, who receive significant penalties in other forums, should have those sanctions considered when this Court imposes its disciplinary sanction.

As this Court has, in the past, recognized, an appropriate and just sanction takes into account all of the circumstances leading up to the disciplinary proceedings, including resignation from office and criminal penalties like those suffered by Mr. Dann. For example, in *Disciplinary Counsel v. Carroll*, 106 Ohio St. 3d 84, 2005-Ohio-3805, an attorney was appointed to the Ohio State Barber Board, as its executive director. The Ohio Inspector General issued a report identifying approximately 90 hours of the attorney's time that had been inaccurately reported on his timesheets. He resigned the position and pled no contest to a charge of dereliction of duty. The respondent's cooperation with investigators, his forthright and prompt effort to remedy any harm caused by his errors, and the absence of any dishonest or selfish motive on his part all militated against his actual suspension from the practice of law. This Court recognized the lawyer had already been "appropriately punished:"

Respondent has in fact already been appropriately punished by the criminal-justice system, and we agree with the board that the public would not be well served by his actual suspension, particularly given that

respondent made full restitution and no longer holds a position in which he must account to the public for his work hours.

Accordingly, a majority of this Court determined that Carroll should receive a six-month stayed license suspension, even though his conduct involved dishonesty in violation of former DR 1-102(A)(4). *See also, Disciplinary Counsel v. Potter* 126 Ohio St. 3d 50; 2010 Ohio 2521 (noting that a violation of *Rule 8.4(c)* typically resulted in an actual suspension, this Court stated that significant mitigating factors, including his full cooperation in the investigation and self-reporting to the Disciplinary Counsel and his otherwise good character and reputation, warranted a departure from that principle); *Dayton Bar Association v. Kinney* 89 Ohio St. 3d 77, 2000-Ohio-445 (because of strong mitigation evidence, lawyer received stayed suspension, although he, among other things, assisted his client in engaging in fraudulent conduct); *Dayton Bar Association v. Millonig* 84 Ohio St. 3d 403, 1999-Ohio-468 (because of ample mitigation, lawyer publicly reprimanded even though his tax conviction involved dishonesty); *Disciplinary Counsel v. Markijohn* 99 Ohio St. 3d 489; 2003 Ohio 4129 (given strong mitigation, including letters of support and the fact the he did not harm any client's interest, lawyer received stayed license suspension, although he misled his law partners that he was making required payments for firm's retirement account).

In the present case, it is significant that Disciplinary Counsel did not charge Mr. Dann with dishonesty as a result of his misdemeanors. Although the parties stipulated that Mr. Dann resigned from office and was punished criminally, and despite that Mr. Dann testified in detail about receiving other sanctions, the panel and the board did not

give this ample consideration when it recommended that Mr. Dann receive an actual license suspension on top of the other sanctions he has already suffered.

In addition to mitigation by virtue of the other penalties Mr. Dann has suffered, the parties stipulated that Mr. Dann's conduct is mitigated by several factors under Section 10(B) of the BCGD Proc. Reg.; (1) full and free disclosure to the disciplinary board, (2) a cooperative attitude toward these proceedings, and (3) positive character and reputation evidence.

Here, Mr. Dann' self-reporting, full and free disclosure and cooperation included the parties' attempt to resolve the disciplinary matter without taxing the resources of the lawyer disciplinary system. This included attempting to resolve the matter by consent. Even after the discipline by consent proposal was rejected, Mr. Dann entered a similar agreement with Relator and participated in what amounted to a mitigation hearing instead of contesting whether he should be disciplined.

Mr. Dann's positive character and reputation evidence included letters and testimony from colleagues in the legal profession, as well as testimony of clients he had assisted through the foreclosure process on a pro bono basis. Mr. Dann's positive character evidence was topped off by his hundreds of hours of pro bono service. For instance, Mary Beth McConville testified that Mr. Dann's volunteer efforts to the Cleveland Legal Aid Society far exceeded the court ordered community service and continues to this day. Tr. 29-37. According to Ms. McConville, Mr. Dann volunteers for difficult cases that other lawyers will not take. *Id.* Volunteer lawyers typically only show up for mediation sessions with the homeowners, but are not required to assist the

homeowners with legal pleadings if the mortgage is not modified. In contrast, Mr. Dann has remained committed by continuing to help homeowners who are unable to afford a modification. *Id.*

Two of Mr. Dann's clients Rosetta Hicks and Robert Favino observed the significant assistance Mr. Dann has given them on their matters, free of charge. Tr. 43-48. Mr. Favino noted that if it weren't for Mr. Dann, he would have lost his home. *Id.* Accordingly, this Court should consider whether those individuals who rely on Mr. Dann to represent them in their foreclosure matters should be deprived of their counsel, who has already paid a great price for his transgressions.

In sum, because "protection of the public" is the hallmark of the lawyer discipline system, this Court, as a foremost concern, should consider when a lawyer's misconduct is significantly mitigated by other factors preceding, surrounding, and after the conduct is committed. Because of the significant mitigation evidence presented, Mr. Dann should receive a six-month stayed license suspension, rather than an actual six-month suspension of his license to practice law. Mr. Dann did not harm the interests of any of his clients. A stayed suspension will adequately protect the public. Should the Court determine that the one-year stayed suspension recommended by Disciplinary Counsel is proper, Mr. Dann agrees that sanction would be reasonable as well.

**PROPOSITION OF LAW NO. II: THE BOARD ERRED IN NOT FOLLOWING THE PRECEDENT OF SIMILAR DISCIPLINE CASES INVOLVING PUBLIC OFFICIALS WHERE PUBLIC REPRIMANDS AND STAYED LICENSE SUSPENSIONS HAVE BEEN IMPOSED.**

Mr. Dann appreciates that his misconduct was committed while he held the office of Ohio Attorney General. In similar cases involving public officials, respondents received sanctions in the range of a public reprimand to that of a six-month stayed suspension. *See, Disciplinary Counsel v. Taft*, 112 Ohio St.3d 155, 2006-Ohio-6525 and *Disciplinary Counsel v. Forbes*, 122 Ohio St.3d 171, 2009-Ohio-2623.

In the *Taft* case, the former governor failed to disclose the names of nineteen benefactors who gave him a total of fifty-two gifts, thereby violating R.C. 102.02(B). *Taft* at ¶ 8. There, the respondent was charged with violating Rule 8.4(h) and the court ultimately found that Governor Taft's violation of R.C. 102.20(D) was conduct that adversely reflected on his fitness to practice law. *Id.* at ¶ 8. Governor Taft received a public reprimand, in part because he fully cooperated with the investigation and "had already been penalized as part of the criminal justice system." *Id.* at ¶ 10.

Similarly, in this case, Mr. Dann was also charged with violating Rule 8.4(h), has fully cooperated with the investigation and provided full and free disclosure in this process and in the criminal process. Moreover, unlike Governor Taft, Mr. Dann, as noted above, resigned his office as an additional penalty connected to his misconduct. Further, the payments or benefits at issue were not given as compensation for any act or omission. Like Governor Taft, Mr. Dann pled to public ethics violations. Mr. Dann's prior discipline record is the principal factor that distinguishes this matter from the *Taft* case, wherein the lesser sanction of a public reprimand was imposed.

Similarly, George Forbes received a six-month stayed suspension as a consequence of his misconduct in overseeing the Bureau of Workers' Compensation Oversight Commission. *Forbes* at ¶ 5. Mr. Forbes failed to disclose his source of meal and travel expenses, including free private plane travel. *Id.* at ¶ 6. Mr. Forbes was charged with violating R.C. 102.02(D), and also charged with violating R.C. 102.03(E), which prohibits public employees from soliciting or accepting "anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties." *Id.* at ¶ 11. Mr. Forbes pled guilty to the R.C. 102.02(D) charges, and pled no contest to the R.C. 102.03(E) charges. *Id.* at ¶ 12. Mr. Forbes was convicted of all counts.

In *Forbes*, the court noted there were several factors that suggested a lighter sanction for Mr. Forbes, including the fact that the parties had stipulated to a public reprimand in the consent to discipline agreement. However, the court then focused its attention on Mr. Forbes' conviction for accepting gifts offered to gain favor and to obtain substantial and improper influence in the performance of a duty of a public official. There is absolutely no evidence that Mr. Dann engaged in such conduct.

Although Mr. Forbes pled no-contest and was found guilty of the charge, it troubled the board and this Court that he attempted to explain away the charges in his disciplinary proceedings. This Court noted that an attorney cannot admit to charged allegations in this criminal case, and then subsequently deny or explain away the same admission in his criminal case. *Forbes* at ¶ 19. This Court recognized that it could treat such an attempt to explain away previously admitted charge as an aggravating factor and,

at the very least, as a refusal to acknowledge the wrongful nature of his conduct. *Id.* at ¶ 23. However, even after Mr. Forbes showed lack of accountability, the Court balanced all the aggravating and mitigating factors. This Court ultimately ruled that Mr. Forbes conduct warranted a six-month stayed suspension. *Id.* at ¶ 27.

Here, while Mr. Dann explained why his conduct occurred, he did not attempt to explain it away. Throughout his testimony, he explained took responsibility for his mistakes and showed unquestionable remorse, stating:

\*\*\* I am so heartbroken that I failed to meet that level of responsibility and nobody - - there's no punishment that anybody can impose on me that exceeds that disappointment to myself.

Tr. at 68.

Not only did Mr. Dann express remorse, he accepted responsibility, as he explained his mistakes:

Q. \*\*\*[Y]ou've talked about receiving legal advice; you're not blaming others for this, are you?

A. Not at all. In fact, I am blaming myself because I know I only received the representation of legal advice, which any good lawyer would never accept at face value. And I'm disappointed in myself... a failure of my own responsibilities as a lawyer. . . .

Tr. at 66.

Mr. Dann has not backpedaled from his plea to misdemeanor criminal charges or the underlying conduct. He repeatedly accepted fault and apologized. His statements and demeanor throughout the hearing reflected how sorry he is. Unlike the lawyer in the *Forbes* case, Mr. Dann was not charged with violating R.C. 102.03(E), and there is no evidence that he accepted any gifts in exchange for improper influence in performance of

his duties as a public official. Like Mr. Forbes, Mr. Dann suffered the considerable penalty of resigning his public office. Like Mr. Forbes, Mr. Dann deserves to receive a stayed suspension and not an actual suspension.

**PROPOSITION OF LAW NO. III: THE BOARD ERRED IN DETERMINING THAT MR. DANN'S STATUS AS ATTORNEY GENERAL REQUIRED THAT HE BE PUNISHED WITH AN ACTUAL SIX-MONTH SUSPENSION OF HIS LICENSE TO PRACTICE LAW IN OHIO.**

The Panel cited the *Taft*, *Forbes*, and *Carroll* cases as precedent, recognizing that no more than a stayed, license suspension was ordered by this Court in those cases. The Board, moreover, recognized that it must fashion a sanction keeping in mind that the sanction is not to punish the offender, but to protect the public. Notwithstanding these important considerations, the Board went on to state:

The fact remains that Respondent's position as the Attorney General of Ohio sets him apart from other lawyers. In the least, Respondent's explanations for his conduct speak poorly to his judgment. Poor judgment is not an aggravating factor. However, whether or not his explanations were sensible or credible, they are not an excuse. The Panel cannot help but wonder at the harm to the reputation of the legal profession and to the confidence of the public in the office of Attorney General when the chief law enforcement officer in the state has committed ethical errors and tries to explain them as Respondent has.

*See*, Board Report at 9.

The Panel's and the Board's recognition that the state of Ohio's chief law enforcement officer should be held to a higher standard is correct. Indeed, Mr. Dann's status as Ohio Attorney General is similar to that of other law enforcement attorneys and judicial officers whose misconduct may become well-known in their local communities.

Many of these elected officials, including judges, who have engaged in similar or more egregious conduct than Mr. Dann's have received public reprimands or stayed license suspensions when other mitigating considerations warrants the imposition of a lesser sanction. *See, Disciplinary Counsel v. Russo*, 124 Ohio St.3d 437, 2010-Ohio-605 (judge received one-year conditionally stayed suspension as a consequence of two misdemeanor disorderly conduct convictions).

In *Russo*, this Court noted that “[j]udges are subject to the highest standards of ethical conduct.” Under the high standards to which judges are held, this Court determined a “midrange sanction” of a six-month stayed license suspension was appropriate because the respondent's conduct was mitigated by the fact that he was impaired by his untreated addiction at the time of his misconduct.

Similarly in *Disciplinary Counsel v. Connor*, 105 Ohio St.3d 100, 2004-Ohio-6902, a then common pleas court judge received a six-month suspension because he had been convicted multiple times of driving a motor vehicle while under the influence of alcohol and had a prior disciplinary record. This Court also stayed the license suspension in *Connor* and allowed the judge to remain on the bench because his two years of sobriety and his uncompromised performance as a judge showed that he posed no risk to the public. *Id.* at ¶ 20-21. As the least egregious example, the board referred to a case in which a Supreme Court justice was publicly reprimanded for a single conviction of driving a motor vehicle while under the influence of alcohol. *In Re Complaint Against Resnick*, 108 Ohio St.3d 160, 2005-Ohio-6800.

Likewise, in *Disciplinary Counsel v. Ault*, 110 Ohio St.3d 207, 2006-Ohio-4247, the respondent judge pleaded no contest to two counts of attempting to obtain a dangerous drug by deception, misdemeanors of the first degree, in violation of R.C. 2923.02 and 2925.22(A). The statute at issue, R.C. 2925.22(A) states, “[n]o person, by deception, as defined in section 2913.01 of the Revised Code, shall procure the administration of, a prescription for, or the dispensing of, a dangerous drug.” R.C. 2913.01(A) defines “deception” as “knowingly deceiving another or causing another to be deceived by any false or misleading misrepresentation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.” For these offenses, respondent received a suspended 120-day jail sentence, was fined \$1,000, and was ordered to serve a two-year probation period under strict conditions to assist in his recovery. In part, because Judge Ault had received other penalties for his conduct, including a criminal penalty, he received a stayed suspension of his license.

Further, the respondent in *Disciplinary Counsel v. Kaup*, 102 Ohio St.3d 29, 2004-Ohio-1525, received a stayed suspension of his license even though he deliberately misled voters by using a deceptive name for his campaign committee and then circulated advertisements that would lead voters to believe that an independent organization had examined the credentials of all of the candidates and concluded that respondent was the best-qualified candidate for common pleas judge. This Court recognized, “[r]espondent was required to run for election on his own qualifications and not on the purported

endorsement of an independent entity that was in fact his own campaign committee.” See, also *Disciplinary Counsel v. Gaul*, 127 Ohio St.3d 16, 2010-Ohio-4831 (judge received six-month stayed suspension where this court described his actions, which were highly prejudicial to a criminal defendant, as “not further[ing] the integrity of the judicial proceedings).”

The decisions of courts of other jurisdictions are also instructive to the question of whether Mr. Dann’s conduct warrants a stayed suspension. For instance, in *People v. Reichman* (Colo. 1991) 819 P.2d 1035, a district attorney was publicly censured for falsifying evidence in contravention of his oath as a public prosecutor. The district attorney formed a task force to conduct undercover operations to investigate and prosecute drug trafficking. The lawyer tried to rehabilitate an undercover agent's cover by filing a false criminal complaint and permitting false statements to be made to a judge who was unaware of the agent's identity and of the fact that the criminal charges were false. The court ruled that such conduct constituted a violation of Colo. Rules of Prof. Conduct DR 1-102(A)(1), (A)(5). In imposing the sanction, the court noted that district attorneys in Colorado owed a very high duty to the public because they were governmental officials holding constitutionally created offices. See also, *Lawyer Disciplinary Board v. McGraw*, 194 W.Va. 788 (1995) (Attorney General of West Virginia publicly reprimanded for conflict of interest and breach of confidentiality, among other things); *In the Matter of Raab* (2003), 100 N.Y.2d 305 (judge censured for improper political activity and threatening and intimidating an attorney); *In the Matter of*

*Kraushaar* (1995), 258 Kan. 772 (lawyer serving as public prosecutor reprimanded for conduct degrading to a tribunal and a serious conflict of interest, among other things).

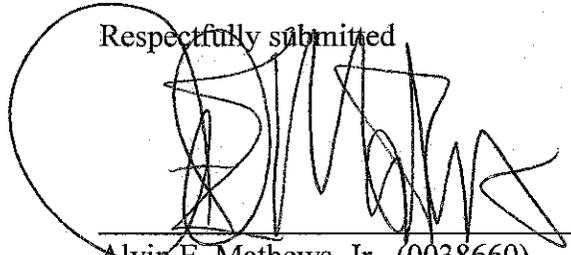
In the present case, it is undeniable that Mr. Dann's status as Ohio Attorney General is an important consideration in determining what sanction should be imposed for his misconduct. Like the respondent in the *Taft* case, Mr. Dann held one of the most important elected offices in the state and his conduct in that office reflects negatively on the legal profession. Respondent's status as Ohio Attorney General, however, should be considered along with the other facts set forth in this case, which serve as mitigation. These factors include the importance of other sanctions and penalties, his cooperation in the disciplinary process, his acceptance of responsibility and expression of remorse, and the evidence of good character and his pro bono work since his resignation as Attorney General.

Many respondents commit ethical violations and do not take steps to rehabilitate themselves. Mr. Dann has rehabilitated himself through the important pro bono legal representation he has provided. That pro bono work continues and Mr. Dann continues to spend hundreds of hours representing individuals who are victims to this nation's foreclosure crisis. Mr. Dann would count it a privilege to continue to help these individuals.

IV. CONCLUSION

Based on the foregoing, Respondent Marc Dann respectfully urges this Court to issue an order imposing a six-month stayed suspension of his license to practice law. If this Court determines that the one-year stayed license suspension recommended by Disciplinary Counsel is more appropriate, Respondent agrees that sanction is also proper.

Respectfully submitted

A large, stylized handwritten signature in black ink, appearing to read 'Alvin E. Mathews, Jr.', is written over a horizontal line. The signature is highly cursive and somewhat illegible.

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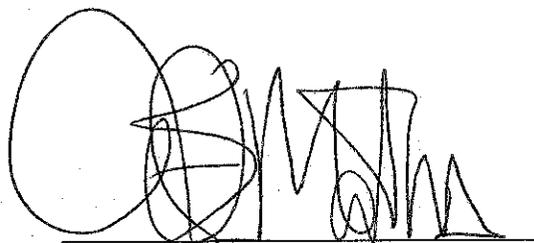
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Respondent's Objections to Board Report*, was served, by Regular U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of January 2012, upon the following:

Joseph M. Caligiuri  
Senior Assistant Disciplinary Counsel  
Office of Disciplinary Counsel  
The Supreme Court of Ohio  
250 Civic Center Drive, Suite 325  
Columbus, OH 43215-7411

A handwritten signature in black ink, appearing to read 'Alvin E. Mathews, Jr.', written over a horizontal line.

Alvin E. Mathews, Jr. (0038660)

**BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO**

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 11-024</b>
<b>Marc Edward Dann</b> <b>Attorney Reg. No. 0039425</b>	:	<b>Findings of Fact,</b>
<b><u>Respondent,</u></b>	:	<b>Conclusions of Law and</b>
<b>Disciplinary Counsel</b>	:	<b>Recommendation of the</b>
<b><u>Relator.</u></b>	:	<b>Board of Commissioners on</b>
	:	<b>Grievances and Discipline of</b>
	:	<b>the Supreme Court of Ohio</b>
	:	
	:	

**INTRODUCTION**

{¶1} This matter was heard on November 3, 2011 in Cleveland, Ohio, before a panel consisting of John H. Siegenthaler, Judge Robert P. Ringland, and Judge Arlene Singer, chair. None of the panel members resides in the district from which the complaint neither arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(I). Attorney Alvin E. Mathews represented Respondent. Attorney Joseph M. Caligiuri represented Relator.

{¶2} On April 14, 2011, the hearing panel was assigned to this matter. The matter initially was submitted to the hearing panel as consent to discipline, pursuant to BCGD Proc. Reg. 11. The agreement was timely filed with the Board. The hearing panel recommended acceptance of the agreement; however, after consideration, the Board rejected the agreement and remanded the matter to the panel for further proceedings.

{¶3} Respondent was admitted to the practice of law in Ohio on November 16, 1987 and is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶4} Relator has charged Respondent with violating Prof. Cond. R. 8.4(h) [conduct that adversely reflects on a lawyer's fitness to practice law].

{¶5} The bases for the complaint are the convictions and the facts underlying the convictions obtained against Respondent in the Franklin County Municipal Court. Case no. 2010 CRB 9998-1, 2.

{¶6} In Count 1 of the complaint, Respondent was charged with violating R.C. 2921.43(A)(1):

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

{¶7} In Count 2, Respondent was charged with violating R.C. 102.02(D):

(D) No person shall knowingly file a false statement that is required to be filed under this section."

{¶8} Both violations are 1<sup>st</sup> degree misdemeanors. Respondent entered an *Alford* plea as to Count 1 and a guilty plea as to Count 2, and was found guilty of both counts. Respondent

was sentenced on Count 1 to a \$500 fine and on Count 2 to a \$500 fine and ordered to perform 500 hours of community service to be completed by June 30, 2012.

{¶9} Respondent was previously found to have violated the Code of Professional Responsibility and was publicly reprimanded. *Mahoning Cty. Bar Assn. v. Dann*, 101 Ohio St.3d 266, 2004-Ohio-716

{¶10} The parties have rested on the stipulations of fact and conclusions of law they submitted previously with the consent to discipline.

### **FINDINGS OF FACT**

{¶11} Respondent served as Ohio Attorney General from January 8, 2007 until May 14, 2008. The facts underlying the criminal violations occurred during this time period.

#### *Facts underlying Count 1 of the Criminal Complaint*

{¶12} Respondent had hired Anthony Gutierrez as the Director of General Services at the Ohio Attorney General's office. Respondent hired Leo Jennings as the Communications Director at the Ohio Attorney General's office. They were thus public servants.

{¶13} Sometime after February 5, 2007, Respondent through his campaign committee, Dann for Ohio Committee, provided Gutierrez free rental housing and associated expenses totaling at least \$7,178. On or about May 18, 2007, Respondent authorized the "Marc Dann OAG Transition Corp." to provide to Gutierrez a \$5,000 interest free loan.

{¶14} Sometime after March 5, 2007, Respondent provided free rental housing and associate expenses paid through direct hotel billings for Leo Jennings. Also, a \$3,000 per month "consulting fee" was paid to Jennings' business, Progressive Solutions Group (PSG), to

compensate Jennings for rent and associated living expenses. The total of these payments exceeded \$30,000. The payments were made through the Dann for Ohio Committee.

{¶15} The payments for Gutierrez and Jennings terminated prior to May 2, 2008. Both Gutierrez and Jennings were employed by the Ohio Attorney General's office during the time period in question.

*Facts underlying Count 2 of the Criminal Complaint*

{¶16} On or about April 26, 2007, Respondent filed his required 2006 financial disclosure statement with the Ohio Ethics Commission. Respondent did not disclose his receipt of 15 checks, totaling \$17,540.86, from the Dann for Ohio Committee. The checks were reimbursements for hotel rooms, parking, mileage, food, supplies, insurance for the campaign vehicle, and other related expenses.

{¶17} On or about April 15, 2008, Respondent filed his 2007 financial disclosure statement without disclosing the source of funds used for travel expenses for his travel to and attendance at a Democratic Attorneys General Association seminar in Scottsdale, Arizona between January 26-30, 2007. He was accompanied by his two minor children, Gutierrez's two minor children, and two other unidentified individuals.

{¶18} Respondent and his party travelled by private jet owned by Imaginaire Private Jet Charter. BFD Aircraft, LLC leased the private jet for this purpose and paid Imaginaire \$20,803.52. BFD Aircraft is affiliated with Ben Barnes Group, LP, founded by Ben Barnes who contributed \$10,000 to Dann's campaign for Attorney General.

### CONCLUSIONS OF LAW

{¶19} The parties have agreed and stipulated and the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(h).

### MITIGATION AND AGGRAVATION

{¶20} The parties have stipulated to and the panel finds the following mitigating factors pursuant to BCGD Proc. Reg. 10 (B)(2): full and free disclosure to the Board and cooperative attitude toward proceedings; good character and reputation evidence; and imposition of other penalties and sanctions.

{¶21} The parties have stipulated to and the panel finds the following aggravating factor pursuant to BCGD Proc. Reg. 10 (B)(1): prior disciplinary record.

### SANCTION

{¶22} In the consent to discipline, the parties stipulated to a six-month suspension from the practice of law, all stayed. However, when the stipulations were later resubmitted, Relator reserved the right to amend his recommendation at the conclusion of the hearing. At that time, Relator requested that Respondent's Ohio license to practice law be suspended for one year, all stayed. Respondent requests a stayed suspension.

{¶23} Respondent has completed his community service and has paid his fines ordered in the criminal matters. He has presented letters from ten people, including four judges, attesting to his good character. At the hearing, testimony as to Respondent's good character was presented by two clients and an attorney who shares office space with him. A staff attorney from the Legal Aid Society of Cleveland, who in addition to submitting a letter, testified for Respondent. She is in charge of keeping track of pro bono hours contributed by attorneys.

Respondent completed his community service requirements through this pro bono program. Previous to his criminal sentence, Respondent had participated in this pro bono program, and he continued his participation after completion of his mandatory community service.

{¶24} Respondent presented testimony on his own behalf. He testified to the humiliation he and his family had experienced because of his actions. Respondent's family bonds have been broken or frayed and his relationship with his children has suffered. He is especially regretful for the pain he has caused his children.

{¶25} His explanations for his missteps revolve around his self-described hubris and arrogance. Respondent explained that he did not expect to win the election for attorney general and was apparently not prepared to immediately hire staff or properly organize his office. He testified that the other newly elected state office holders had hired many experienced persons, some from the attorney general's office, and he was left to set up a system to hire new employees, some of whom had little or no government experience. He claimed that because his staff wanted to "accommodate" him, they recommended for hiring those they thought he wanted to hire, rather than those he should have hired. As a result, he hired people that he should not have.

{¶26} He explained that the payments from his campaign committee for rent and other expenses for Gutierrez and Jennings were to avoid paying public funds for their political work. As he had been critical of his predecessor for allowing state employees to do political work on state time, he wanted to compensate his own employees for doing political work outside of state hours. Even though Respondent was aware that the state had enacted legislation prohibiting additional compensation, remembering the case of a previous lieutenant governor who had

accepted additional compensation from a campaign committee, he accepted what was told to him without question, *i.e.* that his office had been advised that campaign funds could be used for that purpose.

{¶27} Respondent filed incorrect financial disclosure statements because he reported the payments to himself from the campaign committee on his campaign reports and did not think that he had to include these payments on his financial disclosure statements also. He claims he did report the use of the private jet for his travel to the Democratic Attorneys General Association seminar payments on his financial disclosure statement. He reported the “Democratic Attorneys General Association” as the source of travel expense payment of \$7,687.14, rather than the \$20,803.52 paid by BFD Aircraft LLC, affiliated with a campaign contributor. Respondent explains that he arrived at the reported amount by following Federal Election Commission guidelines, using the value of two first class airline tickets. He further states that someone else prepared the statements for him whom he relied on to do the necessary “legal” research and analysis as to what and how to report payments and expenses. The fact remains that he plead guilty to the charges.

{¶28} Counsel have cited *Disciplinary Counsel v. Taft*, 112 Ohio St.3d 155, 2006-Ohio-6525 and *Disciplinary Counsel v. Forbes*, 122 Ohio St.3d 171, 2009-Ohio-2623 in support of an appropriate sanction.

{¶29} In *Taft*, a public reprimand was ordered when Respondent failed to report over 50 gifts (mostly golf outings and other events) on his financial disclosure statement. He was found to have violated DR 1-102(A)(6) [conduct that adversely reflects on a lawyer’s fitness to practice law] pursuant to a consent to discipline agreement filed with and accepted by the Board and the

Supreme Court. Taft had been charged with four counts of violating R.C. 102.02(D) [filing false financial disclosure statements). He pleaded no contest to the charges, was found guilty, and was sentenced. The Board characterized Taft's actions as "carelessness."

{¶30} In *Forbes*, Respondent was found to have violated DR 1-102(A)(6) after being convicted of four violations of R.C.102.02(D) (filing false financial disclosure statements) and two violations of R.C. 102.03(E) (accepting gifts of such character as influence the performance of his duties as a public official), after a full hearing before a panel of the Board at which he tried to "explain away" his actions. The Court found this to be an aggravating factor and ordered his license suspended for six months, all stayed. The panel and the Board had recommended that Forbes receive a public reprimand.

{¶31} The parties also cite *Disciplinary Counsel v. Carroll*, 106 Ohio St.3d 84, 2005-Ohio-3805. Carroll, as a member of the Ohio State Barber Board, submitted inaccurate and improper reimbursement requests. He was found to have violated DR 1-102(A)(6) and DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]. His full cooperation, restitution, acknowledgement of responsibility, resignation from the Barber Board, no selfish or dishonest motive, genuine remorse without excuses, service to financially needy clients, no harm to legal clients, criminal prosecution and payment of a fine, and good character and reputation were all factors cited by the Court. The Court found that Carroll had already been appropriately punished and stated that "the public would not be well served by his actual suspension," noting that Carroll was no longer accountable to the public for his work hours. Because of this mitigating evidence, Carroll was given a stayed suspension, rather than an actual suspension. Compare *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261,

¶13 [“A violation of DR 1-102(A)(4) usually requires an actual suspension from the practice of law for an appropriate period of time”].

{¶32} The panel recognizes that *Taft, Forbes, and Carroll* are precedent for no more than a stayed, suspended license sanction. We must fashion a sanction keeping in mind that the primary purpose of the sanction is not to punish the offender, but to protect the public. See *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704; *Ohio State Bar Ass’n v. Weaver* (1975), 41 Ohio St.2d 97, and *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411.

{¶33 } As a consequence of his criminal conviction, Respondent cannot hold public office for seven years. Respondent expresses no or very little interest in future public office. However, the fact remains that Respondent’s position as the Attorney General of Ohio sets him apart from other lawyers. In the least, Respondent’s explanations for his conduct speak poorly to his judgment. Poor judgment is not an aggravating factor. However, whether or not his explanations were sensible or credible, they are not an excuse. The panel cannot help but wonder at the harm to the reputation of the legal profession and to the confidence of the public in the office of Attorney General when the chief law officer in the state has committed ethical errors and tries to explain them away as Respondent has.

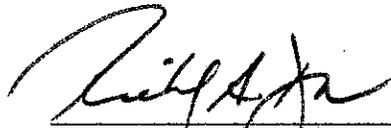
{¶34} The panel recommends that Respondent’s license to practice be suspended for six months.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 1, 2011. The

Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Marc Edward Dann, be suspended from the practice of law in the State of Ohio for six months. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio**

# CHARACTER LETTERS



TRUMBULL COUNTY FAMILY COURT

220 S. MAIN AVENUE, P.O. BOX 1209  
WARREN, OH 44482  
Phone: (330) 675-2600 \* Fax: (330) 675-2322

HONORABLE RICHARD L. JAMES  
Administrative Judge (2011)

HONORABLE PAMELA A. RINTALA  
Judge

Anthony M. Natale, Family Court Administrator

5/31/11

Board of Commissioners on Grievances and  
Discipline of the Supreme Court of Ohio

Re: Attorney Marc E. Dann

Dear Board Members:

I am in receipt of the subpoena you issued to me on 5/19/11.

Attorney Dann has represented numerous domestic and juvenile clients in our Court over the years.

He has appeared on time, prepared, and has advocated zealously on behalf of his clients.

I have no information regarding any alleged improper conduct involving Attorney Dann.

Thank you.

Sincerely,



Judge Richard L. James

*Trumbull County Court of Common Pleas*  
*Judge Andrew D. Logan*

161 High Street NW, Warren, Ohio 44481  
Office Phone (330) 675-2564  
Office Facsimile (330) 675-3076

June 7, 2011

Board of Commissioners on Grievances  
and Discipline of the Supreme Court of Ohio  
65 South Front Street  
Columbus, OH 43215-3431

Re: Attorney Marc Dann  
Case No: 11-024

Dear Board of Commissioners:

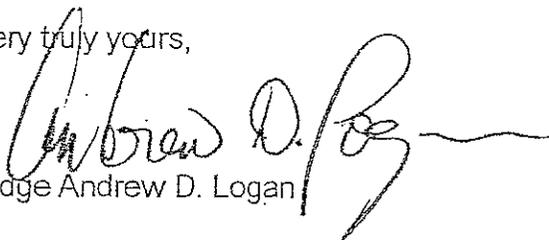
This letter is in regard to the Attorney Marc Dan and in response to Subpoena issued on his behalf.

I am presently in my 17th year as Common Pleas Court, General Division Judge after serving four years on the count court bench. I have known Attorney Dann for approximately my entire judicial career. I know Attorney Dann to be professional, knowledgeable, and respectful attorney while practicing in my court. He has always acted responsibly and ethically while appearing before me.

Although my relationship with Attorney Dann is almost entirely professional, I have seen him on occasion outside of the courtroom. For instance, his children played sports at or about the same time as my children and I would see him at school sporting events. I know Attorney Dann to be a caring parent and an active member of his community.

Notwithstanding his present problems, I have known Attorney Dann to be diligent and thorough as an attorney who has always acted professionally and responsibly in his conduct in my presence.

Very truly yours,

  
Judge Andrew D. Logan

ADL:jpc



JOHN M. DURKIN, JUDGE  
May 25, 2011

The Supreme Court of Ohio  
Board of Commissioners on Grievances and Discipline  
41 S. High Street - Suite 3370  
Columbus, Ohio 43215-6104

In Re: Disciplinary Counsel v. Marc E. Dann, Case No. 11-024

To Whom It May Concern:

This letter is being sent pursuant to a subpoena that I received regarding the above captioned matter. I am familiar with the facts giving rise to this disciplinary proceeding. I have known Attorney Dann for over twenty years, both professionally and personally.

During that time I have had an opportunity to form an opinion as to both Marc's ability as an attorney, as well as his reputation in the community.

Since I have taken the bench in 1997, Marc has appeared before me in the Common Pleas Court on many occasions. In every instance, I have found Marc to be well prepared, courteous and a zealous advocate for his client.

I also believe that Marc has taken the steps necessary to address issues related to this case, and that they are unlikely to reoccur in the future.

Finally, as it relates to Marc's reputation for truthfulness, I have always found Marc to have an excellent reputation for truthfulness, and believe that my opinion is shared by others in the community.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Durkin".

HON. JOHN M. DURKIN  
Mahoning County Court of Common Pleas

JMD:lc



The  
Legal Aid Society  
of Cleveland  
*Since 1905*

Volunteer  
Lawyers  
Program  
[vip]

June 6, 2011

Board of Commissioners on Grievances and Discipline  
Supreme Court of Ohio  
65 South Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

Re: Marc Dann

Dear Commissioners:

As a staff attorney in the Volunteer Lawyers Program at The Legal Aid Society of Cleveland, I monitored and tracked the hours related to Mr. Dann's Supervised Community Service. From May 9, 2010 through February 8, 2011, Mr. Dann completed 500 hours of community service in the form of pro bono legal assistance to low income individuals in Northeast Ohio. During this time, my interaction with Mr. Dann included in-person, phone, and electronic communications regarding referrals; attendance at Save the Dream "brown bag" lunches and trainings that were offered for volunteer support; and participation at neighborhood Brief Advice and Referral Clinics.

Mr. Dann's involvement at Legal Aid pre-dates and post-dates his court-mandated community service. Legal Aid's records reflect that he accepted approximately eleven foreclosure referrals prior to the start of the required community service period. In meeting the requirements of the community service, Mr. Dann continued to work on the previously accepted referrals and accepted approximately 35 additional referrals, including several family law/custody cases. He also attended two neighborhood Brief Advice Clinics at which he assisted six low income individuals. Since satisfying the 500 hour requirement on February 8, 2011, Mr. Dann has accepted two additional referrals, along with attending a Brief Advice Clinic at Collinwood's Five Points Community Center on May 14, 2011, where he assisted four low income individuals.

The majority of cases handled by Mr. Dann involve homeowners facing foreclosure. He has proven to be an effective and zealous advocate for his clients and a vocal participant in the public discourse regarding the foreclosure crisis and the courts' handling of it. While Legal Aid's efforts through the Save the Dream project are focused on assisting homeowners at mediation, Mr. Dann has been willing to serve as a volunteer attorney in cases where mediation has failed and the

Mary Beth McConville  
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mbmccconville@lasclev.org

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Cleveland, OH 44113  
Phone: 216.687.1900  
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Franklin & Geauga Counties  
North State Street  
Suite 300  
Columbus, OH 44077  
Phone: 440.352.6200  
Toll-Free: 888.808.2800  
Fax: 440.352.0015

Lorain County  
38 West Broad Street  
Suite 300  
Columbus, OH 44035  
Phone: 440.323.8240  
Toll-Free: 800.444.7348  
Fax: 440.323.8526

www.lasclev.org

case is placed back on the active docket. These cases usually involve either a set of circumstances that suggest that the lender/servicer has not participated in the mediation process in good faith or circumstances exist in which the homeowner is particularly vulnerable and a determination has been made that the benefit afforded by continued legal assistance is significant. Mr. Dann is one of several attorneys who is willing to accept foreclosure litigation referrals. There have been several cases that but for Mr. Dann, clients would have been turned away.

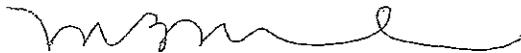
Though the quantity of Mr. Dann's volunteer commitment was determined by the court, the quality of the commitment was not. Mr. Dann has been a highly effective advocate for low income individuals. He has gained respect in the foreclosure practice area. On one occasion, when a volunteer attorney had to withdraw from a case, court personnel suggested to me that due to the complexities of the case, Mr. Dann was the best person to step in.

Mr. Dann has been an active participant in the broad strategic discussions surrounding the foreclosure crisis and has shown concern and interest about the systemic issues beyond the individual case assignments he has accepted. When the "robo-signing" issue hit the headlines, Mr. Dann attended a roundtable discussion with other Legal Aid attorneys regarding Cuyahoga County's response to the troubling practice. He has been a valued participant in the "brown bag" lunch help sessions that are aimed at supporting volunteer attorneys in the Save the Dream program. By sharing his insights and experiences related to the cases he was handling, he helped provide support to other volunteers as well as being considered a valued partner to Legal Aid's consumer unit attorneys.

Mr. Dann has showed additional support by offering to speak at the complimentary continuing legal education foreclosure trainings that Legal Aid provides to volunteer attorneys. He has recruited two additional pro bono volunteers who are now handling cases for Legal Aid clients. More than just fulfilling the time requirements of the service placement, he has exhibited a commitment to Legal Aid's mission of securing justice and resolving fundamental problems for those who are low income and vulnerable. Legal Aid looks forward to Mr. Dann's continued participation as it strives to provide high quality legal services to low income individuals in Northeast Ohio.

If you have any questions, please feel free to contact me.

Sincerely,



Mary Beth McConville, Esq.

May 31, 2011

Board of Commissioners of Grievances and Discipline  
Supreme Court of Ohio  
65 South Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

Dear Board of Commissioners,

My name is John Russo, and I am a professor in the Williamson College of Business Administration and Co-director of the Center for Working-Class Studies (CWCS) at Youngstown State University. I am writing to attest to the character of Attorney Marc Dann.

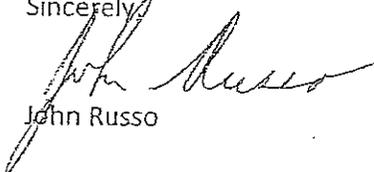
I have known Mr. Dann for over a decade as a community affiliate of the CWCS, Ohio State Senator and Attorney General, and friend. As a CWCS community affiliate for seven years, Mr. Dann has actively supported the Center and helped frame its programmatic goals and activities. He has also contributed to the Center's blog, *Working-Class Perspectives*, writing on various legal issues impacting working people. This highly successful blog is a "staff pick" at the *Washington Post*.

As an attorney and public servant, Mr. Dann was known as a fighter for economic and social justice. He regularly won the pro bono award from the Northeast Ohio Legal Services. He was the first state attorney general to sue mortgage lenders involved in predatory lending. This help to forestall the foreclosure on homes of many working families. Similarly, he helped to develop programs statewide to provide representation for people in foreclosure, thus giving access to the legal system to those who couldn't afford it.

Finally, Mr. Dann is a good father to his two children, helping them to become successful young adults.

In conclusion, despite mistakes for which he is truly sorry, Mr. Dann is man of integrity and character who already has paid personally, professionally, and publicly for his misdeeds.

Sincerely,



John Russo

# Mahoning County Court of Common Pleas

R. Scott Krichbaum, Judge  
120 Market Street • Youngstown, Ohio 44503  
Phone: 330-740-2156

June 1, 2011

The Board of Commissioners  
on Grievances and Discipline of  
The Supreme Court of Ohio  
Office of James D. Caruso  
416 N. Erie Street, Suite 500  
Toledo, Ohio 43604-6301

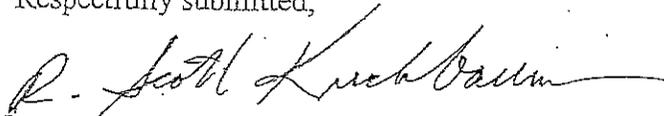
Dear Members of the Board of Commissioners:

Pursuant to subpoena received by the undersigned to submit a letter on behalf of Marc E. Dann, I am providing this information in lieu of appearing personally to testify.

I have known Marc Dann professionally for about 25 years. I have had little to no outside social contact with him or his family during that entire time. Mr. Dann is a talented lawyer with an exceptional ability to use the media to further his cause. Marc practiced law with David Betras for many years and developed a viable, prosperous and respected law firm during their association. His appearances before me were always respectful, and he displayed preparation and competence during all of his presentations to me. When Marc Dann ran for Attorney General, he was vilified by his opponent for serving as a criminal defense lawyer for a man accused of a sexual assault upon a young female. His opponent's comments were to the effect that "she was a better candidate than he because she would not represent someone like that". When the press called me for a reaction to his opponent's comments, I spoke for our profession and indicated that it takes a dedicated and dutiful lawyer to take on the responsibility of representing someone accused of such a heinous crime, and that Marc Dann should be applauded for that effort, rather than criticized. Marc has always stood up for the little guy.

I am of the opinion that a person should be judged upon the entire body of his life's work, rather than upon a single incident. In Mark Dann's case, it seems to me that the good he has accomplished in his life far outweighs the bad.

Respectfully submitted,



R. Scott Krichbaum  
Judge, Court of Common Pleas

Robert W. Briggs  
1350 COUNTRYSIDE CIRCLE, N.E.  
HARTVILLE, OH 44632  
(330) 233-0956

June 2, 2011

Board of Commissioners on Grievances and Discipline  
65 South Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

RE: Marc Dann

Dear Commission Members:

Over a year ago, I had the good fortune of meeting a wonderful woman named Alyssa Lenhoff at a Knight Foundation event in Florida. We began dating and after a year we became engaged. Shortly after I met her, I Googled her name and to my surprise, and at that time chagrin, I noted that her husband was Marc Dann from whom she has since divorced.

I had only met Marc once in connection with my service on the Northeast Ohio Universities Collaboration and Innovation Study Commission, when he appeared before the Commission to defend the Attorney General's right to dictate which lawyers and law firms would represent the Northeast Ohio's universities which caused needless expense. After that meeting, I concluded that Marc Dann was a jerk.

Since that time, I have come to know Marc as ex-husband to my fiancée, father to a 19-year-old Georgetown son and a 16-year-old Walsh Jesuit High School daughter, and a friend. Needless to say, my initial opinion of him has changed dramatically.

It has changed because notwithstanding the severe public humiliation and termination of a long marriage, he has worked tirelessly in the Herculean task of rebuilding his relationship with his two wonderful children and maintaining close and friendly communications with Alyssa for the benefit and welfare of those two fine teenagers. In addition to that, he has managed to rebuild his law practice, which has included an extraordinary amount of pro bono work well beyond that which he was required to do as a result of his misdemeanor convictions. He and his family have paid an incalculable price for his transgressions. In my humble opinion, he has been punished far beyond the violations for which he was convicted. I would hope that his other

indiscretions and bad judgment would not be a factor in your determinations, especially because he has paid an extraordinary price for that as well.

Accordingly, I respectfully implore you to avoid any additional punishment and bring this long and painful matter to a fair and just conclusion. Obviously, my request is not a political one because Marc and I are not only in different parties, our political philosophies are divergent in some areas. You should also note that he has no alimony obligations to Alyssa, which could suggest ulterior motives on my part if he did.

Marc Dann is a bright, hard working, caring, giving, ethical man and an exceptional father. Please allow him to continue on that path as a practicing attorney.

Most sincerely,

  
Robert W. Briggs



THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

JUSTICE CENTER

1200 ONTARIO STREET

CLEVELAND, OHIO 44113

ANDREA R. KINAST

Foreclosure Mediator

216-443-8504

June 6, 2011

Board of Commissioners on Grievances & Discipline  
Supreme Court of Ohio  
65 South Front Street, 5<sup>th</sup> Floor  
Columbus, Ohio 43215-3431

RE: Marc Dann

Dear Board:

I am the Director of the Cuyahoga County Court of Common Pleas Foreclosure Mediation Program. It is through my work in the foreclosure mediation program that I have come to know Marc Dann. I am providing this letter to you in lieu of testimony regarding Mr. Dann's character.

Prior to meeting Mr. Dann through his representation of clients in the foreclosure mediation program, I did not know him personally. It is only through his representation of clients who are going through foreclosure and have requested mediation that I have come to know Mr. Dann.

I have been extremely impressed by Mr. Dann's representation of clients, and his participation in foreclosure mediation. The area of foreclosure mediation is a relatively new legal arena, and is significantly different than other types of mediation. Client interaction and control is crucial to the process, and I have been impressed with his ability to create strong attorney-client relationships. The typical property owner I meet who is in foreclosure has a difficult time trusting anyone involved in the process, including his/her own attorney. However, Mr. Dann has been able to create relationships that ultimately serve his client's interests in a positive way. Furthermore, there are often some very difficult conversations that must take place regarding a property owner's current financial, medical and marital status, as all are factors when discussing foreclosure. Mr. Dann's ability to have these conversations in a humane and thoughtful manner, without patronizing or minimizing his clients is not a strength which many attorneys can attest to having.

Since Mr. Dann has started representing property owners in foreclosure, I have had the opportunity to serve as a mediator on several cases in which he has been involved. His ability to zealously advocate for his client, while making a case for

resolution, has created very successful outcomes for his clients; outcomes that are not typical to the process. His excitement regarding this area of law and his continued interest in pursuing justice for his clients is admirable.

Opposing counsel have not always reacted positively to Mr. Dann. He became involved in representing Defendants in foreclosure mediation at a time when most property owners were unrepresented. Plaintiff's counsel were not used to having an attorney sitting across the table, who was prepared on the file and could speak to a resolution. I have found that when Mr. Dann is involved in a file, it makes opposing counsel better because they know that they must prepare properly in order to be ready for his questions. To me, this is a mark of a good attorney—when you make those around you better as well.

In conclusion, I welcome the opportunity to continue working with Mr. Dann and am hopeful that he will be able to maintain his practice, specifically in regard to his representation of property owners in foreclosure. I have found him to be an excellent advocate, well-prepared attorney, and caring individual.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions.

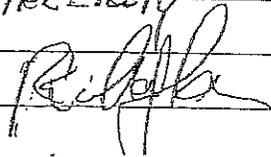
Sincerely,

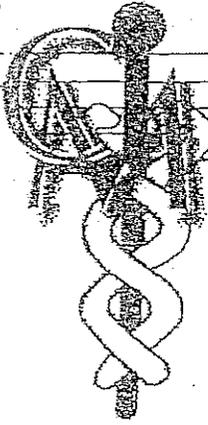
A handwritten signature in cursive script, appearing to read "Andrea R. Kinast".

Andrea R. Kinast

To Whom it may concern,  
I am writing this letter in reference to  
Marc Dann. My name is Robert Favino. I met  
Marc in 2009 and without his help I don't know  
where I would be today. Let me briefly explain  
my situation a little. I am a 42 year old  
divorced male living in Garfield Hts, OH with  
my son. In Oct of 2008 I was laid off at  
DHL Express, with the country in the midst of  
a recession there weren't any jobs for me to  
get back on my feet. With bills mounting and  
foreclosure inevitable, I started calling attorneys  
to find out how I could save my home. No one  
could help. Until I met Marc Dann. I met  
with Marc at his office and explained my situation  
to him and unlike the other attorneys before  
him, he took on my case and never charged me  
a single penny for his services. Without Marc's  
free representation and advice I don't know what  
may have happened. To conclude I would like  
to say that because of Marc, my son and I  
are still in our home today. It was truly a  
godsend that I met Marc. Thank you for  
taking the time to read my letter.

Sincerely





COMMUNITY • MEDICAL • ASSOCIATES, INC.  
7450 S. Canfield-Niles Rd. • Austintown, Ohio 44515 • (330) 792-7495 • Fax (330) 792-7842

MICHAEL J. DEVINE, III, M.D. • DAVID M. KENNEDY, M.D. • JAMES F. SHINA, M.D.

June 02, 2011

TO: BOARD OF COMMISSIONERS

I have known Marc Dann for approximately twenty years. I personally believe Marc to be a man of high moral character. I respect his legal ability and his willingness to work for all his clients, including those with limited means. Marc has always worked hard to support local charities and religious organizations.

I continue to trust and admire Marc Dann. I believe he will work honestly and live up to the high standards required by the bond.

Sincerely,



David M. Kennedy, MD  
DMK/ap



The  
Legal Aid Society  
of Cleveland  
Since 1905

Volunteer  
Lawyers  
Program  
[vip]

Mary Beth McConville  
Phone: 216.861-5427  
Fax: 216.687.0779  
mbmccconville@lasclev.org

February 18, 2011

Via Facsimile and Ordinary Mail  
Steve Downing  
Probation Officer  
Department of Probation Services  
375 S. High Street, 8<sup>th</sup> Floor  
Columbus, Ohio 43215-4520

Re: Case No. 2010 CR.B 009998

Dear Mr. Downing:

By letter dated January 14, 2011, I answered your request for a summary of the number of community service hours that Marc Dann had completed to date. At that time, he had completed 439.99. Please be advised that as of February 8, 2011, Mr. Dann has satisfied the 500 hour community service requirement.

I am including copies of the remaining timesheets that Mr. Dann has submitted on a weekly basis. Out of concern for the confidentiality of clients, we have redacted client names.

As stated in my prior correspondence to you, Mr. Dann has proven to be a valued advocate for the defense bar in the foreclosure crisis. In the course of completing the community service hours, he has assisted Legal Aid in providing high-quality legal services to low income individuals in Northeast Ohio.

Please contact me with any questions regarding this final report on Mr. Dann's community service placement.

Sincerely,

Mary Beth McConville

Encl.

CC: Christine Seymour (by ordinary mail)

Cuyahoga County  
ADMINISTRATIVE OFFICES

1225 West Sixth Street  
Cleveland, OH 44113

Phone: 216.687.1900  
Toll-Free: 888.617.5777  
Fax: 216.687.0779

Ashtabula County

124 East Walnut Street  
Perrysburg, OH 44047

Phone: 440.576.8120  
Toll-Free: 866.873.9665  
Fax: 440.576.3024

Lake & Geauga Counties

8 North State Street  
Suite 500  
Circleville, OH 43087

Phone: 440.352.6200  
Toll-Free: 888.808.2800  
Fax: 440.352.0015

Lorain County

538 West Broad Street  
Suite 300  
Elyria, OH 44035

Phone: 440.323.8240  
Toll-Free: 800.444.7348  
Fax: 440.323.8526

www.lasclev.org

LSC

Stipulated  
Exhibit 8

# Law Office Of Marc Dann - Client Summary

Starting : 05/01/2010 | Ending : 02/08/2011 | Client : Legal Aid Society | Project : All | User : All Users | Ticket Type : All Project Types | Activity Type : All Activity Types | Billable : All | Billing Status : All

Date	Activity	Project	Description	Time/Cost	Billable/Sell
12/28/2010	Phone Call		client	0.20	0.00
12/28/2010	Phone Call		client	0.20	0.00
12/29/2010	Email correspondence		opposing counsel	0.30	0.00
12/29/2010	Review Documents		check alvinville court docket	0.20	0.00
12/29/2010	Email correspondence		Client	0.30	0.00
12/29/2010	Phone Call		opposing counsel	0.30	0.00
12/29/2010	Phone Call		Client	0.30	0.00
12/30/2010	Meeting		Client	0.50	0.00
12/30/2010	Drafting		Notice of Deposition	0.40	0.00
12/30/2010	Revise Document		Motion to dismiss	0.80	0.00
12/31/2010	Email correspondence		opposing counsel	0.30	0.00
1/2/2011	Phone Call		Client	0.50	0.00
1/3/2011	Drafting		letter to opposing counsel	0.30	0.00
1/3/2011	Drafting		Revise brief; letter to client; letter to opposing counsel	0.70	0.00
1/3/2011	Drafting		letter to client	0.30	0.00
1/3/2011	Drafting		Motion to return to active docket; restore custody do adrian carlisle; letter to client	0.90	0.00
1/3/2011	Phone Call		client	0.40	0.00
1/3/2011	Drafting		Interrogatories; request for production of documents	1.80	0.00
1/3/2011	Email correspondence		opposing counsel phone call with in house counselor	0.30	0.00
1/3/2011	Review Documents		Review file	0.80	0.00
1/3/2011	Drafting		Shared parenting plan	0.90	0.00
1/4/2011	Meeting		mediator	0.20	0.00
1/4/2011	Meeting		mediator	0.70	0.00
1/4/2011	Phone Call		Client	0.40	0.00
1/4/2011	Phone Call		client	0.30	0.00
1/4/2011	Drafting		Letter to opposing counsel; client	0.60	0.00
1/4/2011	Phone Call		client	0.20	0.00
1/5/2011	Review Documents		dismissal entry	0.20	0.00
1/8/2011	Review Documents		court notice	0.20	0.00
1/8/2011	Review Documents		Settlement agreement	0.90	0.00
1/11/2011	Email correspondence		Opp: con	0.20	0.00
1/12/2011	Phone Call		Follow up on home visit	0.30	0.00
1/12/2011	Phone Call		client	0.30	0.00
1/12/2011	Review Documents		email from opp counsel	0.30	0.00
1/12/2011	Review Documents		Supplemental Complaint	0.50	0.00
1/12/2011	Drafting		corr with client	0.20	0.00
1/13/2011	Phone Call		Opposing counsel email con	0.40	0.00
1/13/2011	Drafting		Letter to client	0.20	0.00

Hours for final report begin. Preceding hours have already been submitted.

Grand Totals Labor: 503.99 0.00  
 Grand Totals Expense: 0.00 0.00  
 Grand Totals: 0.00 0.00

Law Office Of Marc Dann - Client Summary

Starting : 05/01/2010 | Ending : 02/08/2011 | Client : Legal Aid Society | Project : All | User : All Users | Ticket Type : All Project Types | Activity Type : All Activity Types | Billable : All | Billing Status : All

Date	Activity	Project	Description	Time/Cost	Billable/Sell
1/5/2011	Review Documents		Client	0.30	0.00
1/13/2011	Email correspondence		Mary Beth	0.20	0.00
1/14/2011	Phone Call		opposing counsel	0.30	0.00
1/14/2011	Drafting		letter to client	0.20	0.00
1/14/2011	Drafting		letter to opposing counsel	0.30	0.00
1/14/2011	Drafting		Motion to strike supplemental complaint filing research and drafting	1.80	0.00
1/14/2011	Drafting		letter to opposing counsel	0.60	0.00
1/14/2011	Drafting		letter to client	0.30	0.00
1/14/2011	Revise Document		Settlement agreement letter to opposing counsel	0.30	0.00
1/14/2011	Review Documents		modification package; letter to opposing counsel	0.80	0.00
1/14/2011	Revise Document		requests for production and interrogatories	0.60	0.00
1/15/2011	Legal Research		standing issues; draft notice of supplemental authority	1.20	0.00
1/15/2011	Phone Call		Client	0.40	0.00
1/16/2011	Phone Call		client	0.30	0.00
1/17/2011	Review Documents		prepare for mediation; Meet with client re depo	0.80	0.00
1/17/2011	Phone Call		client	0.30	0.00
1/17/2011	Review Documents		Prepare for hearing	0.80	0.00
1/18/2011	Court Time		Custody Matter; Child endangering issues	1.70	0.00
1/18/2011	Email correspondence		client; prep for hearing	0.40	0.00
1/18/2011	Email correspondence		Client; prep for hearing	0.40	0.00
1/18/2011	Meeting		Client	0.50	0.00
1/18/2011	Meeting		Client	1.50	0.00
1/18/2011	Review Documents		Prepare for mediation	0.60	0.00
1/18/2011	Review Documents		Prepare for mediation	0.70	0.00
1/18/2011	Drafting		letter to opposing counsel and client	0.60	0.00
1/18/2011	Court Time		Custody hearing	3.20	0.00
1/18/2011	Phone Call		client re breach of contract	0.30	0.00
1/18/2011	Drafting		Agreed JE	0.90	0.00
1/18/2011	Email correspondence		opposing counsel; client	0.30	0.00
1/19/2011	Court Time		mediation	3.50	0.00
1/19/2011	Court Time		mediation	2.30	0.00
1/19/2011	Deposition		client	3.30	0.00
1/20/2011	Meeting		Brown Bag Lunch	1.00	0.00
1/20/2011	Court Time		Motion for custody pretrial	2.00	0.00
1/20/2011	Meeting		Client	0.40	0.00
1/20/2011	Phone Call		client	0.30	0.00

Grand Totals Labor: 503.99 0.00  
 Grand Totals Expense: 0.00 0.00  
 Grand Totals: 0.00 0.00

# Law Office Of Marc Dann - Client Summary

Starting : 05/01/2010 | Ending : 02/08/2011 | Client : Legal Aid Society | Project : All | User : All Users | Ticket Type : All Project Types | Activity Type : All Activity Types | Billable : All | Billing Status : All

Date	Activity	Project	Description	Time/Cost	Billable/Sell
1/20/2011	Revised Documents		Shared parenting grade 9c	0.80	0.00
1/20/2011	Drafting		Letter to client; letter to opposing counsel; draft debt summary	0.90	0.00
1/20/2011	Drafting		letter to client	0.60	0.00
1/20/2011	Drafting		Letter to client; Letter to opposing counsel	0.80	0.00
1/20/2011	Drafting		letter to client	0.20	0.00
1/22/2011	Phone Call		Client	0.20	0.00
1/25/2011	Review Documents		modification submission	0.60	0.00
1/25/2011	Drafting		Brief In Opposition to motion to dismiss.	2.30	0.00
1/25/2011	Phone Call		clients (2)	0.40	0.00
1/25/2011	Review Documents		submission to lender for modification; redraft letter	0.60	0.00
1/25/2011	Phone Call		client re: problems with mod	0.40	0.00
1/26/2011	Court Time		Mediation	0.30	0.00
1/26/2011	Phone Call		client	0.30	0.00
1/26/2011	Review Documents		Prepare for pretrial	0.30	0.00
1/27/2011	Court Time		total county common pleas	1.00	0.00
1/27/2011	Court Time		Mediation	1.00	0.00
1/27/2011	Drafting		letter to client	0.30	0.00
1/27/2011	Drafting		Letter to the client	0.30	0.00
1/28/2011	Drafting		letter to client	0.30	0.00
1/28/2011	Drafting		Letter to client; review court order	0.40	0.00
1/28/2011	Drafting		letter regarding discovery issues; review discovery responses	0.80	0.00
1/28/2011	Drafting		Letter to opposing counsel	0.30	0.00
1/31/2011	Phone Call		client; review documents	0.40	0.00
1/31/2011	Drafting		letter to client	0.30	0.00
2/1/2011	Phone Call		client	0.30	0.00
2/2/2011	Review Documents		Payoff and reinstatement documents	0.40	0.00
2/2/2011	Court Time		Case Management Conference	1.10	0.00
2/2/2011	Phone Call		Client	0.20	0.00
2/2/2011	Phone Call		client	0.20	0.00
2/4/2011	Meeting		client	0.90	0.00
2/4/2011	Review Documents		file; prepare for pretrial	0.30	0.00
2/4/2011	Review Documents		Letter from opposing counsel; phone call with client	0.50	0.00
2/4/2011	Review Documents		response to motion to dismiss	0.40	0.00
2/4/2011	Meeting		Client to prepare modification submission	0.90	0.00
2/4/2011	Court Time		Pretrial	1.00	0.00
2/4/2011	Email correspondence		opposing counsel	0.50	0.00
<b>Grand Totals Labor:</b>				<b>503.99</b>	<b>0.00</b>
<b>Grand Totals Expense:</b>				<b>0.00</b>	<b>0.00</b>
<b>Grand Totals:</b>					<b>0.00</b>

# Law Office Of Marc Dann - Client Summary

Starting : 05/01/2010 | Ending : 02/05/2011 | Client : Legal Aid Society | Project : All | User : All Users | Ticket Type : All Project Types | Activity Type : All Activity Types | Billable : All | Billing Status : All

Date	Activity	Project	Description	Time/Cost	Billable/Sell
2/4/2011	Drafting		Answer and counterclaim	1.70	0.00
2/4/2011	Revise Document		Answer and Counter claim and motion to file instanter	0.90	0.00
2/5/2011	Drafting		Letter to client	0.30	0.00
2/6/2011	Letter		Client	0.20	0.00
2/6/2011	Letter		client	0.30	0.00
2/6/2011	Review Documents		client	0.30	0.00
2/7/2011	Review Documents		modification	0.30	0.00
2/7/2011	Phone Call		Client modification	0.40	0.00
2/7/2011	Review Documents		client	0.30	0.00
2/8/2011	Phone Call		court decision on motion to dismiss	0.80	0.00
2/8/2011	Revise Document		Sheperd client	0.60	0.00
2/8/2011	Review Document		Complaint	0.40	0.00
2/8/2011	Review Document		Agreement modification	0.60	0.00
2/8/2011	Email correspondence		package letter to client		
			Client	0.30	0.00
			<i>Total Labor For Marc Dann</i>	<b>503.99</b>	<b>0.00</b>
			<i>Total Expense For Legal Aid Society</i>	<b>0.00</b>	<b>0.00</b>
			<i>Total For Legal Aid Society</i>		<b>0.00</b>
			Total Labor For Legal Aid Society	<b>503.99</b>	<b>0.00</b>
			Expense For Legal Aid Society	<b>0.00</b>	<b>0.00</b>
			Total For Legal Aid Society		<b>0.00</b>
			<b>Grand Totals Labor:</b>	<b>503.99</b>	<b>0.00</b>
			<b>Grand Totals Expense:</b>	<b>0.00</b>	<b>0.00</b>
			<b>Grand Totals:</b>		<b>0.00</b>