UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585)613-4000

Dr. Richard Cordero
Appellant and creditor

v.

NOTICE OF MOTION AND MOTION TO HAVE THE BANKRUPTCY COURT REPORTER REFERRED TO THE JUDICIAL CONFERENCE FOR INVESTIGATION OF HER REFUSAL TO CERTIFY THE RELIABILITY OF THE TRANSCRIPT

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Richard Cordero moves the Court to make at its earliest possible date a referral to the Judicial Conference of the United States under 28 U.S.C. §753(c) (¶17 below) for an investigation of the reasons and circumstances why Bankruptcy Court Reporter Mary Dianetti has refused to certify the reliability of the transcript of the evidentiary hearing that she recorded stenographically on March 1, 2005, called by Bankruptcy Judge John C. Ninfo, II, to hear the DeLano Respondents' motion to disallow Dr. Cordero's claim against Mr. DeLano. Judge Ninfo's Decision and Order of April 4, 2005, disallowing that claim is the subject of the above-captioned appeal.[1]

[1]The applicability of 28 U.S.C. §753 to bankruptcy court reporters is discussed in ¶41 et seq., below.

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Dates of Letters Exchanged Between		
	Dr. Cordero	**Reporter Dianetti**
1.	April 18, 2005	
2.		May 3
3.	May 10	
4.		May 19
5.	May 26	
6.		June 13
7.	June 25	
8.		July 1

I. Reporter Dianetti avoided stating on three occasions the count of the stenographic packs and folds that she had counted to arrive at her transcript cost estimate; Dr. Cordero requested confirmation that her reluctance was not motivated by her concerns about the transcript content; but the Reporter requested prepayment while refusing to certify that the transcript would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence

2. At the end of the evidentiary hearing on March 1, Dr. Cordero asked Reporter Dianetti to count and write down the number of packs and folds of stenographic paper that she had used; the Reporter did so, but on that occasion she did not provide an estimate of the cost of the transcript.

3. Over a month and a half later, contemporaneously with giving notice of appeal and designating the items in the record and the issues on appeal, Dr. Cordero requested in his letter of April 18 to Reporter Dianetti that she provide a cost estimate and indicate the number of stenographic packs and folds "that you will be using to prepare the transcript". In so doing, Dr. Cordero was simply exercising his right under §753(b), providing that:

> §753(b) [last paragraph] The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

4. Since Dr. Cordero lives in New York City, hundreds of miles away from the bankruptcy clerk's office in Rochester, and since he, by contrast, would be charged for ordering the transcript, it is only reasonable that he would want to have the closest equivalent to an inspection in person of the original records by asking the court reporter to describe what she would transcribe at his expense. This sort of "dealings with parties requesting transcripts" must fall precisely within the scope of §753(c). Hence, Dr. Cordero simply asked for information that he was legally entitled to obtain.

5. In her answer of May 3, Reporter Dianetti failed to provide any count of packs and folds of stenographic paper. Yet, she must have counted them since she provided "the estimated cost…of $600 to $650". To that she added the caveat "Please understand this is an estimate only." Thereby she

undermined the reliability of what in the normal course of business would have been deemed as the lower and upper limits of the estimate.

6. Hence, in his letter to her of May 10, he asked that she state by how much more her estimate could fluctuate and added "This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording."
7. In her letter of May 19, she surprisingly stated that "I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it." Her statement was self-contradictory because if her estimate may not fluctuate "at all", then how could she provide an initial estimate with lower and upper limits, which by definition mark the margins of fluctuation? How would she pick the final "cost...[inside or outside the range] of $600 to $650"? Since Reporter Dianetti is an official reporter, who earns her living as such, who would prepare the transcript based on her own recording of a proceeding, and who had provided an estimate that already fluctuated by almost 10%, how could she not have an idea of by "how much my estimate can fluctuate"? After all, how many variables can possibly affect the final number of transcript pages? Is censure one of them?
8. Making her estimate even more incomprehensible, Reporter Dianetti again failed to provide in that letter of May 19 the count of stenographic packs and folds that she would use to prepare the transcript because "you already have that information". Did she have it too?; if so, why not just restate it in a straightforward business fashion? Moreover, there was something very odd to her failure to appreciate the difference between the count of packs and folds that she gave Dr. Cordero on March 1 and what she had recently counted and would actually "be using to prepare the transcript", as Dr. Cordero had asked in his first letter of April 18.
9. Thus, in his letter to her of May 26, Dr. Cordero pointed out that:

> If you cannot state those limits, the final amount can be anywhere above

> or below that fork [of $600 to $650]. In practical terms this means that there is no estimate at all. Consequently, I am left to assume all the risk and be liable for whatever final price you bill me for. I hope you will agree that does not sound either fair to me or an acceptable business arrangement.

10. In her response of June 13, Reporter Dianetti agreed to an upper limit of $650 and stated a cost per page of $3.30. However, she added the astonishing statement that:

> Also, I am listing the number of stenographic packs and the number of folds in each pack and this is **the same information** that was given to you on the afternoon of the hearing as I had marked each pack with the number of folds within your view and **am just giving you those exact numbers** at this time. (emphasis added)

11. How astonishing indeed, for Reporter Dianetti was emphatically avoiding any statement of the numbers of packs and folds that she would actually use to prepare the transcript! How and to what extent would those numbers differ from the numbers of packs and folds in her March 1 recording? Moreover, if she did not even have to count the packs and folds to arrive at her estimate of the transcript cost, why would she on her May 3 and 19 letters not merely restate "the same information…[with which] I had marked each pack", thus nipping any suspicion in the bud ? Dr. Cordero made this point unambiguous in his letter to her of June 25:

> Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:
>
> > [since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript…provide me with that count…Therefore…
> >
> > 2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

12. By now Reporter Dianetti had rendered herself suspicious by refusing to state the number of packs and folds that she would "translate into the transcript". The fact is that she recorded the evidentiary hearing on a stenographic machine, presumably the same that she uses for recording every other bankruptcy proceeding, using the same type of stenographic paper, whose folds were

pulling in and filled with content at the same rate, so that the same amount of such content would fill transcription pages at the same rate.

13. Indisputably, the very aim of a stenographic recording of a proceeding is to record it "verbatim" (§753(b)) so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications...determined by standards formulated by the Judicial Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content and the same length. That is a logical and practical imperative of the system of reporting court proceedings. Consequently, why so much evasiveness on the part of Reporter Dianetti? Since her refusal made no sense from either a mechanical or business point of view, was she concerned about how much content would finally determine the number of pages that would make up her transcript? If so, her concern cast in issue the transcript's reliability.

14. Hence, Dr. Cordero asked her in his letter of June 25 to agree to:

> …provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing…
>
> …simultaneously file one paper copy with the clerk of the bankruptcy court and mail to [Dr. Cordero] a paper copy together with an electronic copy…and not make available any copy in any format to any other party…[and]
>
> …truthfully state in your certificate [that] you have not discussed with any other party (aside from me)…the content…of your stenographic recording of the DeLano evidentiary hearing or of the transcript…[otherwise] you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

15. But in her July 1 letter Reporter Dianetti refused to agree to provide such assurance!; and she did so without offering any explanation whatsoever. On the contrary, she required that Dr. Cordero prepay by "a money order or certified check in the amount of $650.00 payable to "Mary Dianetti"", made

no provision for the final cost coming out at her own lower estimate of $600 or even lower because, as she had put it in her May 3 letter, "Please understand this is an estimate only", once she applied her own $3.30/page rate, and then she added: "The balance of your letter of June 25, 2005 is rejected."

16. How come "rejected"? It must be quite obvious that Reporter Dianetti has no justification to refuse to agree that her transcript will be accurate and complete, not distributed to others (aside from the clerk) yet paid for by Dr. Cordero, and not subject to anybody's tampering influence. Who in his right mind would pay $650 up front for a product that he has already been given evidence will be defective and unsuitable for the intended purpose? Would you want your rights and obligations determined on a transcript for whose reliability the reporter herself will not vouch? More importantly for this Court, will it in Reporter Dianetti's stead vouch for the reliability of that particular transcript to the Court of Appeals and the Supreme Court? Would the Court certify to the Judicial Conference or the FBI that her conduct is the customary and acceptable conduct that the Court allows its reporters to engage in?
17. Under 28 USC §753(c) the Court has the authority and duty to ascertain the reason for Reporter Dianetti to refuse to give assurance about the reliability of the transcript, for that subsection provides thus:

> (c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts**.**

18. Reporter Dianetti recognized this supervision by stating in her July 1 that "I am providing a copy of this letter…to the U.S. District Court".

II. Reporter Dianetti already tried on a previous occasion to avoid submitting the transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it

19. This is by no means the first time that Reporter Dianetti engages in conduct contrary to her statutory duties despite §753(a) providing that "...Each reporter shall take an oath faithfully to perform the duties of his office...." In 2003 she violated her regulatory duties under FRBkrP 8007, which provides thus:

> Rule 8007. *(a) Duty of reporter to prepare and file transcript.* On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

20. Against the backdrop of FRBkrP 8007(a), the wrongful conduct of Reporter Dianetti stands in bold relief. However, it takes on sinister significance upon one learning that her previous violation of her duties occurred in the context of *Pfuntner v. Gordon et al*, docket no. 02-2230, WBNY, the case that contains Dr. Cordero's claim against Mr. DeLano and that Judge Ninfo emphatically linked to this case (see Dr. Cordero's motion of June 20, 2005, in this Court and the supporting Statement on the Judge's linkage of both cases.

21. In *Pfuntner,* Dr. Cordero was named a defendant and he cross-claimed against Chapter 7 Trustee Kenneth Gordon for having negligently and recklessly performed his duties as trustee to the detriment of Dr. Cordero and making defamatory statements against him to Judge Ninfo in order to induce the Judge not to cause the Trustee to be investigated, as requested by Dr. Cordero. Trustee Gordon moved to dismiss and his motion was heard on December 18, 2002. Judge Ninfo

dismissed the cross-claims summarily at the hearing despite the genuine issues of material fact stated by Dr. Cordero and even though discovery had not started on any aspect of the case and not even disclosure pursuant to FRBkrP 7026 and FRCivP 26(a)(1) had been provided by any party other than Dr. Cordero although the case had been commenced some three months earlier. Interestingly enough, according to PACER, https://ecf.nywb.uscourts.gov/, between April 12, 2000, and June 26, 2004, Trustee Gordon appeared as trustee in 3,383 cases, in 3,382 out of which he did so before Judge Ninfo! By contrast, Dr. Cordero was a non-local litigant living hundreds of miles away in New York City and appearing pro se. Had Judge Ninfo developed a modus operandi with a trustee who had become a fixture litigant in his court so that to protect it he got rid of what he could only deem to be one of the weakest of defendants, a non-local pro se? The question is warranted by the series of acts by Judge Ninfo and others, including Court Reporter Dianetti, of disregard of the law, the rules, and the facts that form a pattern of non-coincidental, intentional, and coordinated wrongdoing.

22. Indeed, to appeal from Judge Ninfo's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript.
23. It was not until March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr.

Cordero had been put on speakerphone and she was not supposed to include it in the transcript.

24. There is further evidence supporting the implication of Reporter Dianetti's comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant Judge Ninfo engages in exchanges with parties in Dr. Cordero's absence. Thus, on many occasions the Judge has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms of civility and of his duty to afford all parties to a **hearing** the same opportunity to be heard and hear the judge and the other parties.

25. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking his gavel, but simply by pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, Judge Ninfo brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left without uttering another word. What is not only likely but in fact certain is that by so doing, the Judge, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the Judge, by so abruptly cutting off a phone communication, have given to any reasonable person at the opposite end of the phone line cause for offense and the appearance of partiality and unfairness?

26. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, 2003, the date on her certificate. Rather, it was filed two weeks later on March 26, a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28.

27. The Court Reporter never explained why she failed to comply with her obligations under §753(b), which provides that:

> Upon the request of any party to the proceeding which has been so recorded…the reporter…shall **promptly** transcribe the original records…and attach to the transcript his official certificate, and deliver the same to the party…making the request. (emphasis added)

28. Was Reporter Dianetti even the one who sent the transcript to Dr. Cordero on that occasion? If she could not complete the transcript in the 30 days provided for under FRBkrP 8007(a) (¶19 above), let alone the 10 days that she had said it would take her to transcribe the mere 27 pages that she herself had estimated, why did she not comply with her obligation that "the reporter shall seek an extension of time from the clerk"? If she did, why did the clerk in turn fail to comply with his obligation that "the action of the clerk shall be entered in the docket and the parties notified"? In either event, Dr. Cordero was left without either the transcript or notice and had to try to contact Reporter Dianetti by calling her and the clerk on several occasions to find out why the transcript had not been sent to him and when it would be. In so doing, either the Reporter or the clerk, or both violated the duty to proceed with promptness. Promptly discharging transcript-related duties is so important that FRBkrP restate it thus:

> Rule 5007. Record of Proceedings and Transcripts
>
> (a) Filing of record or transcript.
>
> The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and **promptly** file them with the clerk. The person preparing any transcript shall **promptly** file a certified copy. (emphasis added)

29. Reporter Dianetti also claimed that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, her transcription of his statements has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in their respective functions. But no imagination is needed, only an

objective assessment of the facts and the applicable legal provisions, to ask whether Reporter Dianetti was told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his statements and submit her transcript to a higher-up court officer to be vetted before mailing a final version to Dr. Cordero. When a court officer or officers so handle a transcript, which is a critically important document for a party's exercise of his right to request on appeal the review of a lower judge's decision, an objective observer can reasonably question in what other wrongful conduct that denies a party the elements of fairness and impartiality essential to the Due Process Clause of the 5th Amendment they would engage to protect themselves.

III. The Clerk of the Bankruptcy Court disregarded the rules by transmitting the record to the District Court when it could not possibly be complete; yet the Court repeatedly scheduled the appeal brief for a date before Dr. Cordero would receive and use the transcript in his appeal

30. Bankruptcy Court Clerk Paul Warren is among those court officers that acted with disregard for the rules and with a detrimental effect on any use by Dr. Cordero of the transcript in the instant case. This is so because Dr. Cordero sent under FRBkrP 8006 his Designation of Items in the Record and Statement of Issues on Appeal to the Bankruptcy Court. The latter filed it on April 21 and, as shown by entries 108 and 109 of docket no. 04-20280 the DeLano case, on that very same day it transmitted the record to the District Court.

31. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel." It is quite obvious that the record could not possibly have been complete on the very day that it was filed since the 10 days for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal", as provided under FRBkrP 8006, had not even started to run. Likewise, contact with the court reporter for preparation of the transcript had only been

initiated, as shown by the copy of Dr. Cordero's letter of April 18 to Reporter Dianetti accompanying the Designation, so that the transcript had not been even started, let alone delivered for Dr. Cordero so that he could take it into consideration when writing his brief on appeal. On a phone conversation that Dr. Cordero had with Clerk of Court Warren on May 2 concerning the premature transmittal of the record in disregard of the Rules, the Clerk defended the transmittal.

32. For its part, the District Court issued a scheduling order on April 22, the day after receiving the record. It required "Appellant to file and serve its brief within 20 days after entry of this order on the docket". Since the record contained a copy of Dr. Cordero's April 18 letter to Reporter Dianetti, the Court must have known that the Reporter had hardly received it and that no arrangement could have been agreed upon for the production of the transcript. In any event, FRBkrP 8007(a) would allow the Reporter 30 days to turn in the transcript and if she had not finished it by that time, she could ask for an extension. Therefore, to require the filing of the appellate brief in 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in his brief or even making it part of the record and thereby available in any subsequent appeal to the Court of Appeals or the Supreme Court.

33. After Bankruptcy Clerk of Court Paul Warren refused on May 2 to acknowledge his mistake and withdraw the record, Dr. Cordero wrote to the District Court on that date to object to such scheduling order and request that it be rescinded. He pointed out that the "premature…acts [of both courts] have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record."

34. The violation of the rules and that concrete detriment notwithstanding, the District Court did not rescind its scheduling order. Instead, on May 3 the Court issued another order requiring Dr. Cordero to file his appellate brief by June 13. It did not take into account the basis of Dr.

Cordero's objection concerning the transmittal of the record and the scheduling order.

35. As a result, Dr. Cordero was forced to write again to the Court to raise a "Motion for compliance with FRBkrP 8007 in the scheduling of appellant's brief". It pointed out that the District Court did not receive a "record [that] is complete for purposes of appeal", as required under FRBkrP 8007(b), so that the incomplete record that it received was in contravention of the rules of procedure; consequently, it did not obtain and still did not currently have jurisdiction over the case to issue a scheduling order.

36. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only he had not received the transcript, but also nobody knew when the Reporter would complete and file her transcript and deliver a copy to him. Hence, if the transcript were delivered before the June 13 date for him to file his brief, he would have to scramble to read the transcript's hundreds of pages and then rework his whole brief to take them into consideration. Worse yet, if the transcript were delivered after that filing date and before the District Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief, not to mention the legal research that he might have to undertake in either case. But if the transcript were not filed and the Bankruptcy Clerk had to notify Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not possibly be known in advance, not to mention that the circumstances surrounding the failure to file the transcript could give rise to a host of new issues. Dr. Cordero asked what would happen if the transcript was delivered after the District Court had issued its decision! He concluded that there was no legal basis for putting on him the onus of coping with all that uncertainty. Is it really possible that none of these considerations crossed the District Court's mind when it twice issued a scheduling order on a

prematurely transmitted incomplete record to require the filing of the appellate brief without the benefit of the transcript?

37. The District Court did not show any awareness of these considerations in its third scheduling order of May 17. On the contrary, it put it as if:

> Appellant requested additional time within which to file and serve his brief. That request is granted, in part. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy proceedings is filed with the Clerk of the Bankruptcy Court.

38. No! Dr. Cordero had certainly not requested additional time. What he had requested was for the Court to act in accordance with the law:

> Rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court.

39. From a practical point of view, this means that if Reporter Dianetti ever files her transcript and it is found objectionable, Dr. Cordero will once more have to move the District Court to rescind that order and undertake corrective measures. From a legal viewpoint, it means that the Court issued a third order with disregard for the legal considerations depriving it of jurisdiction to do so. Did the Court intend for Dr. Cordero to file his brief without the benefit of the transcript, thereby protecting other officers and parties from its incriminating contents, but if he insisted on obtaining it, then for him to use a transcript whose reliability Reporter Dianetti would weave and bob in order to avoid certifying? What conceivable reason can Dr. Cordero now have to believe that when a complete record is properly before the Court, it will decide the appeal in accordance with the law, the rules, and the facts?

40. When so many court officers blatantly and repeatedly disregard legal and factual considerations, every time with a detrimental effect on the same party and a beneficial effect on the other parties, is it more reasonable to wonder whether they are all, including their supervisors, performing their

functions incompetently or rather to infer that they are all acting intentionally and in coordination? To answer one must take into account that on the basis of circumstantial evidence a jury of lay persons is asked to draw inferences that can provide the basis for a finding of guilt beyond reasonable doubt, which will lead to depriving the accused of his property, his liberty, and even his life. By such standard, reasonable persons can also make similar inferences on the basis of a long series of acts committed by related people having the same effect.

IV. Bankruptcy court reporters are subject to 28 U.S.C. §753

41. FRBkrP 5007(b) on transcript fees is commented on in the Advisory Committee Notes to that Rule thus: "Subdivision (b) is derived from 28 U.S.C. §753(f)". This shows that §753, the Court Reporter Act of 1944, as amended, is applicable to bankruptcy court reporters, just as it is applicable to district court reporters, who are expressly appointed under §753(a).

42. The same conclusion follows from the fact that §753 is applicable to the district court clerk, who in districts where no bankruptcy clerk has been appointed, performs exactly the same clerkship duties for the bankruptcy court. This point is explicitly stated in FRBkrP 5001, Advisory Committee Notes, 1987 Amendments:

> …Clerk means the bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court.

43. If district court clerks can perform the same duties as bankruptcy court clerks although such duties have some elements specifically connected with bankruptcy, such as those affecting real property and liens, then district court reporters can also serve as bankruptcy court reporters, whose duty is in no way whatsoever affected by the nature of the cases or proceedings that they record. That duty is set out in §753(b) and consists in:

> …record[ing] verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations…[e]ach session of

> the court and every other proceeding designated by rule or order of the court or by one of the judges…

44. The applicability of §753 to bankruptcy court reporters is also arrived at by elimination. Thus, 28 U.S.C. §156. Staff; expenses, provides under subsection (a) for each bankruptcy judge to appoint a secretary and a law clerk, and under (b) for the bankruptcy judges for a district to appoint a bankruptcy clerk upon certifying that the number of cases and proceedings so warrants. By contrast, §156 does not provide for bankruptcy judges to appoint reporters; neither does FRBkrP Part V-Bankruptcy Courts and Clerks. The appointment of reporters is provided for under §753(a), which empowers the Judicial Conference to determine their number and qualifications.

45. Moreover, bankruptcy courts are adjunct to the district courts, which refer bankruptcy cases to them under 28 U.S.C. §157(a) pursuant to the bankruptcy system set up in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, in the aftermath of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), which drew in question the constitutionality of some appellate aspects of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978). It is reasonable to conclude that bankruptcy courts adjudicate cases referred to them by the district courts subject to the same administrative provisions to which district courts are subject if they adjudicate those cases, whether before any referral or after it upon withdrawing them under §156(d) from the bankruptcy courts back to themselves. It is reasonable to conclude that in either event, the staff of the district or bankruptcy court, including the court reporters, perform the same functions, just as the public deals with them the same way.

V. Conclusion and Request for Relief

46. Reasonable people can deem two acts having similar effect to be the result of pure coincidence.

But when a long series of acts carried out by related persons in disregard of their official duties consistently benefit local parties known to them and injure a non-local pro se party for a period of years,[2] reasonable people, particularly those charged with detecting and punishing other persons' wrongdoing or malfeasance, must recognize that those persons' acts form a pattern of non-coincidental, intentional, and coordinated unlawful activity. If such reasonable people are also responsible, then they must discharge their duty regardless of whether that leads them to expose and punish subordinates, acquaintances, and even colleagues. To allow them to continue disregarding the law would amount to condoning and encouraging their unlawful activity and show insensitivity to the havoc that they wreak on other people's lives. Those persons would keep committing ever bolder acts that would eventually attain a critical mass threatening to explode and expose them, thereby inducing them to engage in an ever higher-pressure-building cover up requiring ever more egregious, even criminal acts. It is a vicious circle that can only end up in disaster and shame for those actively involved and for those who had the duty to stop them but who aided and abetted them through their passivity. Reasonable, responsible, and

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[2] See Dr. Cordero's Designation of Items in the Record and Statement of Issues on Appeal - prematurely transmitted by the bankruptcy clerk to this Court on April 21, 2005, the same day of its receipt- and in particular the following summarizing documents:

realistic people must recognize when to cut their losses before they lose all their values and valuables. Now is the time to do so.

47. That the time is ripe to take corrective action follows from the fact that the alternative would only worsen the problem: To force Dr. Cordero to file his brief on appeal without the transcript would be as much a denial of his right to an effective appeal as it would be to force him to prepay and use a transcript that Reporter Dianetti herself has at the outset refused to certify that it will be accurate and complete, not distributed to others aside from him and the clerk, and not subject to anybody's tampering influence. Both actions would clearly constitute a denial of due process under the 5th Amendment.

48. Therefore, Dr. Cordero respectfully requests that the District Court:

    a. Refer this matter to the Judicial Conference under 28 U.S.C. §753(c) for investigation and for that purpose submit to it copies of this motion and the documents forming its context, that is, the record that it has already received[3];

    b. Request the Judicial Conference to designate under §753(b) 3rd paragraph an experienced court reporter, unrelated to either Reporter Dianetti, or any judicial or administrative

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[3] The record now comprises the documents listed in the footnote accompanying ¶46, above, as well as these:

i. Dr. Cordero's **motion** of **June 20**, 2005, to stay *Pfuntner* and **join** the parties in that case to the *DeLano* appeal and its
    a) Dr. Cordero's **statement** of **June 18**, 2005, to the Pfuntner parties on Judge Ninfo's linkage of the Pfuntner and DeLano cases

ii. Dr. **Cordero**'s notice of **motion** and motion of **July 13**, 2005, to **stay confirmation** hearing and order, **withdraw** case pending appeal, **remove** trustee and give **notice of** addition to **appeal**
    a) Dr. Cordero's **Affidavit** of **July 11**, 2005, in Support of his Motion to Stay Confirmation Hearing and Order, Withdraw Case Pending Appeal, Remove Trustee and Give Notice of Addition to Appeal.

officers of the Bankruptcy Court or the District Court, to prepare the transcript based on all the stenographic packs and folds used by Reporter Dianetti to record the evidentiary hearing of March 1, 2005, having due regard for the chain of custody and condition of such packs and folds;

c. Transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 this appeal together with *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, WBNY, to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury by a judge unfamiliar with either case and unrelated and unacquainted with any of the parties;

d. Refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that it be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation;

e. Grant Dr. Cordero any other relief that is just and proper.

Dated: July 18, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served a copy of my notice of motion and motion to have Court Reporter Mary Dianetti referred to the Judicial Conference for investigation, on the following parties:

I. DeLano Parties

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

II. Pfuntner Parties (02-2230,WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650; fax (585) 454-6525

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585) 641-8000; fax (585) 641-8080

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500; fax (212) 668-2255

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

v

ORDER

05-CV-6190L

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

Having considered the motion of July 18, 2005, raised by Appellant, concerning Court Reporter Mary Dianetti and the transcript pertaining to this appeal, the Court orders as follows:

a. 1) A copy of the above-mentioned motion is referred to the Judicial Conference of the United States under 28 U.S.C. §753(c) for investigation of the reasons and circumstances why Court Reporter Mary Dianetti has refused to certify the reliability of the transcript of the evidentiary hearing that she recorded stenographically on March 1, 2005, in In re David DeLano and Mary Ann DeLano, 04-20280, WBNY;

2) For that purpose, a copy of the documents already constituting part of the record on appeal is transmitted to the Judicial Conference, namely:

i. Dr. Cordero's **motion** of **June 20**, 2005, to stay *Pfuntner* and **join** the parties in that case to the *DeLano* appeal and its

a) Dr. Cordero's **statement** of **June 18**, 2005, to the Pfuntner parties on Judge Ninfo's linkage of the Pfuntner and DeLano cases

ii. Dr. **Cordero**'s notice of **motion** and motion of **July 13**, 2005, to **stay confirmation** hearing and order, **withdraw** case pending appeal, **remove** trustee and give **notice of** addition to **appeal**

a) Dr. Cordero's **Affidavit** of **July 11**, 2005, in Support of his Motion to Stay Confirmation Hearing and Order, Withdraw Case Pending Appeal, Remove Trustee and Give Notice of Addition to Appeal; and

iii. Dr. Cordero's **Designation of Items** in the Record and Statement of Issues on Appeal and in particular the following summarizing documents:

65. Dr. Cordero's **motion of** August 14, **2004**, for **docketing** and issue, **removal**, referral, examination, and other relief, noticed for August 23 and 25, 2004 231

98. Dr. Cordero's **motion of** February 17, **2005**, to request that Judge **Ninfo recuse himself** under 28 U.S.C. §455(a) due to lack of **impartiality** 355

a) Dr. Cordero**'s motion of** August 8**, 2003,** for **Judge** Ninfo **to** remove the Pfuntner case and **recuse himself** 385

b. Dr. Cordero**'s motion of** November 3**, 2003, to** the Court of Appeals for the **Second Circuit** for leave to file updating supplement of **evidence of bias in Judge** Ninfo**'s** denial of Dr. Cordero's request for a trial by jury 425

b. The Judicial Conference is requested to designate under §753(b) 3rd paragraph an experienced court reporter, unrelated to either Reporter Dianetti, or any judicial or administrative officers of the Bankruptcy Court, WBNY, or the District Court, WDNY, to produce the transcript based on all the stenographic packs and folds used by Reporter Dianetti to record the evidentiary hearing of March 1, 2005, having due regard for the chain of custody and condition of such packs and folds;

c. In the interest of justice and judicial economy under 28 U.S.C. §1412, this appeal together with *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, WBNY, is transferred to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury by a judge unfamiliar with either case and unrelated and unacquainted with any of the officers or parties;

d. The *DeLano* and *Pfuntner* cases are referred for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that it be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from

such offices in either Rochester or Buffalo participate in any way in such investigation.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
, 2005.

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP
ATTORNEYS AT LAW

July 19, 2005

VIA MESSENGER

Hon. David G. Larimer
United States District Court
100 State Street
Rochester, New York 14614

Re: Dr. Richard Cordero vs. David G. and Mary Ann DeLano
Case No. 05-cv-6190L

Dear Judge Larimer:

This law firm represents David G. and Mary Ann DeLano with respect to the above matter. Enclosed please find our Statement in Opposition to Cordero Motion to Stay Confirmation and Other Relief. Thank you for your courtesy.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

cc: David G. and Mary Ann DeLano
Dr. Richard Cordero ✓
George M. Reiber, Esq.
David D. MacKnight, Esq.

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
http://www.boylanbrown.com

UNITED STATES DISTRICT COURT
COUNTY OF MONROE STATE OF NEW YORK

Dr. Richard Cordero,
Appellant/Creditor,

-vs-

David G. Delano and Mary Ann Delano,
Respondents/Debtors.

STATEMENT IN OPPOSITION TO CORDERO MOTION TO STAY CONFIRMATION AND OTHER RELIEF

Case No. 05-cv-6190L

DAVID G. DELANO and **MARY ANN DELANO**, by their attorneys, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in response and opposition to Richard Cordero's pending Motion before this Court, as follows:

1. Richard Cordero sets forth no substantive basis for any of the relief requested in his current Motion, nor does he have any interest in the DeLano matter whatsoever, as determined by Judge Ninfo on his Order on the Debtors' objection to his claim.

2. Mr. and Mrs. DeLano have been delayed for approximately one (1) year in the confirmation of their Chapter 13 Plan and the confirmation hearing should proceed as currently scheduled.

Dated: July 19, 2005

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

1. Debtor(s) DAVID G DELANO
MARY ANN DELANO
Bk.# 04-20280

Attorney CHRISTOPHER K WERNER, ESQ FuDI Filing Fees: $ 185 Paid

2. Plan:

A. Summary: $ 1940 per month by wage order

$ 14145 * annually R

Repayment to secured creditors $ 6900

Repayment to priority creditors $ 16,655

Repayment to unsecured creditors $ 4646 ~5 % ~~specific~~ estimated

Classification of unsecured creditors None

Class ____ ____% $ ____ ____

Class ____ ____% $ ____ ____

92,920 TOTAL

Rejection of executory contracts None

Other: * Payments decrease to $635/month in July, 2004; then increase to $960/month in August, 2006. Plus proceeds of accounts receivable.

why then increase

B. Feasibility:

Total Indebtedness $ 185462 including mortgages

Monthly Income (net) $ ~~4886.50~~ 2946.50 (gross)$ 7501.

Less Estimated Expenses $ ~~2946.50~~

Excess for Wage Plan $ 1940.

Duration of Plan 3 years

why End of Sev & unemply

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:

Interest rate unless otherwise stated: 8 1/4 %

Name of Creditor	Amount of Security	Security Claimed	Perfected	341 Valuation	Disputed
Capital One Auto	$ 10,285	'98 Chevy Blazer	Yes	$ 6900	stip

3. **Best interest of creditors test:**

A. All assets were listed.

B. Total market value of assets: $ 256,562

Less valid liens	$ 83734
Less exempt property	$ 171732
Available for judgment liens	$ ~~0~~ 266
Less priority claims	$ ~~0~~ 16,655
(Support $________)	

C. Total available for unsecured creditors in liquidation $ ~~1096~~ 0

D. Amount to be distributed to unsecured creditors $ 4646

E. Nature of major non-exempt assets: ____________________

4. Debtor(s) state~~s~~ that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) state~~s~~ that to the best of ~~his/her~~/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income - 1) I.R.A. available; 2) loan payment available; 3) pension loan ends 10/35.

8. Debtor requests no wage order because, ____________________ (+) 2 concerns

(1)

9. Other comments: ~~1) Best Interest - $1255;~~ Attorney fees (OK) AF's But court [illegible] in [illegible] confirm order

10. Converted from Chapter 7 because ____________________ (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: $ 1350

Additional fees Anticipated? (Yes) no $16,655

GEORGE M. REIBER
TRUSTEE

IN RE: DeLong, David & Mary Ann

BK. # 04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- ✓ **Lost employment** (Wife) Age 59
- ✓ **Hours or pay reduced** (Husband 62) To delay retirement to complete plan
- ____ **Matrimonial**
- ____ **Garnishments**
- ____ **Medical problems**
- ____ **To receive a Chapter 13 discharge**
- ____ **Filed a previous bankruptcy proceeding within six (6) years**
- ____ **Owe priority (example: tax) claims**
- ____ **Reconstruct credit rating**
- ✓ **To pay back creditors as much as possible** w 3yrs prior to retirement
- ____ **To stop creditor harassment**
- ____ **To stop foreclosure or other legal proceedings**
- ✓ **To cram down secured liens**
- ____ **To avoid contracts**
- ____ **Overextension of credit**
- ____ **Decline in income from business, commissions or business failure**
- ____ **Overspending**
- ____ **Student loans**
- ✓ **Children's college expenses** pre-1990 then wages reduced $30,000 to 19,000
- ____ **Avoid Chapter 7 substantial abuse charge**
- ____ **Protect debtor's property**
- ____ **Others:** _____

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

ORDER TO EMPLOYER TO PAY TRUSTEE

DAVID G. & MARY ANN DELANO,
Debtor(s),

BK# 04-20280

EMPLOYEE: DAVID G. DELANO
S.S. #xxx-xx-3894

Upon representation of the Trustee or other interested party, the Court finds that:

The above-named debtor has pending in this Court a proceeding for the adjustment of debts by an individual with regular income under Chapter 13 of the Bankruptcy Code (Title 11 U.S.C.) and pursuant to the provisions of said statute and the debtor's plan the debtor has submitted all future earnings and wages to the exclusive jurisdiction of this Court for the execution of debtor's plan; and

That under the provisions of 11 U.S.C.§1306 this Court has exclusive jurisdiction of the earnings from service performed by the debtor during the pendency of this case and may require the employer of the debtor, upon the order of this Court, to pay over such portion of the wages or earnings of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that until further order of this Court the employer of said debtor:

M&T BANK

deduct from the earnings of said debtor the sum of **$293.08 bi-weekly** to begin on the next payday following the receipt of this order and deduct a similar amount for each pay period there-after, including any period for which the debtor receives periodic or lump sum payment for or on account of vacation, termination, or other benefits arising out of present or past employment of the debtor, and to forthwith remit the sum so deducted to: **GEORGE M. REIBER, TRUSTEE, Chapter 13 Trustee, PO Box 490, Memphis, TN 38101-0490; (585)427-7225; *(PLEASE INCLUDE THE DEBTOR'S FULL NAME AND CASE NUMBER ON THE CHECK REMITTED)*** and

IT IS FURTHER ORDERED, that said employer notify said Trustee if the employment of said debtor be terminated and the reason for such termination; and

IT IS FURTHER ORDERED, that all earnings and wages of the debtor, except the amount required to be withheld by the provisions of any laws of the United States or laws of any State or political subdivision, or by an insurance, pension, pension loans, current maintenance or support payments or by the order of this Court, be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures; and

IT IS FURTHER ORDERED, that no deductions for or on account of any garnishment, wage assignment, credit union or other purpose not specifically authorized by the Court be made from the earnings of said debtor; and

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the debtor or employer in this case.

Dated: AUG - 8 2005

FILED
AUG - 8 2005
BANKRUPTCY COURT
ROCHESTER, NY

HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. & MARY ANN DELANO,
Debtor(s),

S.S. #xxx-xx-3894
#xxx-xx-0517

ORDER CONFIRMING
CHAPTER 13

BK #04-20280

A Petition was filed by Debtor(s) under Chapter 13 of the Bankruptcy Code, and a meeting of creditors conducted upon due notice pursuant to 11 U.S.C. §341 at which the Chapter 13 Trustee, Debtor(s), and attorney for Debtor(s) were present and creditors or representatives of creditors were afforded an opportunity to be heard.

A hearing on confirmation of the Plan has been held upon due notice pursuant to 11 U.S.C. §1324. The Court has heard and determined all objections to confirmation and to Debtor's Schedules and has considered the Plan as proposed or modified, the Trustee's Report and the testimony of Debtor.

THE COURT THEREFORE FINDS:

(1) The Plan complies with the provisions of Chapter 13, Title 11, United States Code, and other applicable provisions of Title 11;

(2) The contents of the plan comply with 11 U.S.C. Section 1322 where applicable;

(3) The Plan represents the Debtor's reasonable effort and has been proposed in good faith and not by any means forbidden by law;

(4) The Plan complies with the standards required by 11 U.S.C. Section 1325 for confirmation; and

(5) Any objections to the plan have been disposed of, and there is presently pending no objection to confirmation of the instant Plan or Debtor's Schedules.

It is accordingly, ORDERED that

(1) Debtor's Plan under Chapter 13 of the Bankruptcy Code, as proposed or modified, is confirmed.

(2) Debtor is stayed and enjoined from incurring any new debts in excess of $500.00 except such debts as may be necessary for emergency medical or hospital care without the prior approval of the Trustee or the Court unless such prior approval was impractical and therefore cannot be obtained.

(3) Except as provided by specific order of this Court, all entities are and continue to be subject to the provisions of 11 U.S.C. §362 insofar as they are stayed or enjoined from commencing or continuing any
proceeding or matter against Debtor, as the same is defined by §362, and subject to the provisions of 11 U.S.C. §1301 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against a co-debtor, as the same is defined by §1301.

The provisions of the Plan bind the Debtor(s) and each creditor, whether or not such creditor has objected to, has accepted, or has rejected the plan.

The Debtor(s) shall forthwith and until further order of the Court pay to the Trustee in good funds the sum of ***$1940.00 per month by wage order. Payments decrease to $635.00 monthly in July, 2004; then increase to $960.00 monthly in August, 2006 when pension loan ends; plus proceeds of mother's annuity.***

(4) A fee of **$18,005.00** is allowed the attorney for the debtor(s) herein for all services rendered in connection with this Plan, except as otherwise ordered and allowed by the Court.

(6) All of the Debtor(s) wages and property, of whatever nature and kind and wherever located, shall remain under the exclusive jurisdiction of this Court; and title to all of the debtor's property, of whatever nature and kind and wherever located is hereby vested in the debtor during pendency of these Chapter 13 proceedings pursuant to the provisions of 11 U.S.C. §1327.

(7) From the Debtor(s) funds the Trustee is directed to make payments in the following order:

a. Filing fee to the Clerk of the Court, U.S. Bankruptcy Court (if unpaid);

b. Retain at all times sufficient funds to pay all other accrued administrative expenses;

c. The unpaid balance of the above described fee to the debtor's attorney;

d. Priority payments in full as allowed by the Court, except where priority claims are deferred until payment of the secured claims;

e. Secured claims shall retain their liens as hereinafter set forth:

CREDITOR	SECURITY VALUE	SECURITY	RATE
Capital One Auto	**$6,900.00**	**'98 Chevy**	**8.25%**

Until the secured claim is paid in full, the secured creditor shall retain its lien. After the secured claim has been paid in full, the Debtor(s) will be entitled to an immediate lien release. Any timely and properly filed claim which alleges a security interest and is filed subsequent to the Confirmation Hearing shall be allowed as unsecured only for purposes of payment under the plan, except as may otherwise be agreed to by the Debtor(s) and the Court.

f. The balance of funds not retained for administrative expenses or used for payment of secured or priority claims shall be accumulated and distributed to unsecured creditors, as follows.

g. Classified unsecured claims as hereinafter set forth:

CREDITOR	AMOUNT	CLASSIFICATION	DIVIDEND
NONE			

h . General unsecured creditors shall be paid **a pro rata share** of their claims as are finally determined by the Court; notwithstanding the above, the plan will not be deemed completed until the debtor(s) pay(s) three years worth of plan payments, unless allowed unsecured claims are paid in full. No claims shall be allowed unless the creditor shall file a proof of claim within 90 days of the first date set for the First Meeting of Creditors; payment to unsecured creditors as allowed by the Court will be made in monthly installments of not less than $15.00. **Plan to run 3 years.**

i. Any temporary reduction in, or suspension of installment payments under this plan, for a period not to exceed ten (10) weeks may be granted upon application of the debtor, without notice to creditors, as the Court or Trustee deems proper.

(8) The debtor has rejected as burdensome the following executory contract(s) of the debtor:

NONE

Any claim timely and properly filed by a creditor arising from rejection of such executory contract(s) shall be allowed as if such claim had arisen before the date of the filing of the petition, subject to the right of the debtor or the Trustee to object to the amount of the claim.

(9) The following secured creditors will be paid by the debtor directly. Said secured claims are either being paid pursuant to their original contract or pursuant to new agreements reached between the parties. To the extent that any such new agreements exist, the parties are hereby ordered to execute any and all documents necessary to reflect the new notes and obligations which exist between the parties. In the event of a dismissal of the plan, the secured creditors may reinstate the terms of the original obligations, subject to the further order of this court. All parties will promptly execute any and all documents necessary to be filed. To the extent that the new arrangements reflects an extension of the obligations secured by valid liens filed prior to the filing of the petition, said liens will continue in existence as of the date of the filing of the lien, and not as of the date of the new arrangement between the parties, unless this court orders otherwise or the parties so stipulate otherwise.

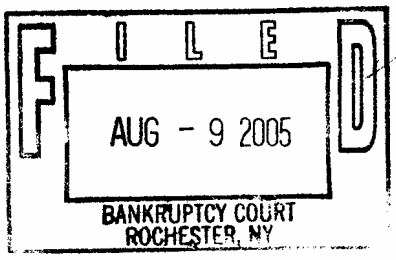
CREDITOR	SECURED CLAIM	SECURITY	BASIC TERMS
Genesee Regional	**$76,300.71**	**Mortgage**	**Original Contract**

(10) Upon conversion of this case to a case under another chapter, the failure of the debtor to honor bad funds negotiated by the Chapter 13 Trustee shall be deemed a willful failure to obey an order of this Court.

Dated: 8/9/05

Rochester, New York

HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE



0027-63-EPIC63-00164610-208222

United States Bankruptcy Court

For The
Western District of New York

IN RE: DAVID G & MARY ANN DELANO

CASE NO. 04-20280
CLAIM NUMBER 018

ACKNOWLEDGMENT OF CLAIM AND NOTICE OF THE MANNER OF THE PROPOSED TREATMENT OF YOUR CLAIM

The claim filed in your behalf in the referenced case has been reviewed by the Trustee, and pursuant to the plan filed herein, will be treated as indicated below.

If your claim has been split between two or more classifications, this acknowledgment applies only to the portion classified as shown below. If your secured claim exceeds the collateral value, it will be split, with the excess paid as a separate unsecured claim.

DR RICHARD CORDERO
59 CRESCENT STREET
BROOKLYN, NY 11208-1515

Account No.:
AMOUNT: 0.00
Classified as: Ignore

Remark: CLAIM DISALLOWED

If the manner in which your claim has been recorded for allowance is inconsistent with the manner in which it was claimed by you, you may send a request in writing to the Trustee's office within 30 days requesting an explanation of the inconsistency.

DATED: 08/19/2005

THIS NOTICE IS NOT A COURT DOCUMENT AND IS NOT FILED WITH THE COURT. IT IS PROVIDED BY THE TRUSTEE FOR INFORMATIONAL PURPOSES ONLY.

George M. Reiber, Trustee, 3136 South Winton Road, Suite 206, Rochester, NY 14623

Add:944 [945-50rsrv] Tr. Reiber's acknowledgment of 8/19/05: Dr. Cordero's disallowed claim is to be ignored

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585)613-4000

Dr. Richard Cordero
Appellant and creditor

v.

NOTICE OF MOTION AND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS AND TAKE OTHER ACTIONS NECESSARY FOR THE EXERCISE OF THE COURT'S SUPERVISION OVER THE BANKRUPTCY COURT AND OF APPELLANT'S RIGHT OF APPEAL, AND FOR THE PROPER DETERMINATION OF THIS APPEAL

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Richard Cordero hereby gives notice of his motion for this Court to take on September 12, 2005, or as soon thereafter as possible, necessary actions to safeguard judicial integrity and due process, described herein or the proposed Order attached hereto, and for such purpose order the production of documents, which actions and/or production involve the following persons or entities:

    a) The Respondents, David and Mary Ann DeLano (hereinafter the DeLanos), who filed a bankruptcy petition on January 27, 2004, docket no. 04-20280, WBNY, (hereinafter *DeLano*);

    b) Chapter 13 Trustee George Reiber, trustee in *DeLano*, and any and all members of his staff, including his attorney, James Weidman, Esq.;

    c) Christopher K. Werner, Esq., attorney for the DeLanos;

    d) Bankruptcy Court Reporter Mary Dianetti;

    e) Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee, and any and all members of her staff;

    f) Deirdre A. Martini, U.S. Trustee for Region 2;

g) Manufacturers & Traders Trust Bank (hereinafter M&T Bank);

h) Paul R. Warren, Esq., Clerk of Bankruptcy Court; and

i) Any other persons or entities referred to herein or the proposed Order.

2. The need for documents for the reasons stated in the caption and summarized in ¶1 above, has become apparent in light of the following entries in the *DeLano* docket:

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)
07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to $635.00 per month in July 2004 and will increase to $960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of $6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005)

3. When one clicks on hyperlink 134 what downloads is a three-page document entitled "Trustee's Findings of Fact and Summary of 341 Hearing". It is reproduced in the exhibits, pages 1-3, infra=E:1-3…what shockingly unprofessional and perfunctory scraps of papers! And so revealing that they warrant close analysis.

Table of Contents

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I. The "Trustee's Findings of Fact and Summary of 341 Hearing" reveal that the same Trustee Reiber who filed as his "Report" such shockingly unprofessional and perfunctory scraps of papers did not investigate the DeLanos for bankruptcy fraud, contrary to his statement and its acceptance by Judge Ninfo

4. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

> FRBkrP 9004. General Requirements of Form
> (a) Legibility; abbreviations
> All petitions, pleadings, schedules **and other papers *shall*** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

5. The handwritten jottings on those scrap papers are certainly not "clearly legible". The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

> **Local Bankruptcy Rule 9004. PAPERS**
>
> 9004-1. FORM OF PAPERS *[Former Rule 13 A]*
>
> All pleadings **and other papers *shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially *defacing* them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)
>
> 9004-2. CAPTION *[Former Rule 13 B]*
>
> All pleadings **and other papers *shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)
>
> 9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

6. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.

7. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there in 11 U.S.C. is "§341 Meetings of creditors and equity security holders" (all §# references are to 11 U.S.C.

unless otherwise stated). The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

> 11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

8. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not preside such a meeting to hear rather passively as an arbiter what the parties have to say and then determine their controversy, as an administrative judge would do. Instead, this is how his role is described:

> 11 U.S.C.§343. Examination of the debtor
>
> The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

9. It follows that the trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is not only active, but also inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works "for the benefit of general unsecured creditors whom the trustee represents". That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

> The purpose of the examination is to enable creditors and ***the trustee*** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

10. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible "341 Hearing" before Judge Ninfo? And in *DeLano,* when did that "341 Hearing" take place?, for not only is such "Hearing" not dated, but also none of those three scrap papers is dated, in disregard of the

requirement under Local Bankruptcy Rule 9004-2 (¶5 above) that they "***shall*** be **dated".** However, if the Trustee's scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

11. Nor do those scrap papers comply with the requirement that they "***shall*** be **signed".** Merely initializing page 2 (E:2) is no doubt another manifestation of the perfunctory nature of Trustee Reiber's scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee's shame about putting his full name on such unprofessional filing with a U.S. court?

A. The third scrap of paper "I/We filed Chapter 13 for one or more of the following reasons:" with its substandard English and lack of any authoritative source for the "reasons" cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted

12. The third scrap paper (E:3) bears the typewritten statement "I/We filed Chapter 13 for one or more of the following reasons:" Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own "341 Hearing", did he simply hear the DeLanos' "reasons" for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those "reasons" raise a host of critical questions. Let's examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment *(Wife) Age 59*

13. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of $67,118 in 2003, according to the Statement of Financial Affairs in their petition.

14. Likewise, what is the relevance of her losing her employment at age 59, or was that her age

whenever that undated scrap paper was jotted? Given that the last jotting connects a "reason" for filing their petition on January 27, 2004, to a *"pre-1990"* event, it is fair to ask when she lost her employment and what impact it had on their filing now.

√ Hours or pay reduced *(Husband 62) To delay retirement to complete plan*

15. Does the inconsistency between writing *"62"* inside the parenthesis in this "reason" and writing "*Age 59"* outside the parenthesis in the "reason" above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the $67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will *"delay retirement"* until he turns 62 so as *"to complete plan"*?
16. Otherwise, what conceivable logical relation is there between "Hours or pay reduced" and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a "reason" for debtors not having to pay their debts to their creditors?
17. Given that a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases! -3,907 before Judge Ninfo-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the "I/We…" who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the "I/We…" meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

18. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but

rather the longer period of five years…or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have planned to pay more than just $635.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's unemployment benefits ran out in 6/04 (Sch. I)
$3,757.50	net monthly income
-2,946.50	for the very comfortable current expenditures (Sch. J) of a couple with no dependents
$811.00	actual disposable income

19. Yet, the DeLanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. No explanation is given for this …although these objections were raised by Dr. Cordero in his written objections of March 4, 2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

20. What is the total of those secured liens and in what way do they provide a "reason" for filing a bankruptcy petition?

√ Children's college expenses *pre-1990 when wages reduced $50,000 → 19-000*

21. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check "Student loans". So, what "college expenses" are being considered here? Moreover, according to that jotting, whatever those "college expenses" are, they were incurred *"pre-1990"*. Given that such listed "reasons" as, "Medical problems", "To stop creditor harassment", "Overspending" and "Protect debtor's property" were

not checked, how can those "college expenses" have caused the DeLanos to go bankrupt *15 years later?* This is one of the most untenable and ridiculous "reasons" for explaining a bankruptcy…

22. until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of "reasons" was extracted; no reference to any document where the "reasons" checked were quantified in dollar terms and their impact on the DeLanos' income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos' plan "meets the best interest test"?

23. Nor is there any reference to a document explaining in what imaginable way, for example, "Matrimonial" is a "reason" for anything, let alone for filing for bankruptcy; or how "Reconstruct credit rating" is such an intuitive "reason" for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby "Student loans" are such a "reason" despite the fact that 11 U.S.C. provides thus:

> §523. Exceptions to discharge
> (a) A discharge under section…1328(b) of this title does not discharge an individual debtor from any debt-…(8) for an education benefit overpayment or loan made…

24. The lack of grammatical parallelism among the entries on that list is most striking. So the first "reason" appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every "reason" and thereby give the list semantic as well as syntactic consistency: "I/We filed…" because: (I/We omitted but implicit) "Lost employment". However, the second "reason" does not fit this pattern: "I/We filed…" because: "Hours or pay reduced". The next reason is expressed by an adjective, "Matrimonial", while the following one is a noun "Garnishments", and in addition it is missing the dash for the check mark, which points to a

poorly revised form; perhaps one introduced recently. Was this form made specifically for the DeLanos?; otherwise, how many plans have been confirmed based on that bungled form? A "reason" is set forth with a gerund, "Overspending", but others are stated with the bare infinitive, "Protect debtor's property", whereas others use *to*-infinitive, "To receive a Chapter 13 discharge" (which by the way, is a particularly *enlightening* "reason", for is that not the result aimed at when invoking any other "reason"?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult.

25. There is no need to read the whole list to be disturbed by this bungled form. To begin with, it lacks a caption. Then the sentence that introduces the "reasons" is written in broken English: "I/We filed Chapter 13 for one or more of the following reasons:" What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: 'You filed Chapter 13….'

26. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your hierarchical superiors, that is, all the circuit judges as well as the justices of the Supreme Court, and even be made publicly available for close scrutiny, would you fill out another order form thus?: "The respondents filed Chapter 13 and win 'cause they *ain't have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with'em after cookin' a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*" (Completing the order form in handwriting would give it a touch of flair…in pencil, for that would show…no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of the appellate peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys –the out-of-towners, who do not know yet– how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for

the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

27. What is more, or rather, less, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

> FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers
>
> (a) Signing of papers
>
> Every petition, pleading, written motion, **and other paper,** except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address** and **telephone number**, if any. An **unsigned paper *shall* be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

28. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to that Rule, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All…lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that 'the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)"'.

29. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under this Court's Local Rules, which provides thus:

> DISTRICT COURT LOCAL RULE 10
>
> FORM OF PAPERS
>
> (a) All text and footnotes in pleadings, motions, legal memoranda **and other papers *shall be*** plainly and legibly written, **typewritten** in a font size at least 12-point type, printed or reproduced, **without erasures or interlineations materially defacing them**, in ink…
>
> (b) **All papers *shall*** be endorsed with the name of the Court…**All papers *shall* be signed by an attorney** or by the litigant if appearing *pro se*, and the **name, address and telephone number** of each attorney or litigant so appearing ***shall be*** typed or printed **thereon**. **All papers *shall* be**

> **dated and paginated**. (emphasis added)

30. Covering for a peer's mistakes, the law, the rules, and the facts notwithstanding, constitutes a denial of due process. But publicly associating oneself with officers that can file and accept such unprofessional and perfunctory scrap papers to discharge Mr. DeLano, a 32-year veteran of the banking industry, of well over $145,000, that would be suspicious, particularly after those officers avoided and prevented an investigation that would have proved a bankruptcy fraud scheme.

II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation

31. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:5). Therein he stated that he "has considered…the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

> The Court found that the…Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.

32. However, what page 2 of Trustee Reiber's scrap papers (E:2) states is this:

> 7. Objections to Confirmation: **Trustee – disposable income –**
>
> **1) I.R.A. available; 2) loan payment available;**
> **3) pension loan ends 10/05.**

33. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough **"~~1) Best Interest - $1255;~~" "Attorney fees"**. At the bottom of the page is written: "ATTORNEY'S FEES"

$ **1350** and, below that, "Additional fees Yes" **$16,655.** The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:9) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:12).

A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos

34. However, Trustee Reiber has been presumably occupied even longer than Att. Werner with Dr. Cordero's written objections of March 4, 2004. Although the Trustee was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor.

35. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶9 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their Schedule B, where they declared having only $535 in cash and account despite having earned $291,470 in just the immediately preceding three years yet declaring nothing but $2,910 in

household goods, while stating in Schedule F a whopping credit card debt of $98,092! Where did the money go or is, which could go a long way toward covering their liabilities of $185,462?

36. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' petition, filed on January 27, 2004, without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004…in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

37. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interest that the Trustee faced due to the request that he:

> investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

38. And so it turned out to be. At Dr. Cordero's insistence, the DeLanos produced documents,

including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

39. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!…insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
40. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
41. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee…any

recorded information…", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were part of the same sham!

B. The sham character of Trustee Reiber's pro forma request for documents and the DeLanos' token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages

42. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at $98,500. However, they still owe on it $77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of $21,415 in the very same home that they bought 30 years ago! Yet, they earned $291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding bankrupts, trustees, and judicial officers?

43. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero,

who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶37 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

44. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Trustees Schmitt and Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:13), he backed down from that limit.

45. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.

46. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production…and still they failed to produce them by the end of that period.

47. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:15-27) once more (¶38 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:14). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for $26,000 in 1975;	E:15 [D:342]	$26,000
2) another for $7,467 in 1977;	E:16 [D:343]	7,467
3) still another for $59,000 in 1988; as well as	E:19 [D:346]	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	E:28 [D:176]	59,000
5) owed $59,000 to M&T in 1988;	E:28 [D:176]	59,000
6) another mortgage for $29,800 in 1990,	E:21 [D:348]	29,800
7) even another one for $46,920 in 1993, and	E:22 [D:349]	46,920
8) yet another for $95,000 in 1999.	E:23[D:350-54]	95,000
	Total	$382,187.00

48. The whereabouts of that $382,187 are unknown. On the contrary, Att. Werner's letter of

February 16, 2005 (E:14), accompanying those incomplete documents adds more unknowns:

> It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of $18, 746.69 to Mr. and Mrs. DeLano. Of this cash, $11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

49. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed $77,084.49 on their home, $98,092.91 on credit cards, and $10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the $291,470 earned in 2001-03 that is nowhere to be seen…and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!

50. Although Dr. Cordero identified these incongruous elements (E:30-32) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner on February 24 than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:36)

51. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:37), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:38). When Att. Werner made a belated service (E:39), it became apparent why he had tried to withhold the documents (E:40-53) from Dr. Cordero: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:54) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:57-60).

52. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the $291,470 earned in the 2001-03 period, over $670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16 Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! But she created nothing and simply produced work for hire.

53. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at the confirmation hearing nor made any reference to them in the scrap papers of his "Report". How futile to ask them again for information!

C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth

54. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, that is, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it

was that an investigation that the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, Judge Ninfo was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thereby requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Bankruptcy Court Reporter Mary Dianetti, who has already refused to certify the reliability of the transcript of her own recording of the evidentiary hearing on March 1, 2005 (E:61-63).

55. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Under those circumstances, common sense and good judgment required that the Trustee's investigation be reviewed as to his method, products, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".

III. Conclusion and Request for Relief

56. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. In fact, they confirmed the plan without investigating the DeLanos as the surest way of fore-

stalling a finding of their having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would disclose his knowledge of systemic wrongdoing: a bankruptcy fraud scheme.

57. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none." to justify the Bankruptcy Court in confirming the DeLanos' plan and to escape his own conflict of interests (¶37 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Bankruptcy Court as an institution even if Judge Ninfo may have known that the Trustee's statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos and the loss of an enormous amount of effort, time, and money and the infliction of tremendous emotional distress.

58. It also follows that insofar as Judge Ninfo knew or through the exercise with due diligence and impartiality of his judicial functions would have known, that Trustee Reiber had conducted no investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm the DeLanos' plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process and caused substantial material loss and emotional distress.

59. The conduct of Judge Ninfo and Trustee Reiber together with others calls for this Court's intervention. Indeed, the District Court has supervisory duties with respect to the Bankruptcy Court because the latter is an adjunct to it to which it refers bankruptcy cases under 28 U.S.C. §157(a) pursuant to the system set up in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, (cf. District Court Local Rule 5.1.(g)); and because as an appellate court with respect to the Bankruptcy Court this Court has an inherent

duty to safeguard the integrity of the judicial process as well as of the bankruptcy system. Such integrity has been compromised by these officers with others taking decisions contrary to the available evidence and in the absence of alleged evidence to further a bankruptcy fraud scheme.

60. Hence, the documents that have not been produced are necessary for this Court to exercise its supervisory duties as well as for Dr. Cordero to exercise his right of appeal and for this Court to determine it. However, the close institutional and personal relationship between the Bankruptcy Court and this Court can impair the latter's objectivity and already led it to rush on April 22 to schedule Dr. Cordero's appellate brief in disregard of the rules and the facts, only to take no action on his motions to enable him to file that brief. Thus, for the sake of the appearance and reality of impartiality, this Court should transfer this appeal and related cases and defer to law enforcement investigators. Therefore, Dr. Cordero respectfully requests that the District Court:

1) Order the production without delay of a copy for each of the Court, Dr. Cordero, and the successor trustee when appointed, of the following documents, each accompanied by an affidavit or a certificate pursuant to 28 U.S.C. §1746 stating that the respective document has not been the subject of any addition, omission, modification, or correction of any type:

   a) The audio tape of the meeting of creditors held on March 8, 2004, conducted by Att. Weidman and that it be transcribed and its transcript made available in paper and on a floppy disc or CD; and the video tape in which Trustee Reiber was seen providing its introduction;

   b) The transcript of the meeting of creditors held on February 1, 2005, in paper and on a floppy disc or CD, which transcript has already been made and is in Trustee Reiber's possession;

   c) The transcript of the evidentiary hearing on March 1, 2005, in DeLano, prepared by a reporter other than Reporter Dianetti pursuant to Dr. Cordero's motion of July 18, 2005, to this Court to have Reporter Mary Dianetti referred to the Judicial Conference for investigation of her refusal to certify the reliability of that transcript, incorporated herein by reference;

d) The documents that Trustee Reiber obtained prior to the confirmation hearing on July 25, 2005, in connection with both the DeLanos' bankruptcy petition of January 27, 2004, and the documents that they produced since filing it and before the July 25 hearing;

e) The statement that, as reported in the *DeLano* docket, entry 134, Trustee Reiber read into the record at the July 25 confirmation hearing regarding his investigation of "allegations of bankruptcy fraud", exactly as read;

f) The monthly and any other statements since 1975 of each and all financial accounts of the DeLanos and the unbroken series of documents relating to their purchase or rental of real property, vehicle, or mobile home, or right to its use, including all mortgage documents;

2) Order that the originals of these documents be held in a secure place and their chain of custody insured;

3) Order that Bankruptcy Court Reported Mary Dianetti have not participation whatsoever in making any such transcript other than producing to the designated person the full set of stenographic paper in her possession of any recording of the proceedings in question;

4) Remove Trustee Reiber from *DeLano*, as requested in Dr. Cordero's motion of July 13, 2005, in this Court to stay the confirmation hearing and order, withdraw *DeLano* pending appeal, remove Trustee Reiber and give notice of addition to appeal, accompanied by Dr. Cordero's affidavit of July 11, 2005, in support thereof, both incorporated herein by reference;

5) Recommend the appointment of a successor trustee based in Albany, NY, unfamiliar with the case; and unrelated and unknown to any of the parties or officers in WDNY and WBNY;

6) Recommend that the successor trustee employ under §327 a reputable, independent, and certified accounting and title firm based in Albany to investigate the DeLanos' financial affairs and produce a comprehensive report of their assets from 1975 to date;

7) Stay Judge Ninfo's order of August 9, 2005, confirming the DeLanos' plan, as requested in the motion of July 13, while allowing continued payments by M&T Bank to the trustee (E:4);

8) Withdraw *DeLano* to this Court under 28 U.S.C. §157(d) pending the appeal;

9) Refer *DeLano* and this appeal as well as *Pfuntner* for the reasons stated in Dr. Cordero's motion of June 20, 2005, to this Court for a stay in *Pfuntner* and to join the parties there to the *DeLano* appeal, accompanied by Dr. Cordero's statement of June 18, 2005, on Judge Ninfo's linkage of *Pfuntner* and *DeLano*, both incorporated herein by reference, under 18 U.S.C. §3057(a) to U.S. A.G. Alberto Gonzales for investigation by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with these cases and unacquainted with any of the parties or officers that may be investigated and thus expressly excluding from participation any staff from such offices in either Rochester (where the DoJ office is literally the next-door neighbor of the Office of the U.S. Trustee) or Buffalo, NY;

10) Transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 *DeLano* and *Pfuntner* and this appeal to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a judge unfamiliar with any of those proceedings and unrelated and unacquainted with any of the parties and officers;

11) Order that any and all proceedings concerning this matter be recorded by the Court by using, in addition to stenographic means, electronic sound recording and that Dr. Cordero be allowed to make his own electronic sound recording;

12) Issue the proposed order;

13) By September 12, 2005, or as soon thereafter as possible, decide the three motions by Dr. Cordero still pending in this Court (¶¶60.1)c); 60.4); and 60.9) above) or state in writing the reasons why it will not decide them, and in the latter case certify the case for appeal to the Court of Appeals for the Second Circuit.

Dated: August 23, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. a copy of my notice of motion and motion to compel the production of documents and take other actions necessary for the exercise of the Court's supervision over the Bankruptcy Court and of Appellant's right of appeal, and for the proper determination of this appeal, on the following parties:

I. DeLano Parties

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Office of the United States Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500; fax (212) 668-2255

II. Pfuntner Parties (02-2230, WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650; fax (585) 454-6525

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585) 641-8000; fax (585) 641-8080

Dated: August 23, 2005
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

ORDER
05-CV-6190L

v.

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

Having considered the motion of August 23, 2005, raised by Appellant, Dr. Richard Cordero, to compel the production of documents and take other actions necessary for the exercise of the Court's supervision over the Bankruptcy Court and of Appellant's right of appeal, and for the proper determination of this appeal, the Court orders as follows:

I. Persons and entities concerned by this Order

a) Respondents, David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors in David DeLano and Mary Ann DeLano, docket no. 04-20280, WBNY, (hereinafter *DeLano*, which shall be understood to include the above-captioned appeal);

b) Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585) 427-7225, and any and all members of his staff, including but not limited to, James Weidman, Esq., attorney for Trustee Reiber;

c) Christopher K. Werner, Esq., attorney for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585) 232-5300; and any and all members of his firm, including but not limited to, Devin L. Palmer, Esq.;

d) Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585) 586-6392;

e) Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585) 263-5812,

and any and all members of her staff, including but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker;

f) Deirdre A. Martini, United States Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212) 510-0500;

g) Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;

h) Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585) 613-4200, and any and all members of his staff; and

i) Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents requested hereinafter.

II. Procedural provisions applicable to all persons and entities concerned by this Order, who shall:

a) Understand a reference to a named person or entity to include any and all members of such person's or entity's staff or firm;

b) Comply with the instructions stated below and complete such compliance within seven days of the issue of this Order unless a different deadline for compliance is stated below;

c) Be held responsible for any non-compliance and subject to the continuing duty to comply with this Order within the day each day after the applicable deadline is missed;

d) Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document the source or recipient of funds or who made any charge or claim for funds; the time and amount of each such transaction; the description of the goods or service concerned by the transaction; the document closing date; the payment due date; the applicable rates; the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document; the beneficiary of any payment; the surety, codebtor, or collateral; and any other similar parts;

e) Certify individually as such person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that such document has not been the subject of any addition, omission, modification, or correction of any type whatsoever and that it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or certify why such certification cannot be made with respect to any part or the whole of such document and attach such document;

f) Produce any document within the scope of this Order by producing a true and correct copy of such document;

g) Produce a document and/or a certificate concerning it whenever a reasonable person acting in good faith would (i) believe that at least one part of such document comes within the scope of this Order; (ii) be in doubt as to whether any or no part of a document comes within that scope; or (iii) think that another person with an adversarial interest would want such production or certificate made or find it of interest in the context of ascertaining whether, in particular, the DeLanos have committed bankruptcy fraud, or, in general, there is a bankruptcy fraud scheme involving the DeLanos and/or any other individual; and

h) File with the Court and serve on Dr. Cordero and the trustee succeeding Trustee Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

III. Substantive provisions

1. Any person or entity concerned by this Order who with respect to any of the following documents (i) holds such document (hereinafter holder) shall produce a true and correct copy thereof and a certificate; or (ii) controls or knows the whereabouts or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the whereabouts or likely whereabouts of, and state such whereabouts and the name and

address of the known or likely holder of such document:

a) The audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman, shall be produced by Trustee Schmitt, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

b) The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, which transcript has already been prepared and is in possession of Trustee Reiber, who shall produce it on paper and on a floppy disc or CD;

c) The original stenographic packs and folds on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim, held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available to the individual, other than Reporter Dianetti, to be designated by this Court or the Judicial Conference of the United States to prepare its transcript;

d) The documents that Trustee Reiber obtained from any source prior to the confirmation hearing for the DeLanos' plan on July 25, 2005, in the Bankruptcy Court, whether such documents relate generally to the DeLanos' bankruptcy petition or particularly to the investigation of whether they have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;

e) The statement reported in the *DeLano* docket in the Bankruptcy Court, entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing of the DeLanos' plan, exactly as read;

f) The financial documents in either or both of the DeLanos' names, or otherwise concerning a financial matter under the total or partial control of either or both of them, regardless of whether either or both exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's, since January 1,

1975, to date,

(1) such as:

(a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at or issued by M&T Bank and/or any other entity in the world;

(b) the unbroken series of documents relating to the DeLanos' purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, including but not limited to:

(i) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY; and

(ii) personal property, including any vehicle or mobile home;

(c) mortgage and/or loan documents;

(d) title documents and other documents reviewing title, such as abstracts of title;

(e) prize documents, such as lottery and gambling documents;

(f) service documents, wherever in the world such service was, is being, or may be received or given; and

(g) documents concerning the college expenses of each of the DeLanos' children;

(2) the production of such documents shall be made pursuant to the following timeframes:

(a) within two weeks of the date of this Order, such documents dated since January 1, 1999, to date;

(b) within 30 days from the date of this Order, such documents dated since January 1, 1975, to December 31, 1998.

2. The holder of the original of any of the documents within the scope of this Order shall certify that he or she holds such original and acknowledges the duty under this Order to hold it in a

secure place, ensure its chain of custody, and produce it only upon order of this Court, the court to which *DeLano* may be transferred, a higher court of appeals, or the Judicial Conference.

3. Reporter Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference for investigation of her refusal to certify the reliability of the transcript of her recording of the evidentiary hearing on March 1, 2005, in the Bankruptcy Court of the DeLanos' motion to disallow Dr. Cordero's claim; Dr. Cordero's motion of July 18, 2005, for this Court to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript.
4. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*.
5. The Court recommends that the successor trustee be an experienced out of district trustee, such as a trustee based in Albany, NY, who shall certify that he or she is unfamiliar with any aspect of *DeLano*, unrelated and unknown to any party or officer in WDNY and WBNY, will faithfully represent pursuant to law the DeLanos' unsecured creditors, and exhaustively investigate the DeLanos' financial affairs on the basis of the documents described in ¶1.f) above and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets, and produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets -whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and file and serve such report together with a copy of the documents used to prepare it.

6. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶5 above; and such firm shall produce a certificate equivalent to that referred to therein.
7. The order of Bankruptcy Judge John C. Ninfo, II, of August 9, 2005, confirming the DeLanos' plan is hereby stayed; the order of Judge Ninfo of August 8, 2005, shall continue in force and M&T Bank shall continue making payments to Trustee Reiber until the appointment of the successor trustee and from then on to such trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.
8. *DeLano* is withdrawn from the Bankruptcy Court to this Court pursuant to 28 U.S.C. §157(d) pending the above-captioned appeal.
9. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, are referred for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with any of those cases and unacquainted with any of the parties, court officers, whether judicial or administrative, or trustees that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.
10. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany for a trial by jury before a judge unfamiliar with any of those cases and unrelated and unacquainted with any of the parties, court officers, whether judicial or administrative, or trustees.
11. All proceedings concerning this matter shall be recorded by the Court using, in addition to

stenographic means, electronic sound recording, and Dr. Cordero shall be allowed to make his own electronic sound recording of any and all such proceedings.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
, 2005.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. RICHARD CORDERO,

Appellant, Case No.: 05-cv-6190L

-vs-

DAVID DeLANO & MARY ANN DeLANO,

Appellee.

RESPONSE

TO: Honorable David J. Larimer, United States District Judge:

James Pfuntner ("Pfuntner") for his limited response and reservation of rights in respect to Appellant's motion for various forms of relief returnable on September 12, 2005, respectfully shows:

1. Pfuntner submits this limited response and reservation of all of his rights, powers, and remedies rights out of an abundance of caution. In particular, Pfuntner by submitting this response does not intend a) to intervene in the above-captioned appeal or admit that he is a party in interest in the DeLano case; b) to intervene Appellant's appeal; c) to agree that he received proper notice of Appellant's motion returnable on September 12, 2005; d) to submit to the jurisdiction of the court in this appeal or the DeLano bankruptcy case in general; or e) to waive any other protection to which he may be entitled. Instead, Pfuntner seeks to alert the court to Appellant's improper effort to obtain relief relating to Pfuntner as set forth in Appellant's proposed order at Paragraphs 9 and 10.

2. Pfuntner has no claim against either DeLano. The DeLanos have no known claim against Pfuntner.

3. Pfuntner is not a party in interest in the DeLano case. Pfuntner did not participate in the DeLano Chapter 13 confirmation proceeding which is the apparent subject of the pending appeal or in other aspects of the DeLano case.

4. Pfuntner cannot determine whether Appellant names him as a respondent in this motion. The motion is directed to named parties, not including Pfuntner, as well as "i) Any other persons or entities referred to herein or the proposed Order." (Motion, at p. 2). The only apparent reference to Pfuntner is at paragraph 9 and 10 of the proposed order submitted by Appellant. Those paragraphs, if read literally, refer to an adversary proceeding in the separate case of Premier Van Lines, Inc. in which Pfuntner is a party, not to Pfuntner, individually, as a respondent against whom Appellant requests relief in his September 12, 2005 motion.

5. The body of the Appellant's motion does not refer to Pfuntner or even to the Premier Van Lines, Inc. case. That omission suggests Appellant did not seek relief against Pfuntner. (At the same time, the absence of any fact relating to the adversary proceeding in which Pfuntner is a party deprives the court of any basis on which to grant any relief to Appellant in respect to that adversary proceeding.)

6. The court can take notice of its own records that in the Premier Van Lines, Inc. adversary proceeding, Appellant sought relief substantially similar to the relief proposed in paragraphs 9 and 10 of Appellant's proposed order. The bankruptcy judge and the appellate courts all refused Appellant's request for similar relief. Those determinations are the law of the case in Premier Van Lines, Inc. adversary proceeding. Those orders cannot be collaterally attacked in a proceeding in another case in which Pfuntner has no interest and did not participate as a party and certainly not on an appeal from a proceeding in which Pfuntner had no role and

nothing at stake that would have alerted him that he should defend against Appellant's claims in that case.

7. Pfuntner takes no position on any matter raised in the motion that does not concern him or the Premier Van Lines, Inc. case and the adversary proceeding in which he is a party.

Wherefore, Pfuntner requests that the court deny Appellant any relief sought against or in any way relating to Pfuntner and, specifically, strike the words "and Pfuntner" and "Pfuntner v. Gordon et al., docket no 02-2230, WBNY" from any order that the court may grant in response to the Appellant's motion and for such other and further relief as to the court seems just and proper to protect Pfuntner.

Dated: September 2, 2005
Rochester, New York

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Telephone: (585) 454-5650
Attorneys for Premier Van Lines, Inc.

UNITED STATES DISTRICT COURT
COUNTY OF MONROE STATE OF NEW YORK

Dr. Richard Cordero,

Appellant/Creditor,

-vs-

David G. Delano and Mary Ann Delano,

Respondents/Debtors.

DELANO RESPONSE TO CORDERO MOTION

Case No. 05-cv-6190L

TO: Honorable David J. Larimer, United States District Judge

DAVID G. DELANO and **MARY ANN DELANO**, the Respondents/Debtors herein ("Debtors"), by their attorneys, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, in response to the Motion of Dr. Richard Cordero ("Cordero"), reserving all rights, respectfully show, as follows:

1. Cordero's Motion attacks a multitude of issues and decisions already determined in Bankruptcy Court, some of which are currently pending on appeal, though it does not appear that Cordero has fully perfected his appeal to date.

2. Bankruptcy Court Judge John C. Ninfo, II, on the Debtors' Objection to Claim, has already determined that Cordero has no claim in this proceeding and is not a creditor herein and shall not participate further in any proceeding with respect to the Debtors. That determination is believed to be the primary aspect of Cordero's pending appeal. In light of such decision, there is no basis for the current Motion herein by Cordero.

3. Cordero's Motion further questions the appropriateness of the confirmation of the Debtors' Chapter 13 Plan, which was duly considered by the Trustee and the Court and properly determined in all respects.

4. All other aspects of the Cordero Motion, including a reiteration of the appropriateness of the Debtors' petition, determination of the Court on discovery motion, the Debtors' good faith in filing of their bankruptcy, the conduct of the extended 341 Hearings, complaints about the Court reporter, and a generalized attack on Trustee Reiber and Judge Ninfo have no merit nor any procedural basis herein.

WHEREFORE, the Debtors request that the Court deny Cordero any relief sought in his Motion herein and ask for such other and further relief as the Court finds just and proper.

Dated: September 7, 2005

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant/Creditor,

DECISION and ORDER

-vs-

05-CV-6190L

DAVID G. DELANO and
MARY ANN DELANO,

Respondents/Debtors.

Dr. Richard Cordero ("Cordero") has filed a motion (Dkt. #13) requesting that this Court refer a bankruptcy court reporter to the Judicial Conference for an "investigation." The motion is in all respects denied.

The perceived difficulty revolves around the bankruptcy court reporter's preparation of (or failure to prepare) a transcript of proceedings before United States Bankruptcy Judge John C. Ninfo, II on March 1, 2005. The prolix submissions might lead one to believe that this is a significant problem. It is not. It is a tempest in a teapot.

The matter must be resolved as follows:

1. If Cordero wishes to order a transcript of the March 1, 2005 proceeding, he must make a request for it in writing to court reporter Mary Dianetti. Cordero has no right to

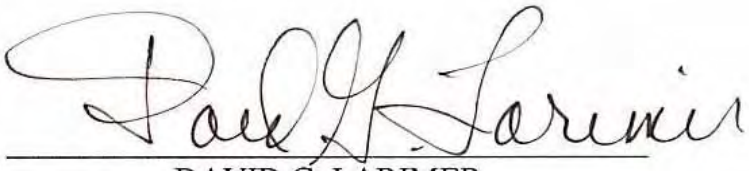
"condition" his request in any manner. This transcript will be prepared in the same fashion that all others are.

2. Upon receipt of a written request, Ms. Dianetti will complete the transcript within twenty (20) days of receipt of the letter.

3. Ms. Dianetti will prepare the usual paper copy for the Court and for Cordero. The copy will be of such quality and in a format for the Court to scan it into the CM/ECF system

4. The copy for Cordero will be released to him upon receipt of the fee for preparation of the transcript, which is estimated to be approximately $650.00. The court reporter has represented that the fee will not exceed that amount – $650.00. Payment for the transcript must be in the form of cash, a money order, or certified check.

IT IS SO ORDERED.



DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

Dated: Rochester, New York
September 13, 2005

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
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Dr. Richard Cordero
Appellant and creditor

NOTICE OF MOTION and MOTION FOR RECONSIDERATION OF THE COURT'S DECISION AND ORDER CONCERNING REPORTER MARY DIANETTI AND THE TRANSCRIPT NECESSARY TO THIS APPEAL

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court next November 18, 2005, or as soon thereafter as possible, at the address of such Court stated in the caption above, for the Court to reconsider its decision and order of September 13 denying his motion of July 18, 2005, concerning Bankruptcy Reporter Mary Dianetti and for it to grant the relief requested below; and requests that the parties file and serve any answer by October 17 so that he may have time to file and serve a reply as appropriate.

1. In his motion of August 23, 2005, Dr. Cordero requested that the Court, District Judge David G. Larimer presiding, rule by September 12, on that and his other three pending motions incorporated therein by reference in paragraph 60 thereof, namely:

   a) Dr. Cordero's motion of August 23, 2005, to compel the production of documents and take other actions necessary for the exercise of the court's supervision over the bankruptcy court and of appellant's right of appeal, and for the proper determination of this appeal;

   b) Dr. Cordero's motion of July 18, 2005, to have Reporter Mary Dianetti referred to the

Judicial Conference for investigation of her refusal to certify the reliability of that transcript;

c) Dr. Cordero's motion of July 13, 2005, to stay the confirmation hearing and order, withdraw *DeLano* pending appeal, remove Trustee Reiber and give notice of addition to appeal, accompanied by Dr. Cordero's affidavit of July 11, 2005, in support thereof;

d) Dr. Cordero's motion of June 20, 2005, for a stay in *Pfuntner* and to join the parties there to the *DeLano* appeal, accompanied by Dr. Cordero's statement of June 18, 2005, on Judge Ninfo's linkage of *Pfuntner* and *DeLano*.

2. In its decision and order of September 13, the Court does not even mention the motion returnable on September 12, that is, Dr. Cordero's motion of August 23 (¶1.a)). Rather, the Court ruled only on the motion of July 18 concerning Bankruptcy Reporter Mary Dianetti.

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I. Reporter Dianetti was so sure that the Court on the floor above from the Bankruptcy Court where she works would not grant by default Dr. Cordero's motion, which put her career at risk, that she did not bother to file an objection to it

3. The July 18 motion requested that Court Reporter Dianetti be referred under 28 U.S.C. §753(c) to the supervisory body for court reporters, that is, the Judicial Conference of the United States, for investigation of her refusal to certify the reliability of the transcript of her own stenographic recording of the evidentiary hearing on March 1, 2005, in Bankruptcy Court. At that hearing, Mr. David DeLano, debtor below and respondent here, was examined by Dr. Cordero.

4. Had the Court referred Reporter Dianetti to the Conference, she risked being the target of a very serious investigation given that in refusing to certify the reliability of her own transcript of her own recording she violated her duty as a reporter, for whom §753(b) 3rd, 4th, and 5th paragraphs

provide that the reporter 'shall officially certify her transcript "to the party or judge making the request". Consequently, she opened herself to the inquiry of what personal motive or external influence could have caused her to fail her duty.

5. Meantime, she would have been replaced under §753(b) 3rd paragraph by another individual who, as requested by Dr. Cordero, would have been "a Conference-designated experienced reporter, unrelated to either her or any judicial or administrative officers of the Bankruptcy Court or the District Court, to prepare the transcript based on her stenographic record of the March 1 evidentiary hearing". This assertion follows from reasoning by analogy based on what the Supreme Court has stated are circumstances requiring the disqualification of not just assistants to judges, as reporters are, but judges themselves under 28 U.S.C. 455(a), which provides that:

> Any justice, judge, or magistrate judge of the United States ***shall*** disqualify himself in any proceeding in which his impartiality ***might*** reasonably be questioned. (emphasis added)

6. The Supreme Court, speaking by the late Chief Justice Rehnquist, recently reaffirmed the vast scope of those disqualifying circumstances in *Microsoft Corp. v. United States, 530 U. S. 1301, 1302 (2000)*:

> As this Court has stated, what matters under §455(a) "is not the reality of bias or prejudice but its appearance." *Liteky v. United States, 510 U. S. 540, 548 (1994).* This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. *See ibid.; In re Drexel Burnham Lambert Inc., 861 F. 2d 1307, 1309 (CA2 1988).*

7. If the Supreme Court applies to even a judge appointed under Article III of the Constitution this strict standard of disqualification by reasonable appearance of partiality, then the Conference, which is presided over by the Chief Justice, would have proceeded with at least equal strictness in disqualifying from preparing the transcript for the instant appeal a reporter who not just gave the appearance, but provided a concrete, written statement, as did Reporter Dianetti, of refusal to provide a transcript free of any distorting influence, incomplete, or inaccurate. Therefore, a

referral for investigation to the Conference of Reporter Dianetti would have resulted in her replacement, and could have ended up in her suspension or even her termination as a reporter.

8. Since the Conference is the supervising body of reporters, Reporter Dianetti must have known the potential consequences of her referral to it by this Court. Likewise, by the very nature of her job of listening to and writing down court proceedings, she must be presumed to be more aware than the average person of the risk of judgment by default: Failing to object to the referral meant that the Reporter implicitly admitted Dr. Cordero's contention against her and consented to such referral. Consequently, the Court could have granted by default Dr. Cordero's motion. (cf. District Local Rules 7.1(e) and 56.2. 3rd paragraph of the Notice)
9. Nevertheless, Reporter Dianetti was so sure that the Court would never grant by default Dr. Cordero's motion that she did not even bother to file an objection to it. How did she become so sure that she had nothing to worry about? If the District Court where Dr. Cordero had to raise that referral motion were not on the floor above the Bankruptcy Court where the Reporter works in the same small federal building, but instead this appeal had been transferred to the U.S. District Court in Albany, as repeatedly requested by Dr. Cordero, would she have reacted to the risk of losing her job with the same assured indifference?

II. The Court referred to the motion as revolving around a "perceived difficulty" in the Reporter preparing the transcript, which indicates that it either did not read the motion after finding it "prolix" or did not grasp how easy it was for the Reporter to state the numbers that she had used to calculate the transcript's cost or to certify that the transcript would be reliable

10. The Court did not have to bother reading the motion only to get rid of it with a mere "in all respects denied" without any mention, let alone discussion, of the facts or the applicable law discussed in detail by Dr. Cordero, much less citing any authority of its own. As a matter of fact,

it qualified Dr. Cordero's submissions as "prolix", which gives rise to the impression that it did not read the motion because too long and boring…'with all those legal arguments, who cares?!' However, had the Court read FRBkrP 8011(a), it would have found that it provides that:

> FRBkrP 8011(a)…The motion ***shall* contain or be accompanied** by any matter required by a specific provision of these rules governing such a motion, ***shall* state with particularity the grounds** on which it is based, and ***shall* set forth the order or relief sought**. If a motion is **supported** by **briefs, affidavits or other papers**, they shall be served and filed with the motion. [emphasis added]

11. By contrast, the Court disposed of the motion thus:

> The perceived difficulty revolves around the bankruptcy court reporter's preparation of (or failure to prepare) a transcript of proceedings before United States Bankruptcy Judge John C. Ninfo, II [sic] on March 1, 2005. The prolix submission might lead one to believe that this is a significant problem. It is not. It is a tempest in a teapot.
>
> The matter must be resolved as follows: …(¶27 below)

12. And that was it! That was all the Court had to say in its decision before jumping to its order.

13. If for such cursory decision the Court felt the need to and actually read the motion, then whatever it read was not sufficient for it to get even the facts straight. Indeed, what "perceived difficulty" could the Court possibly be referring to?!

14. On the contrary, what Dr. Cordero noted and the Court would have "perceived" had it read the motion, was how indisputably easy it would have been for Reporter Dianetti to avoid this controversy. The fact is that Dr. Cordero noted it twice to the Reporter in his letters to her of May 26 and June 25 and to the Court in paragraph 11 of the motion, where he wrote thus:

> 11. …Dr. Cordero made this point [of Reporter Dianetti's easily "nipping any suspicion in the bud"] unambiguous in his letter to her of June 25:
>
> Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:
>
> [since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript…provide me with that count…Therefore…

> 2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

15. That was all it took!: Simply to state the number of stenographic packs and folds on which she would base the transcript. The Court knows that Reporter Dianetti necessarily had that number because in the last paragraph of its order, paragraph 4, the Court stated that the transcript's cost had been "estimated to be approximately $650.00" by the Reporter.

16. What is more, the Court could have read in paragraph 10 of the motion that Dr. Cordero wrote:

> 10. In her response of June 13, Reporter Dianetti agreed to an upper limit of $650 and stated a cost per page of $3.30.

17. So Reporter Dianetti had both multiples necessary to arrive at her estimate: $650 = cost per page x number of pages. And the only way she could possibly have arrived at the number of pages was by counting the number of stenographic packs and folds that she would use for the transcription. That was the number that Dr. Cordero requested of her. Was there anything easier than for the Reporter to state a number that she implicitly admitted she had? Could any reasonable, informed, and impartial observer have found any "perceived difficulty" in the Reporter stating that number before asking Dr. Cordero to hand over $650? So if there was any "perceived difficulty", it was only the Court's mind. But which and why?

18. Reporter Dianetti, instead, refused to state that number in her letters of May 3 and 19, and June 13, in response to Dr. Cordero's letters concerning his request for the transcript. By contrast, she referred him to the numbers of stenographic packs and folds that she had given him at his request at the end of the same day on which she recorded the evidentiary hearing, that is, March 1. How strange that she had the numbers counted months earlier and was willing to give them again to Dr. Cordero, but she would not give him the number that she had necessarily just finished counting to arrive at her estimated transcript's cost and that he did not have, hence the

reason why he wanted it. Why did the Court not "perceive" that the only "difficulty" here was in making sense of Reporter Dianetti's conduct?

19. Dr. Cordero did and even sensed that her conduct was suspicious. Any reasonable, informed, and impartial observer would have sensed it too. So he asked her in his letter of June 25 to agree to:

> …provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing…
>
> …simultaneously file one paper copy with the clerk of the bankruptcy court and mail to [Dr. Cordero] a paper copy together with an electronic copy…and not make available any copy in any format to any other party…[and]
>
> …truthfully state in your certificate [that] you have not discussed with any other party (aside from me)…the content…of your stenographic recording of the DeLano evidentiary hearing or of the transcript…[otherwise] you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

20. But in her July 1 letter, Reporter Dianetti requested payment of $650 in advance, agreed to provide the transcript on paper and a computer disc, and then without offering any explanation whatsoever wrote: "The balance of your letter of June 25, 2005 is rejected". What a conclusorily concise response!, like the Court's order: "The motion is in all respects denied", then the order to Dr. Cordero to pay $650 for the transcript followed by the specification of paper/disc format.[1]

21. So, in what did the "perceived difficulty" referred to by the Court consist? The question is all the more pertinent because, contrary to the Court's insinuation, it could not relate to 'the court

[1] The Court disregarded Dr. Cordero's request that the Reporter not provide any copy in any format to any person other than the Clerk and Dr. Cordero. On the contrary, it provided that: "The copy will be of such quality and in a format for the Court to scan it into the CM/ECF system [sic]"

There is something odd in requiring one party to pay for the transcript and then making it available for free to all the other parties and everybody else regardless of whether the paying party uses only a portion of it or nothing at all. By contrast, under FRCP 26(b)(4)(C), a party interested "in obtaining facts and opinions from the expert…[of another party must] pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party".

reporter's preparation of the transcript' since Reporter Dianetti never actually began to prepare it, but rather refused to state what was it that she would prepare for $650 and its quality.

22. The Court did not provide any indication of what it understood that "perceived difficulty" to be. Instead, it added that "The prolix submission might lead one to believe that this is a significant problem. It is not." (¶11 above) Likewise, what is "this"? Hence, with additional swings of the crude hack "in all respects denied", the Court chopped to the ground a motion although it showed not to have a clue of what the motion stood for or not to care to show that it did. In so doing, the Court becomes liable to having applied to it what Justice Marshall stated in his dissent in *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979)*: [A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary.

III. If the Court read the motion, it knowingly dismissed as "a tempest in a tea pot" Dr. Cordero's objection to the reporter's refusal to certify her transcript as complete, accurate, and free from tampering influence, and ordered him to pay for and use it anyway, thereby indicating its willingness to decide the appeal on a transcript that it knows will be incomplete, inaccurate, and the result of tampering influence, whereby the Court shows contempt for his right of appeal and the integrity of judicial process

23. The Court must be presumed to know with certainty that a transcript is the key document of an appeal generally and of this appeal in particular. Indeed, a transcript provides an account of the events in the court below upon which the decision was rendered that is on appeal before it. Furthermore, the Court knows and should know if it bothered to read Dr. Cordero's motion of August 23, not to mention that of June 20, (¶1 above), that:

a) the transcript in question here is that of the evidentiary hearing on March 1, 2005, of the DeLano Debtors' motion, filed on July 22, 2004, to disallow Dr. Cordero's claim in *DeLano*;

b) the disallowance motion was used as an artifice to eliminate Dr. Cordero from *DeLano* and

thereby prevent him from requesting anymore the production of documents that would prove fraud in the DeLanos' bankruptcy petition generally and their concealment of assets specifically;

c) with Judge Ninfo's support, the DeLanos failed to produce such documents, even those that they had been pro forma ordered to produce by the Judge and Chapter 13 Trustee George Reiber;

d) Judge Ninfo, without invoking any authority and disregarding contrary authority brought to his attention by Dr. Cordero, unlawfully ordered him to conduct discovery in another case, that is, *Pfuntner v. Trustee Gordon et al*, docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano, only to deny Dr. Cordero **every single document** that he requested from the DeLanos, whereby the evidentiary hearing, as part of the artifice of the motion to disallow, was from its inception a sham;

e) hence, the testimony of Mr. DeLano under examination by Dr. Cordero at the evidentiary hearing is the only evidence in *DeLano* of Dr. Cordero's claim against Mr. DeLano;

f) the transcript will show that Judge Ninfo conducted the evidentiary hearing with contempt for due process and as the chief advocate of Mr. DeLano and as opposing counsel to Dr. Cordero rather than as an impartial arbiter;

g) all of which establishes the transcript of the evidentiary hearing as the key document in the appeal, indispensable to prove that Dr. Cordero's claim is valid and supports his status as creditor of the DeLanos and that the disallowance of his claim was not just error, but rather abuse of judicial power in support of a bankruptcy fraud scheme.

24. Therefore, objecting to a transcript that will be incomplete, inaccurate, and the result of tampering influence in order both to deprive Dr. Cordero of his claim against the DeLanos and much more importantly, to conceal the bankruptcy fraud scheme that has enabled and protects

the DeLanos' fraudulent petition cannot under any conception of respect for Dr. Cordero's right to appeal and the integrity of judicial process be dismissed as "a tempest in a teapot".

25. In addition, the Court knows that the transcript is such a key document for the appeal if it only read the title of Dr. Cordero's motion of August 23, namely, "to compel the production of documents and take other actions necessary for the exercise of the court's supervision over the bankruptcy court and of appellant's right of appeal, and for the proper determination of this appeal". If it dutifully or out of curiosity read the motion, it must have learned that the motion concerns some specific individual and types of documents that persons identified by name in its first paragraph have refused or failed to produce. The Court must also have learned how their unjustifiable non-production is part of a series of non-coincidental, intentional, and coordinated series of acts of disregard of the law, the rules, and the facts in support of the bankruptcy fraud scheme. Moreover, the Court must have learned that its ordering their production of such documents is essential not only to determine this appeal, but also to discharge its duty of supervision of the integrity of court officers and the judicial process.

26. Yet, the Court did not sign Dr. Cordero's proposed order for the production of those documents and did not issue any order of its own for the production of any of those documents except the transcript. That means that the Court has ordered Dr. Cordero to pay Reporter Dianetti $650 to obtain that one document that it knows from a letter of the Reporter herself will not be incomplete, inaccurate, and the result of tampering influence. Will objecting to such order be qualified by the Court in another cursory decision as "a tempest in a teapot"? Or will the Court recognize that to have issued that order and to let it stand constitute a denial to Dr. Cordero of due process and an abdication of the Court's duty to insure judicial integrity?

IV. The Court has no authority under the Bankruptcy Code or the Constitution to interfere in contractual negotiations between Reporter Dianetti and Dr. Cordero and to require the latter to accept the transcript under whatever 'conditions' dictated by the former

27. In its order, the Court stated the following:

> The matter must be resolved as follows:
>
> 1. If Cordero wishes to order a transcript of the March 1, 2005 proceeding, he must make a request for it in writing to court reporter Mary Dianetti. Cordero has no right to "condition" his request in any manner. The transcript will be prepared in the same fashion that all others are.

28. The Court did not cite any authority for this position. Yet it could have realized how wrong it was if it were in the habit of ruling in accordance with law.

29. Indeed, FRBkrP 8006 provides thus:

> FRBkrP 8006…If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and **make satisfactory arrangements for payment of its cost**. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record. [emphasis added]

30. In compliance therewith, Dr. Cordero filed together with his designation of items in the record, where the transcript of the March 1 evidentiary hearing is included as item no. 112, a copy of his letter to Reporter Dianetti, bearing the same date as the designation, that is, April 18, 2005. In it he asked her to provide a cost estimate and "let me know also the number of stenographic packs and the number of folds…that you will be using to prepare the transcript". Knowing how Reporter Dianetti would calculate the cost of the transcript for which he would commit himself to paying her was part of his effort "to make satisfactory arrangements for payment of its cost".

31. Any reasonable, impartial, and informed observer would recognize that part of contract negotiations is determining what it is that each contractual party offers to give the other and is willing to accept from the other. This is part of bargaining at arms length, where neither party

can dictate to the other what the other party must accept as well as what it must give in return. A court reporter is not endowed under any provision of law with such grossly superior bargaining power that she can impose upon a litigant not only the cost, but also the quality of a transcript on a take it or leave it basis. A reporter cannot force on an appellant a contract of adhesion. Her transcription of her record is not a captive market and she cannot hold the transcript hostage to the acceptance of her unilaterally dictated conditions by an appellant. Her treatment of the latter as a weaker and exploitable contractual party would offend a court respectful of the law, which would find a contract entered into under those conditions unconscionable and thus, unenforceable. To "make satisfactory arrangements" does not mean that the reporter is legally entitled to be the only contractual party to choose the conditions that satisfy her and that the appellant has no choice but to be dissatisfied if he wants to obtain anything passed off as a transcript at all. If the transcript does not provide a pristine reflection of the proceeding in question, then the appellant cannot possibly be satisfied with it, and if this Court is intent on administering justice on the basis of that transcript, it should not be either.

32. Nor is the Court empowered by the laws that it took an oath to uphold and apply impartially to rearrange the contract negotiating positions of a court reporter and an appellant from that of bargaining at arms' length to that of gross disparity by elevating the reporter above the need to negotiate to a higher position from which she can abusively impose her unilateral conditions on the appellant below. The Court has no such power either under the Contract Clause of Article I, section 10, clause 1 of the U.S. Constitution providing that "No State shall…pass any Law impairing the Obligation of Contracts"; nor the XIV Amendment providing that 'no State shall "deprive any person of…property, without due process of law"; nor the V Amendment providing that "No person shall…be deprived of…property, without due process of law".

33. On the contrary, as the Constitution was interpreted in *Erie Railroad Co. v. Tompkins, 304 U.S.*

64 (1938), a federal court would have to apply state law to the interpretation of any contract between a court reporter and an appellant. In the instant case, that would be New York State law. The Civil Practice Law and Rules (CPLR), the New York City Civil Court Act (NYCCCA), the Uniform City Court Act (UCCA), and the Uniform Commercial Code (UCC) were the transcript somehow considered the sale of a product rather than the provision of a service of a writer for hire, contain no provision exempting a court reporter from contract negotiations on an equal and fair basis with an appellant. Neither contains any principle of law that entitles a court reporter, or any other contractual party, to compel an appellant, or any other party to a contract, to accept and pay for a product or service that she herself has produced evidence will be defective and unsuitable for the intended purpose.

34. That is precisely the unacceptable quality condition of the transcript that Reporter Dianetti wants to impose upon Dr. Cordero by her refusal to certify that it will be complete, accurate, and free from tampering influence. Yet, in so doing, she violates her duty as a reporter to:

> 28 U.S.C.§753(b)…record verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations…[e]ach session of the court and every other proceeding designated by rule or order of the court or by one of the judges…

35. Unquestionably, the very aim of a stenographic recording of a proceeding is to record it "verbatim", that is, word for word, so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications…determined by standards formulated by the Judicial Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content having the same length. That is a logical and practical imperative of the system of reporting court proceedings. As the Supreme Court put it, 'the §753(b) duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible,

what transpires in court', *Antoine v Byers & Anderson, 508 US 429, 124 L Ed 2d 391, 113 S Ct 2167 (1993).*

36. This means that the reporter's duty under §753(b) 3rd, 4th, and 5th paragraphs requiring that she 'shall officially certify her transcript "to the party or judge making the request" has as its correlative Dr. Cordero's right to require as a condition for committing himself to paying the reporter for her transcript that such certificate be truthful. However, that certificate would be meaningless in this case because Reporter Dianetti already refused in writing to rule out that her transcript will not be incomplete, inaccurate, and the result of tampering influence. Her refusal frustrates Dr. Cordero's reasonable expectations as to the transcript's reliability and prevents a meeting of the minds that can form the basis of a contract. These are basic principles of contract law. Therefore, what motive or agenda could the Court have to disregard them and demonstrate its willingness to decide an appeal on the basis of a transcript on whose reliability its Court Reporter herself has cast doubt?

V. The Court tried to prevent Dr. Cordero from using the transcript by ordering him to file his appellate brief before the transcript had been prepared, which violated FRBkrP 8007; now it is trying to prevent him from using a reliable transcript by ordering him to buy it from Reporter Dianetti and denying his request that she be referred to her supervisor, the Judicial Conference, for an investigation into her refusal to certify that it will not be incomplete, inaccurate, and the result of tampering influence

37. FRBkrP 8006 requires appellant to file a designation of items in the record and a statement of issues on appeal and to furnish the clerk with a copy of those items. It also provides 10 days after service of that designation for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal". Likewise, it makes the transcript part of the record if a party includes it in its designation of items on appeal. (¶29 above)

38. For its part, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court." It is obvious that the record could not possibly have been complete on the very day on which appellant's designation was filed since the 10 days provided for the appellee to designate additional items had not even started to run; they would begin to run the following day in application of FRBkrP 9006(f).

39. These rules notwithstanding, the Bankruptcy Court received Dr. Cordero's designation of items, which listed the transcript among them, and a copy of his letter to Reporter Dianetti, both dated April 18, on April 21, 2005, and on that same day it transmitted them upstairs to the District Court in the same small federal building. Hence, this Court knew there was no way for the record to be complete since the Reporter might not even have had time to open the letter, let alone to respond to his efforts to "make satisfactory arrangements for payment of [the transcript's] cost". But disregarding the legal consideration that the transmittal of an incomplete record violated FRBkrP 8007(b), the Court issued the next day, April 22, an order providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". Thus, the due date was May 12.

40. It is illustrative to note here that appellee's designation of additional items was mailed in Rochester only on May 3 and delivered in NYC, where Dr. Cordero lives, only on May 10, just two days before his appellate brief was supposed to arrive in Rochester to be filed on May 12. Therefore, Dr. Cordero would not have had time to take it into consideration in his brief.

41. Moreover, FRBkrP 8007(a) allows the reporter 30 days to complete the transcript and if she has not done so by that time, she could ask for an extension. Thus, to require the filing of the appellate brief within 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in writing that brief. It follows that the Court intended by means of its scheduling order to deprive Dr. Cordero of the use of the transcript.

42. In light of this, on May 2, Dr. Cordero faxed to the Court his objection to its scheduling order and requested that it be rescinded. He pointed out that the "premature…acts [of transmitting and scheduling the appellate brief] have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record".

43. Disregarding the violation of the rules and that concrete detriment, the Court did not rescind its scheduling order. Instead, on May 3, it issued another order requiring Dr. Cordero to file his appellate brief by June 13. In so doing, the Court did not even mention the legal and factual basis of Dr. Cordero's objection to premature transmittal of the incomplete record and the consequences in practical terms of the scheduling order.

44. As a result, Dr. Cordero was forced to write again to raise before the Court a "Motion for compliance with FRBkrP 8007 in the scheduling of appellant's brief". It pointed out that the Court did not receive a "record [that] is complete for purposes of appeal", as required under FRBkrP 8007(b), so that in contravention of the rules it received an incomplete one; therefore, it had not obtained and still did not currently have jurisdiction over the case to issue a scheduling order.

45. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only he had not received the transcript, but also nobody knew even when the Reporter would complete it, let alone deliver it to him. Hence, if the transcript were delivered before the brief-filing deadline, he would have to scramble to read its hundreds of pages and then rework his whole brief to take them into consideration and do in a hurry any necessary legal research. Worse yet, if the transcript were delivered after that filing deadline and before the Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief. But if the transcript were not filed timely and the Bankruptcy Clerk notified

Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not be known in advance, not to mention that the circumstances of the Reporter's failure to complete it could give rise to a host of new issues. And what would happen, Dr. Cordero asked, if the transcript was delivered *after* the Court had issued its decision?! He concluded that there was no legal basis for putting on him the onus of coping with all that burdensome extra work and uncertainty.

46. In its third scheduling order of May 17, 2005, the Court did not show any awareness of these issues, let alone that they were its concern. On the contrary, it issued its order pretending that:

> Appellant requested additional time within which to file and serve his brief. That request is granted, in part. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy proceedings is filed with the Clerk of the Bankruptcy Court.

47. No! Dr. Cordero had certainly **not** "requested additional time". What he had requested was for the Court to act in accordance with the law:

> Rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court.

48. The Court's last order means in practice that if Reporter Dianetti ever files her transcript and it is found incomplete, inaccurate, or the result of tampering influence, Dr. Cordero will once more have to move the Court to rescind that order and undertake corrective measures, lest he miss the brief-filing deadline and have his appeal dismissed. In terms of the law, it means that the Court issued a third order with disregard for the legal issues depriving it of jurisdiction to do so. Likewise, by refusing to return the incomplete record to the Bankruptcy Court, the Court wanted to force Dr. Cordero to move for the addition of the transcript to the record under District Local Rule 7.1.(a)(3), thus reserving for itself the last chance to deny the motion and prevent the transcript from becoming available in any subsequent appeal to the Court of Appeals or the Supreme Court.

A. The Court and Reporter Dianetti already tried in *Pfuntner* to prevent Dr. Cordero from timely receiving a transcript so that he could not use it in writing his appellate brief, which forms part of a pattern of the Court engaging in and tolerating the disregard for the rule of law

49. This is not the first time that the Court has shown disregard for the rules governing transcripts. In fact, the instant events are an exact repetition of the way the Court proceeded when Dr. Cordero requested an earlier transcript in *Pfuntner v. Trustee Gordon et al.*, (¶23 above), to which both Mr. DeLano and Dr. Cordero are parties. Thus, after the Court's colleague, Judge Ninfo, summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002, Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14, where she informed him that the due date for his designation of items was January 27. Yet, already on January 16, 2003, the Court, Judge Larimer presiding, had an order filed in docket 03cv6021L scheduling Dr. Cordero's brief for 20 days hence. Nevertheless, the Court knew that the Bankruptcy Clerk had transmitted to the Court a record unquestionably incomplete, for it consisted of merely the notice of appeal!

50. For her part, Reporter Dianetti tried to avoid submitting that transcript to Dr. Cordero and after belatedly completing it mishandled its delivery. As a result, instead of the transcript being prepared in 10 days as she had said it would, it was sent to him more than two and a half months later, after Judge Ninfo had found out what Dr. Cordero had to say at the hearing on March 26, 2003.

51. Alas!, these are not the only instances of the Court showing disregard for the law, the rules, and the facts. Indeed, the Court showed contempt for judicial process in deciding Dr. Cordero's two appeals from *Pfuntner*, to wit, his opposition to Trustee Gordon's motion to dismiss the appeal, docket no. 03cv6021, where it disregarded, among others, FRBkrP 8002 and 9006; and his application for default judgment against David Palmer, docket no. 03mbk6001, where it

disregarded FRCP 55 and the facts in the record. (Dr. Cordero's opening brief in *Cordero v. Premier Van Lines,* docket no. 03-5023, CA2, §§VII.C.7; VIII.C; and IX.D)

52. In the instant order the Court disregards basic principles of contract law, depriving Dr. Cordero of his right to negotiate with Reporter Dianetti the conditions on which to "make satisfactory arrangements for payment of [the transcript's] cost", and compelling Dr. Cordero to accept a transcript that Reporter Dianetti has already indicated will be produced in a defective condition. This reasonably gives rise to the unacceptable prospect that however incomplete, inaccurate, and distorted by tampering influence Reporter Dianetti's transcript turns out to be, the Court will dismissively treat any objection on Dr. Cordero's part as another "tempest in a teapot" and just charge toward a determination of the appeal with contempt for the integrity of judicial process. Nor does the Court show respect for the rule of law by issuing the instant order without citing any authority and instead contradicting established contract law principles.

53. This series of acts is consistent with the same objective of preventing an appellant from receiving and using a transcript and effectively exercising his right to appeal. It shows that the acts are the product of non-coincidental, intentional, and coordinated violations of the rule of law by administrative and judicial officers. Such pattern evidence supports the reasonable inference that the Court intended for Dr. Cordero to file his brief without the benefit of the transcript while protecting Judge Ninfo from being incriminated by the record therein of his contempt for the requirements of fair and impartial judicial process and by the arbitrariness of his decisions on appeal. Since the Court failed to attain that objective through scheduling orders, it is now attempting to do the same through the next best means available to it, namely, requiring that Dr. Cordero pay for a transcript of no value because Reporter Dianetti has refused to certify that it will not be incomplete, inaccurate, and resulting from tampering influence.

54. The Court has created the prospect of more such arbitrariness and unlawfulness in future. In so

doing, the Court shows contempt for the principle laid down by the Supreme Court that "to perform its high function in the best way 'justice must satisfy the appearance of justice'", *Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986)*, citing *In re Murchison, 349 U.S. 133, 136 (1955).* The Court not only does not do justice, but does not even care to be seen doing injustice by deciding an appeal on the basis of an unreliable transcript. Consequently, what the Court conducts and intends to conduct is not judicial process according to law, but rather a travesty of justice in pursuit of its own agenda. In subjecting Dr. Cordero thereto, the Court has denied him due process of law to which he is entitled under the Fifth Amendment.

VI. A proposal to bankruptcy fraud schemers for disclosure in exchange of immunity; and to whistleblowers for a positive reward

55. Bankruptcy fraud schemers have already caused Dr. Cordero enormous loss of effort, time, and money as well as inflicted upon him tremendous emotional distress. Those who think that in order to protect themselves and others from being exposed as participants in the scheme they only have to keep abusing him and can do so with impunity delude themselves. The reason for this is not that Dr. Cordero is invulnerable, but rather that the scheme will become unsustainable. It is a function of the implosive dynamics of expanding wrongdoing (IDEW). The collapse from the inside of ENRON, Arthur Andersen & Co., WorldCom, Tyco, and Adelphia due to the unbearable amount and complexity of their fraud is there to prove it.

56. Indeed, Dr. Cordero has endured all this abuse for four years now. He is not quitting now that a growing number of participants need to commit ever more egregious abuse and disregard the law, the rules, and the facts ever more blatantly in order to cover up their previous wrongdoing. The time is nearing when the mass of such wrongdoing will make their scheme implode.

57. There will be pressure from the outside too. As additional cover ups of previous cover ups of wrongdoing by their own dynamics become ever less effective and exposed, even the schemers' peers and colleagues will be unable to deny that their acts form a pattern of non-coincidental, intentional, and coordinated wrongful activity, that is, a scheme. They will not be willing to risk being associated with the schemers. At that time, the schemers will be on their own. Panic will seize them, they will multiply their mistakes, and the weakest of them will break down, causing other schemers to become unstable, and bringing down one after the other until the scheme implodes from the inside.
58. After the implosion, the schemers will face enormous tort liability to Dr. Cordero, not to mention criminal liability. They must realize that while the benefits of the scheme are not shared equally because the few at the top take the lion's share while the many below them must get by with merely diminishing crumbs, they all will share joint and several liability. Likewise, it is of little comfort to know that somebody else is serving a sentence of 20 years in jail under a provision such as 18 U.S.C. §1519, when one has been imprisoned for 10 years. And then there is that other prospect: shame, the shame of being implicated in a fraud scheme, not to mention of being incriminated and convicted, public shame and shame before friends and family.
59. Their prospect is that all they have worked for so far and all they will continue to work for from now on will have to be spent to pay their defense attorneys' fees and the award of compensatory and punitive damages to Dr. Cordero (the DeLanos have already been billed more than $16,500 by their bankruptcy lawyer just trying to avoid the production of incriminating documents to Dr. Cordero; Martha Stewart spent over $1million on her legal defense alone, without including fines, and still ended up in prison and then wearing an ankle bracelet-. Is that an acceptable prospect for one building up his or her career, raising a family, or approaching retirement?
60. This prospect should be enough for that one schemer to realize that on practical or moral

grounds the benefit from the scheme is not keeping pace with the increasing risks and that the time has come to cut his or her losses. That one schemer is the one that realizes that there is a need for only one grant of immunity because one schemer who discloses everything he or she knows is enough to accelerate the investigation of the scheme exponentially and bring all the other schemers down. Yet, even that one grant of immunity is only available before the investigators –whether they be FBI agents, U.S. attorneys, journalists aspiring to become the next Woodward/Bernstein, or bloggers- have gathered enough evidence to bring a case on their own against the schemers. When that happens, the lights go out in the tunnel and the nightmare begins in earnest, with anxiety eating at you from the inside.

61. So a proposal goes out to every schemer: Let he or she make a full and truthful disclosure of everything that he or she knows pertaining to bankruptcy fraud or any other violation of law or ethical rule to U.S. officials in Washington, D.C., in exchange for partial or total immunity. To identify those officials, he or she, directly or through a lawyer, may contact Dr. Cordero. The race is on and the clock is ticking.

62. This proposal goes out too to whistleblowers. The incentive for them is, of course, not an offer of immunity, but rather a positive reward and they will not have to wait 30 years to blow their cover as Deep Throat did.

VII. Relief requested

63. Therefore, Dr. Cordero respectfully requests that the Court:

    a) Reconsider its decision and order of September 13, rescind it, and refer to the Judicial Conference under 28 U.S.C. §753(c) for investigation Reporter Mary Dianetti and her refusal to certify the reliability of the transcript of the March 1 evidentiary hearing in Bankruptcy Court concerning the DeLanos' motion to disallow; and to that end, submit to

the Conference copies of his July 18 motion and the other three motions before it of June 20, July 13, and August 23 that describe its context (¶1 above) as well as the record transmitted to it by the Bankruptcy Court[2];

b) Request the Judicial Conference to designate under §753(b) 3rd paragraph an experienced court reporter, unrelated to either Reporter Dianetti, or any judicial or administrative officers of the Bankruptcy Court or the District Court, to prepare the transcript based on all the stenographic packs and folds used by Reporter Dianetti to record the March 1 evidentiary hearing, having due regard for the chain of custody and condition of such packs and folds (cf. FRCP 30(f)(1));

c) Transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 this appeal together with the three pending motions (¶1 above) as well as *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury by a judge unfamiliar with either case and unrelated and unacquainted with any of the parties or judicial or administrative officers;

d) If it does not so transfer the appeal, certify under 28 U.S.C. §1291(b) for appeal to the Court of Appeals for the Second Circuit the following questions:

1) Where a court reporter rendered her transcript unreliable by refusing to certify that it would not be incomplete, inaccurate, and the result of tampering influence, and the

[2] The incomplete record unlawfully transmitted to the Court comprises Dr. Cordero's Designation of Items in the Record and Statement of Issues on Appeal and in particular the following summarizing documents:

appellant moved the court to refer the reporter to the Judicial Conference of the United States for investigation and replacement; and the reporter did not object to such action by the court:

(a) does it constitute a denial of due process of law and the impairment of the right to appeal for the court not to grant the motion by default and instead issue an order unsupported by any legal authority that strips the appellant of his right to negotiate contractually with the reporter the conditions of payment for, and quality of, the transcript; forces the appellant to use on his appeal such unreliable transcript; and requires appellant to pay, in advance and without recourse, good money for a defective product unsuitable for its intended use?

(b) does it constitute a denial of due process and the impairment of the right to appeal for the court to disregard applicable legal provisions by issuing repeated orders, despite the incompleteness of the record, requiring appellant to file his appellate brief before the transcript is available; and then show contempt for the integrity of judicial process by demonstrating its willingness to dispose of the appeal on the basis of a transcript that the reporter has rendered unreliable by refusing to certify that it will not be incomplete, inaccurate, and the result of tampering influence; thereby giving the appearance to a reasonable and impartial observer informed of all the facts that the court is biased toward the reporter and has prejudged the appeal's outcome against the appellant?

e) If it does not transfer the appeal or certify the questions, rule on the three other pending motions;

f) Grant Dr. Cordero any other relief that is just and proper.

Dated: September 20, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties a copy of my notice of motion and motion for reconsideration of the Court's denial of my motion of July 18 concerning Court Reporter Mary Dianetti:

I. DeLano Parties

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

II. Pfuntner Parties (02-2230,WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
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Kathleen Dunivin Schmitt, Esq.
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100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500; fax (212) 668-2255

Dated: September 20, 2005
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

DECISION AND ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

By motion filed September 26, 2005 (Dkt. #19), appellant, Richard Cordero ("Cordero"), moves for reconsideration of this Court's Order of September 13, 2005, familiarity with which is presumed. In Cordero's motion for reconsideration, he references other motions. Those motions are under review and will be determined in due course. The motion for reconsideration is in all respects denied.

If Cordero wishes to designate a transcript as part of the record on appeal, he must comply with Rule 8006, Federal Rules of Bankruptcy Procedure. That rule requires a written request for the transcript to the court reporter and a requirement that satisfactory arrangements for payment be arranged. This Court directed Cordero as to the process that must be utilized if a transcript is to be part of the record. Therefore, Cordero is directed to make his request for the transcript and on payment of the $650 fee, the transcript will be prepared and produced. Cordero must make this

written request within 14 days of entry of this Decision and Order. If Cordero determines not to include the transcript as part of the record, he should so indicate to this Court, in writing, within 14 days.

Cordero is reminded that if an appellant fails to comply with scheduling orders and therefore fails to perfect the appeal, it could be dismissed by this Court. *See* Fed. R. Bankr. P. 8001(a); *In Re Michalek*, 104 F.3d 356 (2d Cir.1996) (Table, text in Westlaw at 1996 WL 698046); *Tampa Chain Co., Inc. v. Reichard*, 835 F.2d 54 (2d Cir.1987); *Greco v. Stubenberg*, 859 F.2d 1401 (9th Cir.1988) (debtor's failure to comply with deadlines imposed by District Court for procuring relevant transcripts of bankruptcy proceedings warranted dismissal of appeal); *In re Sandra Cotton*, 89 B.R. 324 (W.D.N.Y.1988) (dismissing bankruptcy appeal for failure to pay for or file transcripts).

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 14, 2005.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

DECISION AND ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

Currently pending with the Court are three motions (Dkts. ##9, 10, and 14) filed by appellant, Richard Cordero ("Cordero"), seeking various relief. The respondents/debtors have responded to the motions by Dkts. ## 12 and 16, as has Mr. Pfuntner (who is not a party to this appeal, but who wished to preserve his rights) by Dkt. #15.

As set forth below, Cordero's motions are denied in their entirety.

By motion filed June 23, 2005 (Dkt. #9), Cordero moves for a stay of an Adversary Proceeding, *Pfuntner v. Gordon et al.*, A.P. No. 02-2230, and to join the parties in *Pfuntner* to this appeal since "their rights and liabilities have already been prejudged." Cordero's motion is denied in all respects. There is no basis in law to support such relief.

By motion filed July 18, 2005 (Dkt. #10), Cordero moves for, *inter alia*, a stay of the confirmation hearing and any subsequent order arising therefrom related to the debt repayment plan

in the underlying Chapter 13 Bankruptcy Case, *In re DeLano*, Case No. 04-20280 ("the DeLano case"). That motion is also denied, as there is no basis to support such relief. In addition, the confirmation hearing has already taken place, and Judge Ninfo has entered an order, dated August 9, 2005, confirming the repayment plan. Moreover, in accordance with Fed. R. Bankr. P. 8005, United States Bankruptcy Judge Ninfo previously denied a stay of the April 4, 2005 Order from which Cordero appeals, because he found that there was little likelihood that Cordero would prevail on the merits of this appeal, there was no public interest involved in the matter, and because the DeLanos and their creditors would be prejudiced by any further delay. The Court sees no reason to disturb Judge Ninfo's determination.

By Dkt. #10, Cordero also moves for an order withdrawing from the Bankruptcy Court the DeLano case pursuant to 28 U.S.C. § 157(d), an order removing Trustee George Reiber as trustee in the DeLano case pursuant to 11 U.S.C. § 324(a), an order for production of documents, and an order referring the DeLano case to the U.S. Attorney's Office for investigation pursuant to 18 U.S.C. § 3057(a). These motions are wholly without merit and they are denied in their entirety.

Finally, by motion filed August 31, 2005 (Dkt. #14), Cordero moves to compel the production of documents and for other miscellaneous relief he believes is necessary in order to "safeguard judicial integrity and due process." That motion, too, is denied in all respects because it completely lacks merit.

Cordero is reminded of this Court's Order entered October 14, 2005, directing him to take the necessary steps to perfect his appeal, and reiterates that the failure to do so could result in dismissal of the appeal.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 17, 2005

OFFICE OF THE CLERK
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
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Paul R. Warren
Clerk of Court

Michelle A. Pierce
Chief Deputy

Todd M. Stickle
Deputy Clerk in Charge

October 20, 2005

Honorable David G. Larimer
United States District Court, WDNY
100 State Street
Rochester, New York 14614

Re: Cordero v. Delano/Case No. 05-MC-6008L and 05-CV-6190L (BK Case No. 04-20280)

Dear Judge Larimer:

Enclosed please find a copy of a letter from Dr. Richard Cordero dated October 18, 2005. Dr. Cordero's most recent letter was directed to Melissa Frieday, as Contracting Officer for the Bankruptcy Court, WDNY. The letter has been recorded to the Docket in the above-referenced bankruptcy case. This letter will serve as the response of the Bankruptcy Court Clerk's Office.

The October 18 Cordero letter is an effort to raise the same or similar issues as those that were presented to and decided by your Honor concerning the court reporter, Mary Dianetti. This most recent tactic by Dr. Cordero appears to be an effort to both avoid your Order and to intimidate the Bankruptcy Court's clerical staff.

I am providing a copy of this letter to Chief Judge Ninfo, so that he is aware of this recent communication and its disposition.

Very truly yours,

/s/

Paul R. Warren
Clerk of Court

Enclosure
cc: Honorable John C. Ninfo, II
Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

October 18, 2005

Ms. Melissa L. Frieday
Contracting Officer
US. Bankruptcy Court, WDNY
Olympic Towers, 300 Pearl Street, Suite 250
Buffalo, NY 14242

faxed to (716)551-5103

;

Dear Ms. Frieday,

I have been referred to you by the Chair of the Executive Committee of the Judicial Conference, Chief Judge Carolyn Dineen King, who stated that you are the supervisor of Bankruptcy Court Reporter Mary Dianetti. Thus, I hereby submit to you a complaint about Reporter Dianetti and her refusal to certify the completeness, accuracy, and untampered-with condition of her transcript of her own recordings of the evidentiary hearing held in Rochester on March 1, 2005, of the motion to disallow my claim in the bankruptcy of David and Mary Ann DeLano, docket no 04-20280, WBNY, before Bankruptcy Judge John C. Ninfo, II.

Indeed, at the end of that hearing, I asked Reporter Dianetti to count and write down the numbers of stenographic packs and folds that she had used, which she did. For my appeal from the disallowance of my claim and as part of making "satisfactory arrangements for payment of [the transcript's] cost" under FRBkrP 8006, I requested her to estimate its cost and state the numbers of packs and folds that she would use to produce it. As shown in the accompanying exhibits, pages E:1-11, she provided the estimate but on three occasions expressly declined to state those numbers. Her repeated failure to state numbers that she necessarily had counted and used to calculate her estimate was quite suspicious. So I requested that she agree to certify that the transcript would be complete and accurate, distributed only to the clerk and me, and free of tampering influence. Instead, Reporter Dianetti asked me to prepay it and explicitly rejected my request! Thereby, she has left me with a transcript whose reliability its reporter herself will not vouch for.

This is by no means the first time that Reporter Dianetti engages in conduct contrary to her statutory duties under 28 U.S.C. §753 providing that "...Each reporter shall take an oath faithfully to perform the duties of his office...." and 'record verbatim any proceeding and produce a transcript of it upon request'. Back on January 8, 2003, I requested from her the transcript of the hearing on December 18, 2002, in which Judge Ninfo dismissed my cross-claims against Trustee Kenneth Gordon in *Pfuntner v. Gordon*, docket no. 02-2230, to which Mr. DeLano is also a party. After checking her notes, Reporter Dianetti called back and told me that there could be some 27 pages and take 10 days to be ready. I agreed and requested the transcript.

However, it was not until March 10 when Reporter Dianetti finally picked up the phone and answered my call asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…'You said that it would be around 27?!' She gave me another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between Judge Ninfo and Trustee Gordon before I had been put on speakerphone and she was not supposed to include it in the transcript.

The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, 2003, the date on her certificate. Rather, it was filed two weeks later on March 26, a

significant date, namely, that of the hearing of one of my motions concerning Trustee Gordon. Somebody wanted to know what I had to say before allowing her transcript to be sent to me. Thus, it reached me only on March 28, 2003, more than two and a half months after I requested it.

In both these cases, Reporter Dianetti has violated her obligations as a reporter under §753. Her conduct redounded to my detriment in *Pfuntner* and will cause me further injury in *DeLano* if I have to defend my claim against Mr. DeLano on the basis of a transcript whose reliability the reporter herself has rendered suspect. Suspicion is more than warranted by the evidence in these two cases, which constitute the context in which Reporter Dianetti has acted.

Hence, documents in just the docket of the *DeLano* bankruptcy indicate that Mr. DeLano is a 32-year veteran of the banking industry currently specializing in bankruptcies at M&T Bank. He declared having together with his wife only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 period $291,470. Likewise, since 1975 the DeLanos have engaged in a string of mortgages worth $382,187 for the purchase of the very same residential home which today, 30 years later, is appraised at $98,500 and on which they have equity of merely $21,415 and still owe $77,084! Similarly, he and his wife claim that after 30 years of work they have accumulated household goods worth the pittance of $2,910. Moreover, both Judge Ninfo and Trustee George Reiber have refused to require the DeLanos to produce documents to account for the whereabouts of over $670,000. For his part, District Court David Larimer tried to force me to file my appellate brief before Reporter Dianetti had even replied to my initial request of April 18, 2005, for the transcript, which if truthful will reveal the incriminating events involving Judge Ninfo and damaging testimony by Mr. DeLano at the March 1 hearing.

These facts show a pattern of non-coincidental, intentional, and coordinated acts of bias and wrongdoing in support of a bankruptcy fraud scheme. I am determined to expose it. I trust you will want to steer clear from even the appearance of lending support to that scheme or protecting those that have rendered themselves liable to me for denying me my rights and causing me enormous material loss and aggravation. I hope that you, by contrast, will set an example of faithful performance of your duties and unwavering commitment to establishing all the contextual facts and motives of Reporter Dianetti's conduct.

Since I am under the constraints of another of Judge Larimer's scheduling orders concerning the transcript, I must request Reporter Dianetti to produce it. That order is not and cannot be binding on you. In addition, it is within the scope of your supervision of her and your duty to safeguard the integrity of your office to replace her. Therefore, I respectfully request that you:

1) remove Reporter Dianetti from further handling the stenographic packs and folds –while ensuring their chain of custody- and the transcript and investigate her handling of them so far,

2) after ascertaining the reliability of her recording of the March 1 hearing, cause it to be transcribed by a trustworthy and experienced reporter unrelated to, and immune to influence from, Reporter Dianetti and any of the parties and District or Bankruptcy Court officers in *DeLano*; and

3) since the investigation of the evidence of the bankruptcy fraud scheme exceeds your competence and resources, refer this matter for investigation to U.S. Attorney General Alberto Gonzales and the FBI in Washington, D.C., not in Rochester or Buffalo.

I look forward to hearing from you at your earliest convenience, and meantime remain,

sincerely yours,

Dr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

October 24, 2005

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445

Re: transcript of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280

Dear Ms. Dianetti,

By order of 14 instant, District Judge David Larimer has directed me to request and pay for the transcript within 14 days lest my appeal be dismissed. To avoid that additional impairment of my right of appeal and since you are the only court reporter to whom I can make such request, I comply with that order and hereby request that you prepare the transcript of the above-captioned hearing and produce to me a copy on paper and on digital format simultaneously with your filing it with the Clerk. To that end, I am enclosing a certified check for $650, which is the maximum that you indicated you would charge. If at your stated official per page rate the cost turned out to be less, please return the balance.

I am making this request under compulsion of Judge Larimer's order and, thus, I am paying under protest and with reservation of all my rights. There are two reasons for this. On the one hand, you have deprived the transcript of its indispensable reliability when you repeatedly refused to state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that you would translate into the transcript; and then further aggravated the suspect nature of your work by rejecting with no explanation whatsoever my request in my letter of June 25, 2005, that you certify that the transcript would be complete, accurate, and free of tampering influence.

On the other hand, Judge Larimer repeatedly tried, in violation of FRBkrP 8006 and 8007, to force me to file my appellate brief before you and I had made "satisfactory arrangements" for the transcript and before the record was complete; and since the failure of those attempts, the Judge has shown contempt for the integrity of judicial process by requiring that I rely in my appeal on your suspect transcript and by denying without any discussion my legal arguments in opposition thereto. In brief, he has blatantly demonstrated his determination to conduct, with your participation and to my detriment, a mockery of a trial. I protest now and will protest in future.

For your participation in causing me that detriment, I reserve the right to sue you. This is particularly justified because you took an oath of office under 28 U.S.C. §753 "faithfully to perform the duties of [your] office" for the benefit of people like me that request a transcript from you. Yet, your conduct with respect to this transcript as well as the one that I requested from you in 2003 in the related case of *Pfuntner v. Gordon*, docket no. 02-2230, WBNY, show that you have participated and continue to participate with others in a series of non-coincidental, intentional, and coordinated acts in breach of your duty.

Moreover, you have already charged me and are willing to take my money to prepare the transcript although you know that if you had disclosed the information that I requested concerning the completeness, accuracy, and tamper-free condition of the transcript, not only would I not pay you that money, but also no judge could order me to pay it or allow you to have anything else to do with the preparation of the transcript. Hence, your acts and your silence support a cause of action against you, among others, for fraud in the inducement.

Although you have already stepped to the brink of your professional and personal abyss, you do not have to jump in. You can still do the right and wise thing, namely, you can disclose why you would not certify the reliability of the transcript as I requested that you do in my June 25 letter and why it could be incomplete, inaccurate, and the result of tampering influence. Moreover, I served you with my motions in District Court of July 18, August 23, and September 20, 2005. Regardless of whether you read them or did not bother to read them, you have imputed knowledge of what I refer to therein as the bankruptcy fraud scheme involving parties and officers. That scheme forms the context in which you work as a reporter in every case, not only the two cases to which I am a party, that is, *Pfuntner* and *DeLano.* Consequently, you are in a position to disclose everything you know about the acts of any person, including any party, court officer, or trustee, that may support such scheme.

[This paragraph is confidential and is not included in the copy of this letter that I am making available to other persons: To that end, you can contact me directly or through your attorney. The latter must be one whom you pay so that his or her commitment is to protecting your rights rather than his or her assignment being to save the skin of the schemer(s) that made him or her available to you and to extract information from me under false pretense. Then we will make arrangements for you to go with me to Washington, D.C., to meet government officers and make a full and truthful disclosure of everything that you know pertaining to both *Pfuntner* and *DeLano* in particular, and the bankruptcy fraud scheme in general, in exchange for partial or total immunity. Nobody else needs to know that you or your attorney have contacted me for that purpose. The officers in Washington will decide whether you should make a statement to Contracting Officer Merissa Frieday, the court, or the Judicial Conference of the United States that you have disqualified yourself from preparing the transcript in *DeLano* or whether you should continue to play along with the schemers...after all, you are already playing, although you do not know with whom.]

You are facing one of the most important decisions of your life. Every day that you continue to work as a reporter in those courts in the context of that bankruptcy fraud scheme you support it by our acts and omissions. Thereby you knowingly compound your wrongdoing in breach of your oath and with full knowledge of further inflicting on me material loss and emotional distress. No transcript that you turn in now, regardless of its quality, can either cure the injury that you have already caused me or excuse your responsibility for allowing that I be further injured in a mockery of judicial process. Hence, the course of action that you take now will determine whether your future will be engulfed in, and your assets consumed by, civil litigation and criminal prosecution, or whether you will come from under the emotional turmoil of entanglement in wrongdoing and experience the liberating feeling of standing up straight to do what is right. Your fate is in your hands.

sincerely yours,

Dr. Richard Cordero

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585)613-4000

Dr. Richard Cordero
Appellant and creditor

NOTICE OF COMPLIANCE WITH THE ORDER
to request the
transcript from, and make payment to,
Reporter Mary Dianetti

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. By order of 14 instant, District Judge David Larimer directed Dr. Richard Cordero to request from Court Reporter Mary Dianetti, and pay her for, the transcript within 14 days lest his appeal be dismissed. The transcript in question is that of the evidentiary hearing held on March 1, 2005, before Bankruptcy Judge John C. Ninfo, II, in the case of David and Mary Ann DeLano, docket no. 04-20280, WBNY, which hearing Reporter Dianetti recorded stenographically.
2. To avoid the additional impairment of his right of appeal that would result from the dismissal of his appeal, and since Reporter Dianetti is the only court reporter to whom he can make such request, Dr. Cordero hereby gives notice to the Court that he has complied with that order by requesting Reporter Dianetti to prepare that transcript and produce to him a copy on paper and on digital format simultaneously with her filing it with the Clerk. To that end, he has tendered to her a certified check for $650, which is the maximum that she indicated she would charge. He asked that if at her stated official per page rate the cost of the transcript turned out to be less, she should return the balance to him.

I. Dr. Cordero made the request for the transcript under compulsion of the order and with reservation of his rights

3. To preserve his rights, Dr. Cordero also gives notice that he made that request under compulsion of Judge Larimer's order and, thus, that he was paying under protest and with reservation of all his rights. He will challenge that order on appeal to the Court of Appeals for the Second Circuit upon a final order in this case has been entered. Indeed, Judge Larimer showed that his October 14 order is interlocutory and non-appealable by failing to address, let alone certify under 28 U.S.C. §1291(b) for appeal, the questions that Dr. Cordero asked for that purpose in ¶63.d. of his motion of September 20, 2005, for reconsideration of the Judge's denial of his motion of July 18, 2005, for the replacement of Reporter Dianetti and her referral to the Judicial Conference for investigation of her refusal to certify the reliability of that transcript.
4. By refusing to certify in her letter of July 1 that the transcript will be complete, accurate, and free from tampering influence, as Dr. Cordero requested, among other things, in his June 25 letter to Reporter Dianetti, the latter has rendered the transcript and her conduct suspect. Faced with that objective basis of suspicion, a judge committed to preserving the substance as well as the appearance of the integrity of judicial process would have taken the initiative to replace Reporter Dianetti and investigate the circumstances of her refusal.
5. Far from it, Judge Larimer has forced Dr. Cordero to request that transcript from Reporter Dianetti, pay for it, and use it in his appeal, under the threat of dismissing his appeal. Thereby the Judge has revealed his intention to determine an appeal on the basis of a transcript that is suspect from before its production. At the same time, he has refused to request the other parties and the trustees to produce documents that they have unjustifiably withheld and that could contribute to establishing the facts and thus, to furnishing a just basis for judicial resolution of a controversy.
6. Actually, Judge Larimer even tried to prevent the production and use of the transcript altogether.

Thus, Bankruptcy Clerk Paul Warren received Dr. Cordero's Designation of Items in the Record on April 21, 2005, and on that very same day transmitted an indisputably incomplete record to the District Court in violation of FRBkrP 8007. In turn, Judge Larimer issued the next day, April 22, an order providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". Yet, the copy of Dr. Cordero's letter of April 18 to Reporter Dianetti accompanying the Designation gave notice to the Judge that the Reporter had barely received the original and that no "satisfactory arrangements" with her for the transcript's production and payment, as required under FRBkrP 8006, could possibly have been made. As a result, there was not even a date in sight for the completion of the transcript, let alone of the record. Consequently, Judge Larimer's April 22 order as well as his other scheduling orders of May 3 and 17, 2005, were in violation of FRBkrP 8007 and an attempt to deprive Dr. Cordero of the transcript.

7. Worse still, Judge Larimer compelled Dr. Cordero to request, pay for, and use that transcript by disregarding the detailed discussion of the facts and applicable law contained in his motions of July 18, August 23, and September 20, 2005, requesting the replacement and investigation of Reporter Dianetti. The Judge did so in his lazy orders of September 13 and October 14 and 17, 2005, where he resorted to the catch-all phrase "denied in all respects" to dispatch them on the conclusory allegation, unsupported by even the semblance of legal argument, that they "are without any merit". These are not orders worthy of a lawyer, let alone a federal judge, but rather fiats that come under the condemnation by the Supreme Court in *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979)*, that "an inability to provide any reasons suggests that the decision is, in fact, arbitrary".

II. Judge Larimer untimely decided the motion not yet before him

8. Such arbitrariness is also revealed by the fact that Dr. Cordero's motion of September 20 for

reconsideration of the September 13 order directing Dr. Cordero to request the transcript from Reporter Dianetti was returnable on November 18. Yet, Judge Larimer issued as early as October 14 his order "denying in all respects" that motion. This means that the Judge decided more than a month in advance a motion that was not officially before him. Of course, he did not even attempt to explain, let alone provide a legal justification, for rushing to deny definitively a motion well before its return date which he had previously disregarded for months, that is, the motion of July 18 concerning Reporter Dianetti (¶3 above). Actually, he decided it only after Dr. Cordero had to file another motion to request that the Judge decide his pending motions, one dated as far back as June 20! Judge Larimer's untimely disposition of the motion has serious legal and practical consequences.

9. To begin with, the September 20 motion on its very first page "requests that the parties file and serve any answer by October 17 so that [Dr. Cordero] may have time to file and serve a reply as appropriate". Dr. Cordero was not only entitled but also required to make such statement under District Local Rule 7.1 Service and Filing of Papers. Hence, Judge Larimer deprived with his order of October 14 all the other parties of the opportunity to file an answer to the motion. By the same token, he deprived Dr. Cordero of the opportunity to know the position that the parties might have taken on his motion and reply thereto. More significantly, the Judge deprived himself of the opportunity to receive answers from the other parties and replies thereto from Dr. Cordero. In so doing, Judge Larimer revealed that instead of approaching the motion for reconsideration with an open mind as judges are required to do, he had set his mind on a prejudged course of action and was not interested in informing himself or his decision with the parties' statements of facts, arguments, and supporting authority. Thereby he showed prejudice and bias.
10. In addition, Reporter Dianetti had that motion of September 20 for over three weeks before Judge Larimer issued his order on October 14. Nonetheless, she felt no need to file even a pink

stick-it note to object to it, although the motion put at risk her professional career as a reporter and thus, her means of livelihood. This indicates that she was so sure that no harm would come to her from the motion that she did not have to bother making a gesture of objection. That is precisely the attitude that she revealed when she never objected to Dr. Cordero's earlier motion of July 18, which also put in jeopardy her career, for if Judge Larimer had granted it, she would have been replaced in the task of preparing the transcript and would have been referred to the Judicial Conference for investigation. Did she know that Judge Larimer would not grant those motions and, if so, how did she come to know it?

11. Exactly these facts and arguments apply, mutatis mutando, to Trustee George Reiber, the trustee in *DeLano*, 04-20280, WBNY. He too felt no need whatsoever to object to Dr. Cordero's motions of July 13, August 23, and September 20 requesting his removal as trustee from *DeLano*, and his investigation for failing to perform his duties, among others, under 11 U.S.C. §704(4) and (7). Did he know that Judge Larimer would not grant those motions and, if so, how did he come to know it?
12. Moreover, none of the other parties filed any answer to the September 20 motion although they had had it for over three weeks before the October 14 order was issued. Did they too know that Judge Larimer would not grant it and, if so, does their conduct in this matter constitute further evidence of non-coincidental, intentional, and coordinated acts in support of wrongful activity?

III. Dr. Cordero will exercise his constitutional rights to challenge Judge Larimer's orders

13. Therefore, Dr. Cordero protests the arbitrariness manifested in Judge Larimer's orders and the objectionable legal and suspicious factual circumstances surrounding them. He will challenge them in future on appeal. In the meantime, he will exercise his right under the First Amendment of the Constitution "to petition the Government for a redress of grievances" as well as his right of

"freedom of speech" and "of the press" so as to have the injurious and unjust effect of the orders and of the compelled request to the Reporter lessened, counteracted, or eliminated. He will also defend his right to "due process of law" under the Fifth Amendment by exposing and challenging the abundant evidence of conduct that has not only the unambiguous appearance, but also the objective substance, of a mockery of judicial process that through contemptuous disregard of the law, the rules, and the facts is aimed at achieving a foregone result.

Dated: October 25, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties a copy of my notice of compliance with District Judge David Larimer's orders concerning the request of a transcript from Reporter Mary Dianetti:

I. DeLano Parties

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

II. Pfuntner Parties (02-2230,WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650; fax (585) 454-6525

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585) 641-8000; fax (585) 641-8080

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500; fax (212) 668-2255

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

United States Courthouse

100 State Street

Rochester, NY 14614-1387

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, dkt. no: 04-20280

Please find attached hereto for inclusion in the docket of the above-captioned case a copy of my notice bearing today's date to the District Court, WDNY, of my compliance with the order of District Court David Larimer of 14 instant directing me to request Reporter Mary Dianetti to produce the transcript of the evidentiary hearing of March 1, 2005, in this case.

The notice is also my response to the letter of Bankruptcy Clerk of Court Paul Warren to Judge Larimer of last October 20.

October 25, 2005

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
tel. (718) 827-9521

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614-1387
tel. (585) 613-4200

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

NOTICE OF MOTION AND MOTION TO REVOKE THE ORDER OF CONFIRMATION OF DEBTORS' DEBT REPAYMENT PLAN

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Richard Cordero hereby gives notice of his motion under 11 U.S.C. §1330(a), returnable on November 16, 2005, or as soon thereafter as possible at the address of the Bankruptcy Court above-captioned, for the revocation of the order confirming the DeLano Debtors' plan that was entered by this Court, Judge John C. Ninfo, II, presiding, on August 9, 2005, on grounds that the confirmation was procured by fraud.
2. Evidence of the DeLanos' bankruptcy fraud has been available since their filing of their petition in January 2004. That evidence was revealed by both documents submitted by them and their conduct and interaction with Chapter 13 Trustee George Reiber. Dr. Cordero presented and discussed that evidence in documents such as:
    a. his Objection of March 4, 2004, to Confirmation (DeLano docket entry no. 13 = dkt:13; cf. Table of Exhibits, infra, entry no. 20 = ToE:20);
    b. his Statement of July 9, 2004, (dkt:47; ToE:21);
    c. §V of his motion of August 14, 2004 (dkt:57; ToE:23); and
    d. his motion of February 17, 2005 (dkt:90; ToE:24);

which are incorporated herein by reference. Additional documentary and circumstantial

evidence has become available that demonstrates that the DeLanos, with the support of Trustee Reiber, procured the confirmation of their plan by fraud. This motion centers on the discussion of such additional evidence.

3. The new evidence presented below corroborates that presented in those papers. The latter showed how suspicious is was for Mr. DeLano, in spite of his 32-year experience precisely as a banker, to go bankrupt, and how incongruous were his and Mrs. DeLano's declarations in the Schedules of their bankruptcy petition; among them that they, two wage earners with no third person to support, had merely $535 on account and in hand despite having earned $291,470 in just the 2001-03 fiscal years; and that they had accumulated $98,092 in credit card debt without having incurred any medical or similar emergency expenditure and while claiming that their household goods were worth the meager amount of $2,910! Consequently, Dr. Cordero invoked §§1302(a) and 704(4) and (7) (all §# references are to 11 U.S.C. unless otherwise stated) to request an investigation of the DeLanos' financial affairs.

4. Even so Dr. Cordero had to request repeatedly Trustee Reiber to abide by his statutory duty under those provisions and ask the DeLanos for supporting documents, which the Trustee had failed to do although months had gone by since the filing of the petition and the meeting of creditors. Dr. Cordero even had to appeal to the Trustee's supervisors to instruct him to perform his duty. Any instructions given were ineffective or given with no intention of their being effective, for the Trustee still only asked for documents that were in an amount and of a kind objectively insufficient to attain the intended purpose of establishing the DeLanos' flow of money. What is more, even to the Trustee's pro forma request the DeLanos responded by making merely a token production in violation of §521(3) and (4), yet the Trustee tolerated it while he continued with his pretense of investigating them for fraud. Nevertheless, even the token documents reluctantly

and belatedly produced revealed that the DeLanos had engaged in fraud, particularly concealment of assets and that to cover it up they were withholding documents as indisputably in their possession as the statements of their checking and savings accounts.[♣]

5. Instead, the DeLanos produced a different document to get rid of Dr. Cordero and his relentless request for documents and an investigation: a motion to disallow his claim against Mr. DeLano. In fact, they filed it on July 22, 2004 (dkt.#51; ToE:22), although already for half a year they had treated Dr. Cordero as a creditor and Mr. DeLano had known for over two years the nature and basis of the claim since both dealt with a bankruptcy matter for moths, which subsequently led Dr. Cordero to serve upon Mr. DeLano his complaint of November 21, 2002, in the related case of *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY.
6. The *Pfuntner* case was and still is in Judge Ninfo's hands. But far from dismissing the motion due to laches and untimeliness, the Judge did not enforce even the Trustee's token document request, let alone require a truthful investigation. Rather, he played along with the DeLanos' subterfuge for eliminating Dr. Cordero through a motion to disallow! Hence, he disallowed Dr. Cordero's claim at that motion's evidentiary hearing on March 1, 2005, thereby achieving the DeLanos' objective of stripping Dr. Cordero of standing as a creditor and party in interest to request that they produce documents and be investigated. This statement's foundation, already laid in Dr. Cordero's previous documents, is only strengthened by the new evidence, which Judge Ninfo had at his disposal but chose to disregard. Thus, despite the evidence that the DeLanos' bankruptcy was fraudulent, the Judge confirmed their plan. Consequently, he should now revoke such confirmation.

[♣] Dr. Cordero now counts with the strong support of Interim FRBkrP 4002 implementing BAPCPA of 2005 for his position that the DeLanos have the duty to produce documents and cooperate with the trustee. (E:64)

Table of Contents

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I. The "Trustee's Findings of Fact and Summary of 341 Hearing" reveal that the same Trustee Reiber who filed as his "Report" such shockingly unprofessional and perfunctory scraps of papers did not investigate the DeLanos for bankruptcy fraud, contrary to his statement and its acceptance by Judge Ninfo

7. Judge Ninfo predicated his confirmation (Exhibit page 5 = E:5) of the plan on the finding that:

a. The Plan complies with the standards required by 11 U.S.C. Section 1325 for confirmation;

b. Any objections to the plan have been disposed of, and there is presently pending no objection to confirmation of the instant Plan of Debtor's Schedules.

8. In turn, the Judge's basis for these findings is stated in the docket report on the confirmation hearing held on July 25, 2005, namely, that the Trustee had investigated the DeLanos and had found no fraud:

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)
07/25/2005	134	Confirmation Hearing Held - **Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.** The plan payment were reduced to $635.00 per month in July 2004 and will increase to $960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of $6,700.00 from the sale of the trailer will be turned over to the Plan. **All of the Trustee's objections were resolved** and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005) [emphasis added]

9. When one clicks on hyperlink 134 what downloads is a three-page document entitled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (E:1-3) And so revealing, for it presented Judge Ninfo with evidence that the Trustee had conducted no fraud investigation and that there were concrete reasons for denying

confirmation of the plan.

10. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

> FRBkrP 9004. General Requirements of Form
>
> (a) Legibility; abbreviations
>
> All petitions, pleadings, schedules **and other papers *shall*** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

11. The handwritten jottings on those scrap papers are certainly not "clearly legible". The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

> **Local Bankruptcy Rule 9004. PAPERS**
>
> 9004-1. FORM OF PAPERS *[Former Rule 13 A]*
>
> All pleadings **and other papers *shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially *defacing* them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)
>
> 9004-2. CAPTION *[Former Rule 13 B]*
>
> All pleadings **and other papers *shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)
>
> 9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

12. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.

13. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is

ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there in 11 U.S.C. is "§341 Meetings of creditors and equity security holders". The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

> 11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

14. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not preside such a meeting to hear rather passively as an arbiter what the parties have to say and then determine their controversy, as an administrative judge would do. Instead, this is how his role is described:

> 11 U.S.C.§343. Examination of the debtor
>
> The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

15. It follows that the trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is not only active, but also inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works "for the benefit of general unsecured creditors whom the trustee represents". That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

> The purpose of the examination is to enable creditors and ***the trustee*** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

16. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible "341 Hearing" before

Judge Ninfo? And in *DeLano*, when did that "341 Hearing" take place?, for not only is such "Hearing" not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (¶11 above) that they "***shall*** be **dated".** However, if the Trustee's scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

17. Nor do those scrap papers comply with the requirement that they "***shall*** be **signed".** Merely initializing page 2 (E:2) is no doubt another manifestation of the perfunctory nature of Trustee Reiber's scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee's shame about putting his full name on such unprofessional filing with a U.S. court?

A. The third scrap of paper "I/We filed Chapter 13 for one or more of the following reasons:" with its substandard English and lack of any authoritative source for the "reasons" cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted

18. The third scrap paper (E:3) bears the typewritten statement "I/We filed Chapter 13 for one or more of the following reasons:" Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own "341 Hearing", did he simply hear the DeLanos' "reasons" for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those "reasons" raise a host of critical questions. Let's examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment *(Wife) Age 59*

19. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-aver-

age income of $67,118 in 2003, according to the Statement of Financial Affairs in their petition.

20. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a "reason" for filing their petition on January 27, 2004, to a *"pre-1990"* event, it is fair to ask when she lost her employment and what impact it had on their filing now.

√ Hours or pay reduced *(Husband 62) To delay retirement to complete plan*

21. Does the inconsistency between writing *"62"* inside the parenthesis in this "reason" and writing "*Age 59"* outside the parenthesis in the "reason" above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the $67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will *"delay retirement"* until he turns 62 so as *"to complete plan"*?

22. Otherwise, what conceivable logical relation is there between "Hours or pay reduced" and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a "reason" for debtors not having to pay their debts to their creditors?

23. Given that a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases! -3,907 before Judge Ninfo-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the "I/We…" who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the "I/We…" meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

24. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but rather the longer period of five years…or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have planned to pay more than just $635.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's unemployment benefits ran out in 6/04 (Sch. I)
$3,757.50	net monthly income
-2,946.50	for the very comfortable current expenditures (Sch. J) of a couple with no dependents
$811.00	actual disposable income

25. Yet, the DeLanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. No explanation is given for this …although these objections were raised by Dr. Cordero in his written objections of March 4, 2004, ¶¶7-8. (ToE:20) Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

26. What is the total of those secured liens and in what way do they provide a "reason" for filing a bankruptcy petition?

√ Children's college expenses *pre-1990 when wages reduced $50,000 → 19-000*

27. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and

college. The fact is that whoever wrote that third scrap paper did not check "Student loans". So, what "college expenses" are being considered here? Moreover, according to that jotting, whatever those "college expenses" are, they were incurred *"pre-1990"*. Given that such listed "reasons" as, "Medical problems", "To stop creditor harassment", "Overspending" and "Protect debtor's property" were not checked, how can those "college expenses" have caused the DeLanos to go bankrupt *15 years later?* This is one of the most untenable and ridiculous "reasons" for explaining a bankruptcy…

28. until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of "reasons" was extracted; no reference to any document where the "reasons" checked were quantified in dollar terms and their impact on the DeLanos' income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos' plan "meets the best interest test"?

29. Nor is there any reference to a document explaining in what imaginable way, for example, "Matrimonial" is a "reason" for anything, let alone for filing for bankruptcy; or how "Reconstruct credit rating" is such an intuitive "reason" for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby "Student loans" are such a "reason" despite the fact that 11 U.S.C. provides thus:

> §523. Exceptions to discharge
>
> (a) A discharge under section…1328(b) of this title does not discharge an individual debtor from any debt-…(8) for an education benefit overpayment or loan made…

30. The lack of grammatical parallelism among the entries on that list is most striking. So the first "reason" appears to be the subordinate clause dependent on the implicit subordinating clause and

conjunction that will be used as a refrain to introduce every "reason" and thereby give the list semantic as well as syntactic consistency: "I/We filed [because]:" (omitted but implicit) "Lost employment". However, the second "reason" does not fit this pattern: "I/We filed [because]:" "Hours or pay reduced". The next reason is expressed by an adjective, "Matrimonial", while the following one is a noun "Garnishments". A "reason" is set forth with a gerund, "Overspending", but others are stated with the bare infinitive, "Protect debtor's property", whereas others use *to*-infinitive, "To receive a Chapter 13 discharge" (a particularly *enlightening* "reason", for is that not the result aimed at when invoking any other "reason"?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension difficult.

31. There is no need to read the whole list to be disturbed by this bungled form. To begin with, it lacks a caption. Then the sentence that introduces the "reasons" is written in broken English: "I/We filed Chapter 13 for one or more of the following reasons:" What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: 'You filed Chapter 13….' Was this form slapped together specifically for the DeLanos?; otherwise, how many plans have been confirmed by Judge Ninfo upon submission by Trustee Reiber of that perfunctory scrap of paper?

32. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your hierarchical superiors, that is, all the circuit judges as well as the justices of the Supreme Court, and even be made publicly available for close scrutiny, would you fill out another order form thus?: "The respondents filed Chapter 13 and win 'cause they *ain't have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with'em after cookin' a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*" (Completing the order form in handwriting would give it a touch of flair…in pencil, for that would show…no, no! better still, in crayon, shocking pink! It

is bound not only to catch the attention of the appellate peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys –the out-of-towners, who do not know yet– how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

33. What is more, or rather, less, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

> FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers
>
> (a) Signing of papers
>
> Every petition, pleading, written motion, **and other paper,** except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address** and **telephone number**, if any. An **unsigned paper *shall* be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

34. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to that Rule, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All…lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that 'the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)"'.

35. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can be established also under the District Court's Local Rules, which provides thus:

> DISTRICT COURT LOCAL RULE 10

> FORM OF PAPERS
>
> (a) All text and footnotes in pleadings, motions, legal memoranda **and other papers *shall be*** plainly and legibly written, **typewritten** in a font size at least 12-point type, printed or reproduced, **without erasures or interlineations materially defacing them**, in ink…
>
> (b) **All papers *shall*** be endorsed with the name of the Court…**All papers *shall* be signed by an attorney** or by the litigant if appearing *pro se*, and the **name, address and telephone number** of each attorney or litigant so appearing ***shall be*** typed or printed **thereon**. **All papers *shall* be dated and paginated**. (emphasis added)

36. For Judge Ninfo to accept from a party that has appeared before him thousands of times, as Trustee Reiber has according to PACER, papers patently in violation of substantive provisions while requiring another party, and a pro se one at that, such as Dr. Cordero, to comply meticulously even with rules that allow for excusable neglect constitutes arbitrary application of the law and bias in treatment, and thus, a denial of due process. But for Judge Ninfo to base on scrap papers that so disregard the rules as well as every standard of professionalism a plan that allows a 32-year veteran of the banking industry, such as Mr. DeLano is, to avoid paying over $145,000 to his debtors is suspicious, particularly after having allowed Trustee Reiber to disregard his duty to conduct an investigation that would have proved bankruptcy fraud.

II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation

37. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:5). Therein he stated that he "has considered…the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶8 above) states:

> The Court found that the…Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.

38. However, what page 2 of Trustee Reiber's scrap papers (E:2) states is this:

> 7. Objections to Confirmation: **Trustee – disposable income –**
>
> 1) I.R.A. available; 2) loan payment available;
>
> 3) pension loan ends 10/05.

39. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough **~~"1) Best Interest - $1255;~~" "Attorney fees"**. At the bottom of the page is written: "ATTORNEY'S FEES" $ **1350** and, below that, "Additional fees Yes" **$16,655.** The itemized invoice for legal fees billed by Christopher Werner, Esq., attorney for the DeLanos, shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:9) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:12).

A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos

40. Trustee Reiber has been presumably occupied even longer than Att. Werner with Dr. Cordero's written objections of March 4, 2004. Although the Trustee was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections and his invocation of the Trustee's duty under §704(4) and (7) to investigate the debtor.

41. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶15 above), such as Dr. Cordero, has pretended to have been investigating

the DeLanos on the basis of those objections. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have found the solid foundation of documentary evidence in their Schedule B, where they declared having only $535 in cash and account despite having earned $291,470 in just the immediately preceding three years yet declaring nothing but $2,910 in household goods, while stating in Schedule F a whopping credit card debt of $98,092! Where did the money go or is, which could go a long way toward covering their liabilities of $185,462?

42. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' January 2004 petition without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004…in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

43. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interest that the Trustee faced due to the request that he:

> investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and

> readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [James Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases [as reported by PACER]? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

44. And so it turned out to be. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

45. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!…insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.

46. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they

did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts, or could easily obtain from Mr. DeLano's employer, M&T Bank. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.

47. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee…any recorded information…", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were parties to the same sham!

B. The sham character of Trustee Reiber's pro forma request for documents and the DeLanos' token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages

48. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at $98,500. However, they still owe on it $77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of $21,415 in

the very same home that they bought 30 years ago! Yet, they earned $291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding bankrupts, trustees, and judicial officers?

49. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004. On that occasion, the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was cut off after asking only two questions. Then the Trustee engaged in his reluctant and pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶43 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

50. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant Trustee Kathleen Dunivin Schmitt and Trustee for Region 2 Deirdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a

member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:13), Trustee Reiber backed down from that limit.

51. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.

52. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production…and still they failed to produce them by the end of that period.

53. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:15-27) once more (¶44 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:14). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for $26,000 in 1975;	E:15 [D:342]	$26,000
2) another for $7,467 in 1977;	E:16 [D:343]	7,467
3) still another for $59,000 in 1988; as well as	E:19 [D:346]	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	E:28 [D:176]	59,000
5) owed $59,000 to M&T in 1988;	E:28 [D:176]	59,000
6) another mortgage for $29,800 in 1990,	E:21 [D:348]	29,800
7) even another one for $46,920 in 1993, and	E:22 [D:349]	46,920
8) yet another for $95,000 in 1999.	E:23[D:350-54]	95,000
	Total	$382,187.00

54. The whereabouts of that $382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:14), accompanying those incomplete documents adds more unknowns:

> It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of $18, 746.69 to Mr. and Mrs. DeLano. Of this cash, $11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

55. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed $77,084 on their home, $98,092 on credit cards, and $10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the $291,470 earned in 2001-03 that is nowhere to be seen…and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!

56. Although Dr. Cordero identified these incongruous elements (E:30-32) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner on February 24 than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:36)

2005 (E:37), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:38). When Att. Werner made a belated service (E:39), it became apparent why he had tried to withhold the documents (E:40-53) from Dr. Cordero: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development. What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:54) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:57-60).

58. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the $291,470 earned in the 2001-03 period, over $670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors, failing to require them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16 Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! But she created nothing and simply produced work for hire.

59. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at the confirmation hearing nor made any reference to them in the scrap papers of his "Report". What a shameless sham!

C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the

supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth

60. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, that is, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, Judge Ninfo was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thereby requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Bankruptcy Court Reporter Mary Dianetti, who has already refused to certify the reliability of the transcript of her own recording of the evidentiary hearing on March 1, 2005 (E:61-63).

61. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Under those circumstances, common sense and good judgment required that the Trustee's investigation be reviewed as to his method, products, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".

III. Conclusion and Request for Relief

62. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the subterfuge for eliminating Dr. Cordero from the case through the artifice of a motion to disallow his claim, and the charade of the meeting of creditors to appease him and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their plan should be confirmed. In fact, they confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of their having filed a fraudulent petition, which would have led to their being criminally charged. In turn, such charge would have induced Mr. DeLano to enter into a plea bargain whereby in exchange for some degree of immunity he would disclose his knowledge of systemic wrongdoing: a bankruptcy fraud scheme.

63. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none." to justify the Bankruptcy Court in confirming the DeLanos' plan and to escape his own conflict of interests (¶43 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Bankruptcy Court as an institution even if Judge Ninfo may have known that the Trustee's statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos and the loss of an enormous amount of effort, time, and money and the infliction of tremendous emotional distress.

64. It also follows that insofar as Judge Ninfo knew or through the exercise with due diligence and impartiality of his judicial functions would have known, that Trustee Reiber had conducted no investigation or that the DeLanos had not filed or supported their petition in good faith, but

nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm the DeLanos' plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process and caused substantial material loss and emotional distress.

65. The conduct of Judge Ninfo and Trustee Reiber has supported the fraud committed by the DeLanos. Their plan, as a means to carry out that fraud, should not have been confirmed.

66. Therefore, Dr. Cordero respectfully requests that the Bankruptcy Court:

a) revoke under §1330(a) its confirmation of the plan;

b) remove Trustee Reiber from the *DeLano* case;

c) reinstate Dr. Cordero as a creditor as well as his claim in *DeLano*;

d) transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 *DeLano* and *Pfuntner* to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a judge unfamiliar with any of those proceedings and unrelated and unacquainted with any of the parties and officers involved;

e) allow Dr. Cordero, who leaves in New York City, to appear by phone at the hearing of this motion, to hear the whole hearing, from the very first word uttered by any person to the last one, and to be heard fully as is his right and the purpose of the hearing, and to that end, not cut off his phone connection before the hearing has terminated, as he has repeatedly done before, and not allow any party to make any statement thereafter;

f) record the hearing on a sound tape and make it available to any party, including Dr. Cordero;

g) disqualify Judge Ninfo from *DeLano* and *Pfuntner* or cause him to recuse himself;

h) grant Dr. Cordero every other fair and just relief.

Dr. Richard Cordero

Dated: November 5, 2005

59 Crescent Street,
Brooklyn, NY 11208

Dr. Richard Cordero;
tel. (718) 827-9521

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. a copy of my notice of motion and motion to revoke the confirmation of the DeLanos' plan on the following parties:

I. DeLano Parties

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300;
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225;
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Office of the United States Trustee
100 State Street, Room 6090
Rochester, NY 14614
tel. (585) 263-5812;
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500;
fax (212) 668-2255

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

II. Pfuntner Parties (02-2230, WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, NY 14618
tel. (585) 244-1070;
fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, NY 14604-1686
tel. (585) 454-5650;
fax (585) 454-6525

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890;
fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585) 641-8000;
fax (585) 641-8080

Revised 05/01 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant

v.

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

NOTICE of FILING
a motion in Bankruptcy Court
to revoke for fraud
the confirmation of Debtors' Plan

case no. 05-cv-6190L

Dr. Richard Cordero affirms under penalty of perjury as follows:

Attached hereto is a copy of my notice of motion and motion of November 5, 2005, under 11 U.S.C. §1330(a) in Bankruptcy Court, WBNY, Judge John C. Ninfo, II, presiding, for the latter to revoke his order of August 9, 2005, confirming the DeLano Debtors' debt repayment plan, docket no. 04-20280, because it was procured by fraud. I file this copy with the intent that it be made part of the record in the above-captioned appeal.

November 9, 2005

Dr. Richard Cordero

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

United States Bankruptcy Court
Western District of New York
1400 UNITED STATES COURTHOUSE
ROCHESTER, NEW YORK 14614

Hon. John C. Ninfo, II
CHIEF UNITED STATES
BANKRUPTCY JUDGE

November 10, 2005

Dr. Richard Cordero
59 Crescent Street
Brooklyn, N.Y. 11208

Re: Case No: 04-20280

Dear Dr. Cordero:

The Court has received your Notice of Motion and Motion to Revoke the Order of Confirmation of Debtor's Debt Repayment Plan wherein you request permission to appear telephonically at the return date of November 16, 2005. This letter is to advise you that the Court has denied your request. Your Notice of Motion also failed to set forth a time for the hearing. You must re-notice your motion for 11:00 a.m. on November 16, 2005.

Very Truly Yours,

Hon. John C. Ninfo, II
Chief U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614-1387
tel. (585) 613-4200

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

Request for a statement of reasons
for the Court's denial of the request to appear by phone for the motion to revoke the confirmation of the DeLanos' plan due to its procurement through fraud

---

Dr. Richard Cordero, creditor, states under penalty of perjury the following:

1. In accordance with the letter of Judge John C. Ninfo, II, of November 10, 2005, Dr. Richard Cordero notices his motion to revoke the order of confirmation of the DeLano debtors' debt repayment plan on the grounds that it was procured by fraud for 11:00 a.m. on Wednesday, November 16, 2005, at the address of the Bankruptcy Court above-captioned.
2. In that letter Judge Ninfo advised Dr. Cordero of his denial of the latter's request to appear by phone. The Judge gave no reason whatsoever for such denial.
3. Dr. Cordero lives in New York City and he cannot travel to Rochester on such a short notice. Nor is there any reason to force him to incur the substantial cost and time investment in order to appear for a motion that, based on the experience of appearing before Judge Ninfo telephonically on 12 previous occasions, would last around 15 minutes. This is particularly the case since the Judge's calendar as it stands now at http://www.nywb.uscourts.gov/calendars/ninfo/November_16_2005_TrialCalendar.htm already has 19 other cases.
4. This reason of reduction of cost and time lag that militates in favor of allowing an appearance by phone is a legal one, for FRBkrP 1001 provides that

   > …These rules **shall** be construed to secure the **just**, speedy, and **inexpensive** determination of **every** case and proceeding. (emphasis added)

5. This provision is particularly pertinent in this case given that, as already noted, Dr. Cordero has already appeared 12 times by phone before Judge Ninfo. In addition, other out-of-town parties are allowed to appear by phone. Consequently, his request to appear by phone cannot be denied without stating any reason, and thus arbitrarily and discriminatorily, thereby frustrating his

reason-able expectation that he would be allowed to appear by phone this time too like other similarly situated parties, and having the effect in practice of denying Dr. Cordero his right to appear and be heard as well as raising the cost of litigation so high as to deny him access to judicial process.

6. Therefore, Dr. Cordero respectfully requests that Judge Ninfo:

   a) rescind his denial and allow Dr. Cordero to appear by phone at the hearing of that motion;
   b) otherwise, state the legal reasons on which he based his denial; and
   c) in either event, both advise Dr. Cordero of his decision and post it electronically in such timely fashion that Dr. Cordero and the other parties, respectively, can decide what to do.

Dated: November 11, 2005

Dr. Richard Cordero

59 Crescent Street,
Brooklyn, NY 11208

Dr. Richard Cordero;
tel. (718) 827-9521

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. a copy of my request for reasons for the denial of my request to appear by phone at the hearing of the motion noticed for 11:00 a.m. on November 16, 2005, before Judge John C. Ninfo, II, WBNY, in Rochester, on the following parties:

I. DeLano Parties

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Office of the United States Trustee
100 State Street, Room 6090
Rochester, NY 14614
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500; fax (212) 668-2255

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

II. Pfuntner Parties (02-2230, WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, NY 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, NY 14604-1686
tel. (585) 454-5650; fax (585) 454-6525

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
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Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
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Fairport, NY 14450
tel. (585) 641-8000; fax (585) 641-8080

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

November 11, 2005

[individualized copy to each party]

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604

Dear Mr. Werner,

Please find the text of a request that I have made to the Bankruptcy Court, WBNY, concerning the motion that I noticed earlier this week. Kindly contact the Court or consult its electronic calendar in PACER (CM/ECF) before attending the hearing.

Sincerely,

Dr. Richard Cordero

Add:1068 Dr. Cordero's letter of 11/11/05 to each party re the time for the hearing of his revocation motion

UNITED STATES BANKRUPCTY COURT
WESTERN DISTRICT OF NEW YORK

In re:

DAVID G. DELANO and
MARY ANN DELANO,

Debtors.

DELANO RESPONSE TO CORDERO MOTION TO REVOKE CONFIRMATION

Case No. 04-20280

CHRISTOPHER K. WERNER, ESQ., the attorney for the Debtors, states in opposition to the Cordero Motion to Revoke Confirmation, as follows:

1. Dr. Cordero was previously found to have no standing in this matter for lack of any proper interest or claim against the Debtors or in the case.

2. Further, the Cordero Motion is wholly without merit and is simply a reiteration of various previous objections filed in innumerable form with only additional reference to specific documents previously considered at length.

3. In all respects, Dr. Cordero's Motion is without merit and should be denied.

WHEREFORE, the Debtors request that the Court deny Cordero any relief sought in his Motion herein and ask for such other and further relief as the Court finds just and proper.

Dated: November 11, 2005

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

TO: Dr. Richard Cordero
George M. Reiber, Esq., Chapter 13 Trustee
Kathleen D. Schmitt, U.S. Trustee

Revised 05/01 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant

v.

NOTICE of FILING
a request in Bankruptcy Court for reasons for denying the request to appear by phone at the hearing of the motion to revoke for fraud the confirmation of Debtors' Plan

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Dr. Richard Cordero affirms under penalty of perjury as follows:

Attached hereto is a copy of my request in Bankruptcy Court, WBNY, Judge John C. Ninfo, II, presiding, for the latter to state his reasons for denying without stating any reason whatsoever my request to be allowed to argue by phone, as I have done on 12 previous occasions before Judge Ninfo, my motion of November 5, 2005, under 11 U.S.C.§1330(a) to revoke the confirmation of the DeLano Debtors' debt repayment plan, docket no. 04-20280, because it was procured by fraud. I file this copy with the intent that it be made part of the record in the above-captioned appeal.

November 12, 2005

Dr. Richard Cordero

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

612 S. Lincoln Road
East Rochester, N.Y. 14445
November 4, 2005

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

I received on November 2, 2005 your letter dated October 24, 2005, together with your bank money order for $650.00 sent by certified mail, wherein you request the transcript of the evidentiary hearing which was held on March 1, 2005.

I am filing the transcript in the Bankruptcy Clerk's office this date and forwarding to you by first-class mail a copy with a PDF copy of the transcript on a CD-Rom and also a money order in the amount of $26.30.

I am providing a copy of this letter together with your letter of October 24, 2005, to the U.S. Bankruptcy Court and U.S. District Court so that their file may be complete.

Very truly yours,

Mary Dianetti

Mary Dianetti
Bankruptcy Court Reporter

cc: Clerk, U.S. Bankruptcy Court
cc: U.S. District Court

S T A T E M E N T

To: Dr. Richard Cordero
24 Crescent Street
Brooklyn, New York 11208-1515

From: Mary Dianetti, Bankruptcy Court Reporter
612 South Lincoln Road
East Rochester, New York 14445

Amount: $623.70

For transcript of proceedings held on the 1st day of March, 2005, before The Honorable John C. Ninfo, II, Bankruptcy Court Judge of the Western District of New York, in the matter of David & Mary Ann DeLano, Debtors, BK No. 04-20280.

Thank you,

Mary Dianetti

Mary Dianetti
Bankruptcy Court Reporter

REPORTER CERTIFICATE

I, Mary Dianetti, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated: 11/4/05

At Rochester, New York

Mary Dianetti

Blank

[Add:1074-1080 reserved]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant and creditor

v.

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

MOTION
FOR THE COURT TO COMPLY WITH THE FRBkrP FOR DOCKETING THE TRANSCRIPT, ENTERING THE APPEAL, AND SCHEDULING THE APPELLATE BRIEF

case no. 05-cv-6190L

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. On November 4, 2005, the transcript of the evidentiary hearing in Bankruptcy Court, WBNY, that gave rise to the decision of Judge John C. Ninfo, II, on appeal here was received by the bankruptcy clerk and transmitted from that Court on the first floor to this District Court on the floor above in the same small federal building in Rochester. Indeed, the docket of the case below, namely, *In re David and Mary Ann DeLano*, states the following:

1. Excerpt from the *In re DeLano* docket, 04-20280, in Bankruptcy Court

11/04/2005	143	Copy of Letter from Mary Dianetti, Bankruptcy Court Reporter, to Dr. Richard Cordero re: the transcript of the evidentiary hearing of 3/1/05 . (Attachments: # 1 Exhibit)-copy of letter from Dr. Richard Cordero to Mary Dianetti, Court Reporter. (Tacy, K.) (Entered: 11/04/2005)
11/04/2005	144	Transcript of the 3/1/05 Proceedings, before the Honorable John C. Ninfo, II, United States Bankruptcy Court Judge, Re: Appeal Filed by Dr. Richard Cordero, Appellant. (RE: related document(s)103 Notice of Appeal,). (Tacy, K.) Modified on 11/7/2005 (Tacy, K.).Clerk's Note: the voluminous paper copy of the Transcript herein was transmitted to District Court on 11/4/05, and as such may be viewed at the U.S. District Court during regular business hours. (Entered: 11/04/2005)

I. The FRBkrP provide clear rules for the transmission of the record and the entry of the appeal

2. However, more than 10 days have gone by but neither the transcript has been docketed nor the notice of docketing the appeal has been sent to Appellant Dr. Cordero, among others, as required under FRBkrP 8007(b), which provides as follows:

> FRBkrP 8007(b)
> When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof **forthwith** to the clerk of the district court or the clerk of the bankruptcy appellate panel**. On receipt of the transmission** the clerk of the district court or the clerk of the bankruptcy appellate panel ***shall*** **enter the appeal** in the docket **and give notice *promptly*** to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed….(emphasis added)

3. This is not the first time that documents concerning this transcript have not been docketed by the District Court. Indeed, Dr. Cordero sent the Court copies of letters exchanged between him and Court Reporter Mary Dianetti, but they were not docketed. What is more, he resent them with a cover notice stating his intent that "they may form part of the record available in Court and online"; but while the notice was docketed, neither the notice nor the letters were made available online through PACER (CM/ECF) by means of a hyperlink, that is, an underlined blue number such as those found in the other entries:

2. Excerpt from the *Cordero v. DeLano* docket, 05cv6190, in District Court

05/03/2005	5	APPELEE DESIGNATION OF RECORD by David DeLano, Mary Ann DeLano. to 1 Bankruptcy Appeal filed by David DeLano, Mary Ann DeLano. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4)(BJB,) (Entered: 05/03/2005)
05/12/2005		Remark - Letters received from Dr. Cordero regarding Bankruptcy transcripts: Placed in file. (BJB,) (Entered: 06/20/2005)
05/17/2005	6	ORDER granting in part 7Appellant's request for additional time within which to file and serve his brief. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court . Signed by Hon. David G. Larimer on 5/17/05. (EMA,) (Entered: 05/17/2005)

4. The fact that motions or any other papers may have been filed with the District Court before the transcript was prepared is totally irrelevant, for such filings do not trigger the bankruptcy clerk's duty to transmit the record or the district court's to docket the appeal. As shown by the quotation above of FRBkrP 8007(b), only 'the completion of the record for purposes of appeal' warrants the transmission; and only 'the receipt of such record' justifies docketing the appeal. Without the reporter filing her transcript with the bankruptcy clerk under FRBkrP 8007(a) the record cannot be complete due to a practical consideration that has legal importance: If the transcript is not available, the appellant cannot as a matter of fact refer to it when writing his brief for the district court or the appellate courts above, which fundamentally impairs his right of appeal because he lacks a certified account of what happened in the courtroom during the proceeding that gave rise to the order from which he is appealing.
5. Therefore, on practical and legal grounds, before the record is complete the bankruptcy clerk cannot exceed his custodial duty with respect to any part of the record in his possession by taking the initiative to send it to the district court. This follows from:

> FRBkrP 8007(c) Record for preliminary hearing
>
> > **If prior** to the time the record is transmitted a party moves in the district court…for an intermediate order, the clerk **at the request of any party** to the appeal shall transmit to the clerk of the district court or the panel a copy of the parts of the record **as any party to the appeal shall designate**. (emphasis added)

6. The time for transmitting the record from the bankruptcy to the district court is quite clear because it has been established by not one, but two sources of precedent, as unequivocally stated by the Advisory Committee:

> ADVISORY COMMITTEE NOTES TO FRBKRP 8007
>
> > **Subdivision (b)** is similar to former Bankruptcy Rule 807. The duty of the clerk of the bankruptcy court to transmit the record as soon as the record is **complete** is derived from the second paragraph of Rule 11(b) F.R.App.P. (emphasis added)

7. In turn, the latter provides thus:

> **F.R.App.P. Rule 11. Forwarding the Record**

> **(b)(2) District Clerk's Duty to Forward**. When the record is **complete**, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. (emphasis added)

II. A series of acts having the same effect and undertaken by both the Bankruptcy Court and the District Court show their non-coincidental, intentional, and coordinated effort to prevent Dr. Cordero from obtaining the transcripts for his appeals

8. The failure of the District Court to docket the transmittal of the transcript and give notice of the entry of the appeal is only the latest attempt to exclude the transcript from the record on appeal: Thus, Bankruptcy Clerk Paul Warren received Dr. Cordero's Designation of Items in the Record on April 21, 2005. Nevertheless, the following day an indisputably incomplete record was transmitted to the District Court in violation of FRBkrP 8007. Yet the bankruptcy clerk knew that the Designation was not supposed to have been transmitted at that time, for the clerk had initially scheduled its transmission for over a month later. Somebody caused the due date for transmittal on "5/23/2005" to be discarded in order to rush Dr. Cordero's Designation upstairs to the District Court…was District Judge David Larimer waiting for it?

3. Excerpt from the *In re DeLano* docket, 04-20280, in Bankruptcy Court

04/21/2005	108	Appellant Designation of Contents For Inclusion in Record On Appeal Filed by Richard Cordero, Pro Se Appellant (RE: related document(s)103 Notice of Appeal,). Appellee designation due by 5/2/2005. Transmission of Designation Due by 5/23/2005. (Tacy, K.) Modified on 4/22/2005. CLERK'S NOTE: on 4/22/05 the appellant designation was transmitted to district court, such document may be viewed at the U.S. DISTRICT COURT CLERK'S OFFICE.(Tacy, K.). (Entered: 04/21/2005)

9. The fact is that on the very same day when Dr. Cordero's Designation was received, April 22, Judge Larimer issued an order providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". While his order and the Designation were docketed that same day, the accompanying copy of Dr. Cordero's letter of April 18 to Reporter Dianetti was

not docketed by either the Bankruptcy or the District Court.

10. Nevertheless, item no. 112 of the Designation gave notice to Judge Larimer that Dr. Cordero wanted the transcript included in the record. For its part, the April 18 letter gave notice that the Reporter had barely received the original and that no "satisfactory arrangements for payment of [the transcript's] cost" could possibly have been made between the Reporter and Dr. Cordero, as required under FRBkrP 8006. As a result, there was not even a date in sight for the preparation of the transcript, let alone the completion of the record. The latter also includes the appellee's R. 8006 Designation of *Additional* Items within the next 10 days. The practical and legal considerations for having the transcript before the record is deemed complete apply to having the appellee' designated additional items prior to that event too, to wit, the appellant can take the appellee's designated items into account when writing his brief only if they have already been filed into the record and made available to him. In the instant case, appellee had until May 2 for his own designation of additional items.
11. Hence, on that practical consideration Judge Larimer's April 22 brief scheduling order was premature. In legal terms it was invalid because at the time his order was not and could not be founded on a complete record. In fact, the Judge was fully aware of such incompleteness, for in that very same order he wrote:

> It shall be the responsibility of appellant to notify Judge Larimer, in writing, **when the record is complete** and all briefs have been filed, that the case is ready for oral argument…or submission. (emphasis added

12. The Judge's other scheduling orders of May 3 and 17, 2005, all of which are incorporated herein by reference, also violated FRBkrP 8007 since they lacked the foundation of a complete record. All of them are part of the attempt to deprive Dr. Cordero of the transcript. (See Dr. Cordero's objections of May 2 and 16 and October 25 to those orders, which are also incorporated herein by reference and fully described in the Table of References at the end of this motion.)

13. Judge Larimer's May 17 order scheduling Dr. Cordero's appellate brief provided thus:

> Appellant shall file and serve his brief within twenty (20) of the date that the transcript of the bankruptcy court proceeding is filed with the Clerk of the Bankruptcy Court.

14. That May 17 order is invalid on two grounds: Not only under Rule 8007(b) due to the premature transfer of an incomplete record that was still incomplete, but also under Rule 8009(a):

> **Rule 8009. Briefs and Appendix; Filing and Service**
>
> (a)(1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to 8007.

15. It is quite clear that the period for filing the brief does not begin to run from the date of its filing in Bankruptcy Court, but rather from the docketing of the appeal in District Court.

16. This is not the first time that Judge Larimer has shown disregard for the rules governing transcripts and briefs when scheduling a brief by Dr. Cordero. In fact, the instant events are an exact repetition of the way the Judge proceeded when Dr. Cordero requested an earlier transcript in *Pfuntner v. Trustee Gordon et al.*, docket 02-2230, WBNY, to which both Mr. DeLano and Dr. Cordero are parties. Thus, after the Court's colleague, Judge Ninfo, summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002, Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14, where she informed him that the due date for his designation of items was January 27, 2003. Yet, already on January 16, 2003, Judge Larimer had an order filed in *Dr. Richard Cordero v. Kenneth Gordon, Trustee*, docket 03cv6021L, WDNY, scheduling Dr. Cordero's brief for 20 days hence. Judge Larimer necessarily knew that the Bankruptcy Clerk had transmitted to the District Court a record unquestionably incomplete, for it did not even contain the appellant's designation of items and consisted merely of the notice of appeal!

17. Likewise, in the instant appeal, Reporter Dianetti repeatedly refused to state "the number of

stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript" (See Dr. Cordero's letters to her of April 18, May 10 and 26, and June 25.) Yet, she necessarily knew that number since she had counted such folds in order to come up with her estimate of the cost of the transcript based on the number of pages derived from such count times the official per page rate.

18. Thus, Dr. Cordero requested that she certify that her transcript would be complete, accurate, and free from tampering influence, and she rejected that request! Although thereby she cast doubt on the reliability of her transcript based on her own stenographic recording, Judge Larimer denied Dr. Cordero's request both in his motion of July 18, 2005, and his motion for reconsideration of September 20, 2005, that another reporter be appointed to prepare the transcript. The Judge forced him to order it from Reporter Dianetti and pay her $650 within 14 days. In so doing, Judge Larimer disregarded without discussion FRBkrP 8006 providing for the appellant and the reporter to "make satisfactory arrangements for payment of [the transcripts'] cost".

19. Judge Larimer has shown disregard not only for procedural rules, but also for substantive law by denying without discussing any of Dr. Cordero's legal arguments in his motions of June 20, July 13 and 18, August 23, and September 20. Instead, he resorted in his orders of September 13 and October 14 and 17, 2005, to the catch-all phrase "denied in all respects" to dispatch them on the conclusory allegation, unsupported by even the semblance of legal discussion, that they "are without any merit". By ruling by fiat rather than reason, he has rendered himself liable to the application to him of what Justice Marshall stated in his dissent in *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979)*: [A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary.

20. These series of events show that Judge Larimer has together with others engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard for the law, the rules, and the

facts. In so doing, he has already denied Dr. Cordero the necessary respect for the law to meet the constitutional requirements of due process of law: cases and controversies are decided by application of the law, not by capricious assertions contemptuous of the rule of law.[♣] The disregard for legality that he has shown gives rise to the reasonable expectation that he will dispose of the instant appeal in the same cursory way leading to the foregone conclusion that Dr. Cordero's arguments and request for relief "are without any merit" and "denied in all respects". Thereby Judge Larimer knowingly puts Dr. Cordero, who as a pro se party does all his legal research and writing and bears all costs, through an exercise in futility that causes him enormous material loss and tremendous emotional distress. Hence, this proceeding is an unlawful and injurious sham!

III. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the District Court:

a) transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 this appeal together with *DeLano*, docket no. 04-20280, WBNY, to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury by a judge unfamiliar with either case and unrelated and unacquainted with any of the parties or judicial or administrative officers;

b) otherwise, rescind the scheduling order of May 17, 2005;

c) cause the docketing of the transcript transmitted by the District Court on November 4,

---

[♣] See in this context:

1) Dr. Cordero's motion of November 5, 2005, in Bankruptcy Court to revoke the confirmation of the DeLano Debtors' debt repayment plan, because of its procurement by fraud;

2) Judge Ninfo's denial of November 10, without any reason whatsoever, of the request by Dr. Cordero, who lives in New York City, to appear by phone at the hearing of the motion in Rochester, just as he has on 12 previous occasions before Judge Ninfo; and

3) Dr. Cordero's request of November 11 for Judge Ninfo to state his reasons for his denial.

2005; enter the appeal in the docket; and give notice thereof to the parties, including Dr. Cordero;

d) to the end of c) above, issue the accompanying proposed order providing, among other things, for Dr. Cordero to file his appellant brief 20 days from the entry of the appeal and the notification of the parties;

e) decide this motion promptly and notify the decision to Dr. Cordero forthwith by phone at (718)827-9521 so that he may know whether he has to mail his brief by November 25 or may do so at a later time;

f) acknowledge that under FRBkrP 8008(a) "briefs are deemed filed on the day of mailing", not on the day when they are received and filed by the district clerk, and that the District Court will respect this rule and not dismiss Dr. Cordero's brief as untimely if mailed on the last day of the period but filed after the end of it;

g) grant any other relief that is just and fair.

Dated: November 15, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,
Appellant,

v.

ORDER
05-CV-6190L

DAVID DE LANO and MARY ANN DE LANO,
Respondents.

Having considered the motion of November 15, 2005, raised by Appellant, Dr. Richard Cordero, the Court orders as follows:

1. The clerk of the District Court shall ascertain the receipt from the Bankruptcy Court of the transcript requested by Appellant from, and prepared by, Bankruptcy Court Reporter Mary Dianetti of her recording of the evidentiary hearing on March 1, 2005, before Bankruptcy Judge John C. Ninfo, II, in the case below, namely, *In re David and Mary Ann DeLano*, docket no. 04-20280.
2. Upon establishing that he is in receipt of such transcript and of a complete record for purposes of appeal, the district clerk shall forthwith docket the transcript, enter the appeal on the docket of this case, and give notice promptly to all the parties to the order appealed from, that is, Judge Ninfo's decision and order of April 4, 2005, of the date on which the appeal was docketed, and the other parties in Appellant's Certificate of Service.
3. Appellant shall serve and file his brief within twenty (20) days after entry of the appeal on the docket. Said brief shall be deemed timely filed if mailed on the twentieth day, unless that day is extended by application of Bankruptcy Rule 9006.
4. Appellees shall serve and file their brief within twenty days (20) after service of the brief of appellant, having regard for Bankruptcy Rule 9006.
5. Bankruptcy Rule 8009 shall control reply briefs and cross-appeals; and Rule 8010 shall control the form and length of the briefs.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York

_____, 2005

Add:1090 Dr. Cordero's proposed order submitted to J. Larimer with his motion of November 15, 2005

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties a copy of my motion of November 15, 2005, for the District Court to comply with the FRBkrP for docketing the transcript, entering the appeal, and scheduling the appellate brief:

I. DeLano Parties

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500; fax (212) 668-2255

II. Pfuntner Parties (02-2230,WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq., for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650; fax (585) 454-6525

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585) 641-8000; fax (585) 641-8080

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

By motion (Dkt. #26), appellant Richard Cordero requests miscellaneous relief pertaining to his bankruptcy appeal. That motion is granted in part and denied in part as follows.

Appellant requests an extension of time to file his brief. That request is granted. Appellant shall file and serve his brief **on or before December 23, 2005**. Appellees shall file and serve their briefs **on or before January 20, 2005**.

In accordance with Fed. R. Bankr. P. 8008(a), briefs are deemed filed on the day of mailing. Fed. R. Bankr. P. 8009 and 8018 shall control concerning cross-appeals and reply briefs as well as the form of all briefs.

The remainder of appellant's motion is denied. Appellant's request that the Court cause the docketing of the transcript is denied as moot. The transcript was docketed in the District Court as Dkt. #23. Appellant's request that the Court "comply with" Fed. R. Bankr. P. 8007 is also denied

as moot. The appeal was docketed in April 2005 and all parties were notified. Since then, the Court has issued various Scheduling Orders setting and revising the deadlines for filing and perfecting the appeal. It now appears that the record on appeal is complete, and no further action pursuant to Fed. R. Bankr. P. 8007 is required. Finally, there is no sound basis in law or fact for appellant's request that the Court transfer this case to the United States District Court for the Northern District of New York and, therefore, it is denied.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
November 21, 2005.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE: **ORDER DENYING MOTION**

DAVID G. & MARY ANN DELANO,
Debtor(s)

Chapter 13
BK#04-20280

PRESENT: HONORABLE JOHN C. NINFO II, BANKRUPTCY JUDGE

Upon the Notice of Motion and supporting documents of Richard Cordero dated November 5, 2005, filed with this Court, and said Motion having been brought on before a Motion Term of this Court on November 16, 2005, and Christopher Werner, Esq., attorney for the debtors, having filed an answer in opposition to said Motion on behalf of said debtors, and the moving party, Richard Cordero, having not appeared in support of the Motion, and George M. Reiber, Chapter 13 Trustee, having appeared in opposition to said Motion, and due deliberation having been had, the Court hereby finds as follows:

1. That by prior order of this Court Richard Cordero has no standing in the above-entitled case;
2. That by prior order of this Court Richard Cordero is not a party in interest in the above-entitled case;
3. That the Bankruptcy Rules require a revocation of a Chapter 13 Plan to be done by adversary proceeding;
4. That Richard Cordero has no standing to file an Adversary Proceeding in the above-entitled matter; and
5. That all of the remaining relief requested by Richard Cordero in said Motion has been requested by him in previous motions and has been denied previously.

It is therefore

ORDERED that said motion of Richard Cordero is denied in all respects.

Dated: November 22, 2005
Rochester, New York

HON. JOHN C. NINFO II
Bankruptcy Judge

ENTER:

FILED
NOV 22 2005
BANKRUPTCY COURT
ROCHESTER, NY

032958

Add:1094 J. Ninfo's order of 11/22/05 denying Dr. Cordero's motion to revoke confirmation of DeLanos' plan

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614-1387
tel. (585) 613-4200

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

NOTICE OF MOTION AND MOTION TO QUASH THE ORDER DENYING THE MOTION TO REVOKE DUE TO FRAUD THE ORDER OF CONFIRMATION OF THE DELANOS' PLAN, REVOKE THE CONFIRMATION, AND REMAND THE CASE

Dr. Richard Cordero, creditor, states under penalty of perjury the following:

1. Dr. Richard Cordero hereby gives notice of his motion on submission for the Bankruptcy Court, Judge John C. Ninfo, II, presiding, to quash its order of November 22, 2005, denying his motion under 11 U.S.C. §1330(a) to revoke due to fraud the order confirming the DeLano Debtors' plan, on grounds that the November 22 order denied Dr. Cordero his constitutional right to appear and be heard, showed lack of impartiality, and resulted from yet another wrongful act in a series of non-coincidental, intentional, and coordinated acts in support of a bankruptcy fraud scheme.

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Paragraphs 2-60 and the contents of the Table of Exhibits of Dr. Cordero's herewith enclosed motion of December 7, 2005, in District Court, WDNY, to withdraw cases from bankruptcy court and declare orders null and void pending appeal are incorporated herein by reference.

61. Therefore, Dr. Cordero respectfully requests that the Bankruptcy Court:

a) quash as unlawful Judge Ninfo's order of November 22, 2005, denying Dr. Cordero's motion for revocation of the confirmation of the DeLanos' plan;

b) revoke under 11 U.S.C.§1330(a) Judge Ninfo's order of August 9, 2005, confirming the DeLanos' plan because the confirmation was procured by fraud;

c) provide a statement of reasons for Judge Ninfo denying in his November 10 letter Dr. Cordero's request to appear by phone at the hearing of his revocation motion and then denying his request on the 14th to reply by fax before the hearing on the 16th;

d) remove under §324(a) Trustee Reiber from the *DeLano* case;

e) remand, in the interest of justice and judicial economy pending the appeal, *DeLano* and *Pfuntner* to the U.S. District Court for the Western District;

f) disqualify Judge Ninfo from *DeLano* and *Pfuntner* or cause him to recuse himself;

g) grant Dr. Cordero every other fair and just relief.

Dated: December 6, 2005

Dr. Richard Cordero

59 Crescent Street,
Brooklyn, NY 11208

Dr. Richard Cordero;
tel. (718) 827-9521

Revised 05/01 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
2120 U.S. Courthouse, 100 State Street
Rochester, NY 14614-1387; tel. (585)613-4000

Dr. Richard Cordero
Appellant

v.

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

MOTION
TO WITHDRAW CASES FROM BANKRUPTCY COURT AND DECLARE ORDERS NULL AND VOID PENDING APPEAL

case no. 05-cv-6190L

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Richard Cordero moves the District Court to withdraw to itself from Bankruptcy Court under 28 U.S.C. §157(d) the case below, namely, *In re DeLano*, docket no. 04-20280, together with *Pfuntner v. Gordon et al*, docket no. 02-2230, and declare null and void the order of November 22, 2005, denying his motion under 11 U.S.C. §1330(a) to revoke due to fraud the order confirming the DeLano Debtors' plan and the order of August 9, 2005, confirming such plan, because they were issued in violation of his constitutional right to appear and be heard, to due process by an impartial judge that respects and applies the law, and in support of a bankruptcy fraud scheme.

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I. Judge Ninfo maneuvered Dr. Cordero's absence from the hearing of his own motion to revoke, thereby denying him his constitutional right to appear and be heard and engaging once more in the systematic avoidance of the examination of fraud that permeates the *DeLano* case and his handling of it

2. The Bankruptcy Court, Judge John C. Ninfo, II, presiding, by order of August 9, 2005, confirmed the DeLanos' debt repayment plan. (Exhibits page 4, infra=E:4) By motion pursuant to 11 U.S.C. §1330(a), dated November 5, 2005, and incorporated herein by reference (cf. E:&), Dr. Cordero requested the revocation of that order due to the confirmation's procurement by fraud. He made it "returnable on November 16, 2005, or as soon thereafter as possible" and requested that at the hearing in Rochester he be allowed to appear by phone because he lives in New York City.

3. However, Judge Ninfo mailed to Dr. Cordero a letter, dated November 10, 2005, denying Dr. Cordero's request to appear by phone. (E:9) He did so without stating any reason, despite having allowed Dr. Cordero to appear before him by phone on 12 previous occasions and although other parties are allowed to appear by phone. The Judge also pointed out that the notice did not indicate

the time of day when the motion was supposed to be heard and that Dr. Cordero had to renotice it. He mailed his letter on Thursday, November 10. Mailing such letter from Rochester was not a reasonably calculated way, particularly since Friday, November 11, Veterans Day, was a legal holiday, of giving notice thereof to Dr. Cordero so that he could reply from New York City with letters to the Court and the parties timely informing them of the time of day for the motion before the hearing on Wednesday, November 16. Dr. Cordero became aware of such letter only because that Friday he checked PACER, where an electronic copy of the letter had been posted. Nevertheless, he called the Bankruptcy Court and recorded a voice mail for Deputy Clerk Todd Stickle asking authorization to fax a two-page letter requesting that Judge Ninfo state the reasons why he had denied his request to appear by phone to argue his motion to revoke the plan's confirmation.

4. At the opening of business on Monday, November 14, Dr. Cordero spoke, among others, with Clerk Stickle, who informed him that he had talked to chambers and that the judges would not allow him to fax his letter, that in the past they had allowed him to do so, but that faxing was not a regular way of filing; that he could either overnight his letter or bring it himself to the Court. Dr. Cordero remarked that it would be extremely expensive to do that and that he could not just drop everything that he was doing in order to travel to Rochester to be in the courtroom on Wednesday morning for a hearing that would just last some 15 minutes, as the previous ones, specially given Judge Ninfo's heavy calendar for that day (E:12), and that it was unreasonable for the Judge not to let him fax a two-page letter. Mr. Stickle said that if Dr. Cordero felt that way, he could bring a complaint against the judge and that "you know how to do that". It followed from that comment that Dr. Cordero's complaint against Judge Ninfo, which was supposed to be confidential, had become known to Judge Ninfo. It was payback time!
5. The fact is that at the hearing on July 19, 2004, of the motion by Trustee George Reiber for the dismissal of the DeLanos' case due to their "unreasonable delay" in the production of documents,

Judge Ninfo allowed Dr. Cordero to appear by phone. During the hearing, Dr. Cordero asked for the issuance of the order for document production by the DeLanos that he had requested in his Statement of July 9, 2004, in Opposition to the Dismissal Motion; in that Statement he had presented to the Judge evidence of the DeLanos' fraudulent concealment of assets. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the same text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo agreed and gave himself to Dr. Cordero his fax number although the Judge knew that the order in question was much longer than just two pages. Yet on the instant occasion, Judge Ninfo would not allow Dr. Cordero either to appear by phone or fax a letter, and that without stating any reason whatsoever and despite the fact that the motion day was only two days away.

6. It should be noted that Judge Ninfo never issued the proposed order although when he agreed to have it faxed to him he already knew its text in the format of a requested order. What is more, he did not even give the faxed proposed order to the clerks to have it docketed. Thereby he violated FRBkrP 7005 and FRCivP 5(e) providing that "the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and ***forthwith*** transmit them to the office of the clerk of court for filing". (emphasis added) By so acting, Judge Ninfo showed the unreliability of his word and his disregard for the rules. He had shown such conduct in a long series of similar acts before, going back all the way to 2002 in *Premier Van Lines*, docket no. 02-20692, and *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, and has shown it repeatedly since. No wonder Dr. Cordero did complain about him.
7. In that conversation on November 14, Dr. Cordero told Clerk Stickle that either that day or the following, the Court would receive on one sheet of paper a two-page document that he had already mailed. Captioned as a Request for a Statement of Reasons (E:10), it set forth the time

of 11:00 a.m. on November 16 for the motion subject to the Court's statement of the reasons why Judge Ninfo had denied Dr. Cordero's request to appear by phone. Dr. Cordero asked Clerk Stickle to docket it upon receipt and bring it to the attention of the Judge so that he could reply to it right away and Dr. Cordero could decide what to do concerning his revocation motion. Clerk Stickle said that as soon as he got it he would docket and bring it to the Judge's attention.

8. The U.S. Postal Service confirmed that the letter was delivered on Monday, November 14. That same day it was entered in the docket of *In re DeLano*, no. 04-20280:

1. Entry no. 150 on the *DeLano* docket, no. 04-20280, WBNY

11/14/2005	150	Request for a statement of reasons: Filed by Dr. Richard Cordero (RE: related document(s)146 Notice of Motion and Motion to Revoke the Order of Confirmaiton of Debtors' Debt Repayment). (Tacy, K.) (Entered: 11/14/2005)

9. Clerk Stickle kept his word.

10. For his part, Judge Ninfo failed to provide any reply. Despite the relief requested, he neither 'a) rescinded his order of denial and allowed Dr. Cordero to appear by phone', nor 'b) stated his reasons for denying the phone appearance request', just as he disregarded the request that "c) in either event, both advise Dr. Cordero of his decision and post it electronically in such timely fashion that Dr. Cordero and the other parties, respectively, can decide what to do".

11. On Wednesday, November 16, Dr. Cordero called Clerk Stickle and left a message for him. The Clerk returned the call and indicated that there was no reply from Judge Ninfo and that instead, there was the expectation that Dr. Cordero would appear in person at the hearing. Dr. Cordero told Clerk Stickle that he had already given notice in writing in his request docketed two days earlier, on November 14, that he was waiting for Judge Ninfo's statement of reasons in order to decide what to do; and that in their conversation on the 14th he had stated to the Clerk that he,

Dr. Cordero, could not drop everything else to travel to Rochester on such short notice to attend the hearing in person so that the ball was in the Judge's court, but that he was ready to appear by phone; otherwise, he was awaiting the Judge's reasons for denying his request to appear by phone, as he had done on 12 previous occasions. Hence, he pointed out that there could be no reasonable expectation that he would appear in person at the hearing. He asked the Clerk to make that statement known to the Judge and communicate the latter's response to Dr. Cordero.

12. The parties also could not have any reasonable expectation that Dr. Cordero would attend the hearing in person. Indeed, in his notice to each of them (E:18), mailed at the time he mailed to the Court his Request for a Statement of Reasons, docketed on Monday, November 14, he wrote:

> Please find the text of a request that I have made to the Bankruptcy Court, WBNY, concerning the motion that I noticed earlier this week. Kindly contact the Court or consult its electronic calendar in PACER (CM/ECF) before attending the hearing.

13. Since no reply to that request was posted to PACER and none was otherwise available from the Court, the only reasonable expectation could be that Dr. Cordero was waiting in New York City for the reply in order to decide what to do. The parties could not expect him to be in Rochester.

14. Before 11:00 a.m., Clerk Stickle called Dr. Cordero to inform him that Judge Ninfo had indicated that Dr. Cordero would not be allowed to appear by phone, but stated no reason therefor. Dr. Cordero told him that he had written in his motion that it was returnable "on November 16, 2005, or as soon as possible thereafter" (E:7), so that his motion was alive and that he was not withdrawing it; and that he expected to receive a reply from Judge Ninfo to his Request for a Statement of Reasons.

15. Instead, what Dr. Cordero received in the mail on Monday, November 28, was an order of Judge Ninfo with the following text (E:21):

Upon the Notice of Motion and supporting documents of Richard Cordero dated November 5, 2005, filed with this Court, and said Motion having been brought on before a Motion Term of this Court on November 16, 2005, and Christopher Werner, Esq., attorney for the debtors, having filed an answer in opposition to said Motion on behalf of said debtors, and the moving party, Richard Cordero, having not appeared in support of the Motion, and George M. Reiber, Chapter 13 Trustee, having appeared in opposition to said Motion, and due deliberation having been had, the Court hereby finds as follows:

1. That by prior order of this Court Richard Cordero has no standing in the above-entitled case;
2. That by prior order of this Court Richard Cordero is not a party in interest in the above-entitled case;
3. That the Bankruptcy Rules require a revocation of a Chapter 13 Plan to be done by adversary proceeding;
4. That Richard Cordero has no standing to file an Adversary Proceeding in the above-entitled matter; and
5. That all of the remaining relief requested by Richard Cordero in said Motion has been requested by him in previous motions and has been denied previously.

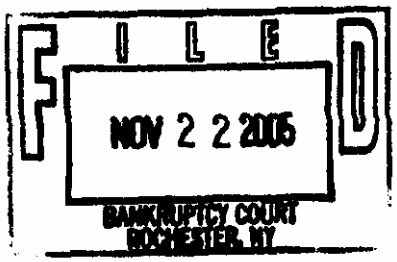
It is therefore

ORDERED that said motion of Richard Cordero is denied in all respects.

Dated: November 22, 2005
Rochester, New York

HON. JOHN C. NINFO II
Bankruptcy Judge

ENTER:



II. Judge Ninfo and Trustee Reiber have a vested interest in neither discussing at a public hearing Dr. Cordero's motion presenting evidence for revoking due to fraud nor revoking the confirmation

16. Judge Ninfo had no legal basis for bringing on before the court the motion despite having received notice in writing that Dr. Cordero considered the denial without any reason of his request to be allowed to appear by phone arbitrary and discriminatory and was asking that it be

granted or that the Judge state the reasons for denying it. The Judge could not on a whim or in retaliation prevent Dr. Cordero from appearing in court to be heard on his own motion. Nor could he under such circumstances engage in a "deliberation" of it with Trustee Reiber, who, just as the Judge, could only reasonably expect that Dr. Cordero would not be present to argue it. This is particularly the case since Trustee Reiber did not give notice that he would either appear at all or appear in opposition, much less the legal and factual basis for opposing the motion.

17. Trustee Reiber shares an interest with Judge Ninfo in not revoking the order confirming the DeLanos' plan, for it was the Trustee who called for its confirmation:

2. Entry for June 23, 2005, on the *DeLano* docket, no. 04-20280, WBNY

06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)

18. The Trustee has an interest also in the denial of the revocation motion because it analyzes the three-page document entitled "Trustee's Findings of Fact and Summary of 341 Hearing". (E:1-3; revocation motion §I; E:8) The mere appearance of those pages with all their interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless and defacing jottings, even undated and missing signatures, shows them to be shockingly unprofessional and perfunctory scraps of paper that objectively fail to comply with the formal requirements of the local and the federal rules of procedure.

19. In addition, the motion's analysis of the substantive content of those scrap papers demonstrates that Trustee Reiber, contrary to Judge Ninfo's fact-disregarding assertion (*DeLano* dkt., entry 134), had conducted no investigation of the DeLanos, let alone one clearing them of fraud. In fact, the Trustee requested confirmation of their plan **1)** without even asking for the where-abouts of the $382,187 that they obtained during 30 years through a string of mortgages on the

same home in which now, when they near retirement, their equity is the pittance of $21,415 while their debt on it is $77,084.49; **2)** despite refusing to ask for even their bank account statements to find the $291,470 that they earned in the 2001-03 fiscal years; **3)** though willfully ignoring the $98,092 that they accumulated on 18 credit cards although the average credit card debt of Americans is $6,000; and **4)** while pretending that it was of no importance that Mr. DeLano has been an officer of financing and banking institutions, still employed as such, for 39 years!, and Mrs. DeLano a Xerox technician. Over $670,000 taken in by the financially savvy DeLanos, as shown by even the token documents that they produced to the Trustee, but that he allowed to go unaccounted for so that their plan could be confirmed! Something is wrong here!!

20. After Trustee Reiber evaded his duty under 11 U.S.C. §704(4) and (7) to investigate the debtors, Judge Ninfo pretended that those three pieces of scrap paper that he referred to as the "Trustee's Report" (E:4) constituted credible evidence that the Trustee had investigated the DeLanos for bankruptcy fraud, although the scrap "Report" did not even mention any investigation, let alone refer to the written objections of Dr. Cordero, who was the creditor that called for them to be investigated and to be required to produce documents. In so doing, Judge Ninfo knowingly disregarded the evidence gathered for over a year and a half before he confirmed the plan that Trustee Reiber never wanted to investigate the DeLanos and merely engaged in the pretense of asking them for documents that he either allowed them not to produce or that far from analyzing upon receipt, he failed even to look at to realize that they were missing pages.
21. Under those circumstances, it is obvious why Judge Ninfo denied without providing any reason at all Dr. Cordero's request to appear by phone at the hearing of his own motion and why he maneuvered a hearing in his absence to deny the motion after "deliberation" (E:21) with Trustee Reiber, who had as much interest as he did in such denial: The last thing that either of them wanted was to engage in a most embarrassing, to the point of being incriminating, discussion for

the record of Trustee Reiber's three piece scrap "Report" and how it could not support the Judge's patently unfounded assertion that the Trustee had investigated the DeLanos and cleared them of allegations of fraud, thus opening the way for plan confirmation. Why put themselves through that ordeal and leave a paper trail since they could not allow revocation by any means?

A. Revocation now would indict Trustee Reiber's and Judge Ninfo's disregard for the abundant evidence of fraud in *DeLano* as well as their supervisors' and raise suspicion about their motives and relations

22. Let a reasonable observer informed of all the circumstances of this case imagine what would happen if the plan confirmation were revoked now. To begin with, revocation would acknowledge the existence of sufficient evidence of bankruptcy fraud by the DeLanos, for fraud constitutes the sole ground for a plan to be revoked under §1330(a). This would imply that both Trustee Reiber and Judge Ninfo have for almost two years disregarded the evidence of fraud 1) contained in the DeLanos' petition and schedules, 2) rendered all the more suspicious because of Mr. DeLano's insider knowledge as an officer that handles the bankruptcies of borrowers of his employer, M&T Bank; 3) aggravated by even the token documents subsequently produced; and 4) analyzed in detail in numerous documents by Dr. Cordero.

23. Actually, a revocation would expand an investigation of the DeLanos by the FBI and facilitate their indictment for bankruptcy fraud by DoJ prosecutors under 18 U.S.C. Chapter 9, and §§1519 and 3571. That would confront them with charges carrying a maximum penalty of 20 years in prison and $500,000 in fines or more. Faced with that prospect, the DeLanos would be inclined to trade up in a plea bargain where in exchange for partial or total immunity they would disclose all they know about fraud engaged in or supported by others of higher status than they, including officers high, perhaps very high, in the official hierarchy. This expectation is founded on the evidence of a pattern of disregard for the law that has emerged from just the four cases of

Premier, *Pfuntner*, *DeLano*, and the appeal *Cordero v. DeLano*, docket no. 05cv6190, WDNY, in all of which Mr. DeLano is involved. It follows that he must have learned during his 39 years in finance and banking about so many past and ongoing bankruptcy fraud schemes as to make him a witness worth keeping quiet by some and talkative by others.

24. In fact, a true investigation of the DeLanos will lead the reasonable observer informed of all the circumstances to want to find out why Trustee Reiber's supervisors, namely, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre A. Martini -both of whom Dr. Cordero has served with every paper that he has filed in *DeLano* and its appeal to District Court- have allowed Trustee Reiber to accumulate an unimaginably heavy caseload:

3. Illustrative row of PACER's presentation of Trustee George Reiber's 3,909 *open* cases in Bankruptcy Court, WBNY, 3,907 of them before Judge Ninfo, as of April 2, 2004

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

25. There is no way that with a caseload of 3,909 *open* cases Trustee Reiber's supervisors expected him to discharge his duty under 11 U.S.C. §704(4) and (7) to investigate the debtors at his own initiative or on request of a creditor. So the reasonable observer and the criminal investigators would quickly ask what conceivable benefit for the bankruptcy system that Trustees Schmitt and Martini are supposed to supervise under 28 U.S.C. §586(a)(3), let alone a benefit for the creditors that Trustee Reiber is supposed to represent, as stated in the Legislative Report on §704, were those supervisors aiming at by allowing him to rubberstamp thousands of cases, pretend to investigate them, and confirm them with shockingly unprofessional and perfunctory "Reports", as he has the *DeLano* case?; otherwise, have all of them handled *DeLano* with exceptional deference because Mr. DeLano knows too much and could disclose it to their detriment?

26. Likewise, for more than a year Dr. Cordero has sent to Trustees Schmitt and Martini letters

requesting that they express their position on the documents produced by the DeLanos themselves that contain evidence of their fraud and on Trustee Reiber's manifest unwillingness and inability to analyze them as well as his pretense of investigating the DeLanos. Yet, they have failed even to answer any of those letters, which they should have done if only out of a sense of institutional responsibility for the system entrusted to their supervision, not to mention toward a citizen exercising his constitutional right under the 1st Amendment "to petition the Government for a redress of grievances". They have also failed to remove and replace Trustee Reiber, as requested by Dr. Cordero. Why have they shown such crass indifference to even documentary evidence of fraud and the facts warranting removal of their supervisee?

27. It is reasonable to imagine that by asking these and similar obvious questions of these officers the investigation would soon implicate ever higher officers and their assistants and trigger the mentality of 'every person for himself or herself' and the reaction of pointing fingers at others. This process, which in no time would spin out of control, they could not allow to start.

28. Hence, far from Judge Ninfo complying with his duty under 18 U.S.C. §3057(a) to refer evidence of bankruptcy fraud to the United States Attorney, he did not even allow Dr. Cordero to appear at a public hearing to discuss for the record yet more evidence of fraud presented in his motion for revocation. (cf. E:8¶3) The Judge would not even discuss it in his order denying the motion if only to comply with the requirement to act "in the best interest of the creditors and the estate", 11 U.S.C. §1307(c), by insuring that neither he as a judicial officer nor the court as an institution had been misused as a "means forbidden by law", §1325(a)(3), to evade debts, conceal assets, and obtain an unlawful benefit. So much so that he did not even risk using the word "fraud" in his order, not even to competently identify the motion that he was denying and contribute to the proper understanding of his order, for doing so could have dangerously brought what was at stake to the attention of those appellate judges and many others whom he by now

must be certain, positive, absolutely sure will be asked by Dr. Cordero to review his order.

29. To minimize that risk, in his order Judge Ninfo referred simply to a "Motion" rather than a "motion under 11 U.S.C. §1330(a)…for the revocation of the order confirming the DeLano Debtors' plan that was entered by this Court, Judge John C. Ninfo, II, presiding, on August 9, 2005, on grounds that the confirmation was procured by fraud", as the motion was described in the first paragraph of Dr. Cordero's November 5 notice (E:7), or "…motion to revoke the confirmation of the DeLanos' plan due to its procurement through fraud", as in the caption of Dr. Cordero's November 11 Request for a Statement of Reasons for denying his request to appear by phone (E:10). Rather, he tried to distract reviewing peers and others with procedural matters, which due once more to his lack of analysis he nevertheless got wrong, whereby he will attract their critical eyes anyway. Let's see.

III. Section 1330(a) provides for a request to be filed for the revocation of the confirmation of a plan; the Bankruptcy Code does not require that such a request be made only by adversary proceeding; FRBkrP explicitly provides for requests to be made by motion; and case law allows for a request to be made by motion even where an adversary proceeding is provided for it

30. To avoid even using the word "fraud" in his denial of the revocation motion, Judge Ninfo reeled off conclusory statements on procedural grounds without engaging in any discussion of legal principles or factual elements at all, as if the uncritical observance of procedure provided a perfect excuse for ignoring the motion's substantive considerations. So he just stated that 'Richard Cordero is not a party in interest and has no standing to file the adversary proceeding required for revocation' (¶15 above; E:21). Let's subject these procedural grounds to legal analysis.

31. Dr. Cordero's motion for revocation of the confirmation of the plan was raised explicitly under 11 U.S.C. §1330(a), which provides as follows:

> 11 U.S.C. §1330. Revocation of an order of confirmation
>
> (a) **On request** of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title,

> and after **notice and a hearing**, the court may revoke such **order** if such order was **procured by fraud**.
>
> (b) If the court revokes an order of confirmation under subsection (a) of this section, the **court shall dispose of the case under section 1307** of this title, unless, within the time fixed by the court, the debtor proposes and the court **confirms** a modification of the plan **under section 1329** of this title. (emphasis added)

32. Section 1330 does not require an adversary proceeding in order for a party in interest to seek revocation of plan confirmation. By its own terms, it only requires that a "request" be made. The procedural vehicle of that "request" is clearly identified by subsection (a) itself, which provides that the "request" is dealt with "after notice and a hearing", rather pleadings, pre-trial conference, discovery, and a trial. Hence, the procedural vehicle of a "request" is a motion.

33. This is unambiguously proved by FRBkrP 9013, which provides as follows:

> FRBkrP 9013. Motions: Form and Service
>
> A **request** for an order, except when an application is authorized by these rules, **shall** be by written **motion**, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall **set forth the relief or order sought**. Every written motion other than one which may be considered ex parte **shall be served** by the moving party on the trustee or debtor in possession and **on those entities specified by these rules** or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs. (emphasis added)

34. Such a motion provides all the constitutional safeguards for judicial process, namely, that notice of the relief or order at stake be given through service on the entities at risk of enforcement against them. The additional formalities and safeguards of an adversary proceeding are not required where all such entities have already been brought under the jurisdiction of the court and are parties to the case. (Cf. 11 U.S.C. §945) To require the time consuming and expensive additions of an adversary proceeding where the "request" concerns only parties to the case so that such proceeding adds no safeguard for justice would contravene the clear mandate of FRBkrP 1001 that "…These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding".

35. Moreover, the Bankruptcy Code explicitly pursues the consistent and unambiguous construction of terms. To that end, it provides definitions under §§101, 741, 781, 901(b), 902, 1101, and 1162. The FRBkrP too aim to provide clarity of meaning and when one term is to be read as another term it provides for such automatic substitution, as under Rules 1018 and 7002.

36. The difference between the terms in question here is also made clear. Hence, Rules 2002 and 4006 leaves no doubt that a notice is not the summons or the complaint referred to under Rules 7003 and 7004 and required to commence an adversary proceeding. Likewise, Rule 5005(a)(1) establishes unambiguously that complaints and motions are different types of papers and that those terms are not interchangeable.

37. It is quite obvious that an entity that is already a party to the case and that is requesting the revocation of the confirmation of a plan against other parties to that case could not reasonably be required to proceed as if "a civil action is commenced by filing a complaint with the court", as provided under FRBkrP 7003 and FRCivP 3. A "request" for revocation cannot be equated either in practical or conceptual terms with the commencement of a civil action between parties to a case that may have been commenced years earlier by the filing of a bankruptcy petition with notice of all its details given to those parties in the plethora of schedules and the plan or even a series of modified plans, not to mention all the documents produced at the request of the trustee or a party in interest in application of §§1302(b)(1) and 704(4) and (7). Requiring the filing and service of a summons and complaint between parties that have already produced and been notified of all those details is implicitly forbidden by common sense and the mandate for "just, speedy, and inexpensive determination of every case and proceeding" required not only by FRBkrP 1001, but also by FRCivP 1 for "the determination of every action".

38. Consequently, when §1330(a) provides that revocation of plan confirmation is made by "request", it means a "request" made by motion, not a summons and complaint. In fact, a

consistent construction of the terms of this subsection in the context of Chapter 13 leads to this result inevitably, for this section makes reference to other sections that use "request" to refer indisputably to asking by motion for court action.

a) Section 1330(b) provides that upon revocation "the court shall dispose of the case under section 1307".

    1) For its part, §1307(b) provides that "On request of the debtor at any time…the court shall dismiss the case". There can be no doubt that a debtor is not required to file an adversary proceeding to request dismissal; he accomplishes that through a motion.

    2) Likewise, §1307(c) provides that "…on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter".

    3) Again, it is beyond question that to "request" such conversion, either that party or the trustee would only be required to notice a motion and the court to hold a hearing, not a trial. As a matter of fact, when Trustee Reiber requested dismissal of the DeLanos' "case pursuant to 11 U.S.C. Section 1307 of the Bankruptcy Code for unreasonable delay" the vehicle that he used was a motion, dated June 15, 2004.

    4) In the same vein, §1307(c)(5) provides for conversion or dismissal upon "denial of a request made for additional time for filing another plan or a modification of a plan".

b) Section 1330(b) itself refers to confirmation by the court of "a modification of the plan under section 1329". Subsection (a) of §1329 provides that "At any time after confirmation…the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim". Nobody would dare suggest that every time any of them seeks such modification they must file an adversary proceeding rather than just a "request" by motion. Such a proceeding would be extremely impractical and superfluous for the protection of anybody's right. Consequently, §1329(b)(2) provides that it is "after notice and a hearing", not pleadings, pre-trial conference, discovery, and a trial, that "the plan as modified becomes the plan…unless…disapproved". Sections 942, 1127, and 1229 also command this common sense and practical construction for modifications of plans.

c) The reference in §1330(b) to §1307 includes the latter's subsection (c)(5) dealing with "denial of a request made for additional time for filing another plan". The procedural vehicle used

for such request is illustrated by analogy to Rule 1007, which provides for using a motion:

> FRBkrP 1007(a)(4) Extension of time
>
> > Any **extension of time** for the filing of the lists required by this subdivision may be granted only **on motion** for cause shown **and on notice** to the United States trustee and to any trustee, committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code, or **other party as the court may direct.** (emphasis added)

39. All this goes to showing that the proper procedural vehicle for making a "request" is a motion. This conclusion cannot be contradicted by FRBkrP 7001(5), which provides that "a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan" is an adversary proceeding governed by the rules of Part VII. For one thing, the Advisory Committee Notes to this section limits the scope of Part VII by stating its purpose:

> ADVISORY COMMITTEE NOTES
>
> …
>
> These Part VII rules are based on the premise that **to the extent possible practice** before the **bankruptcy** courts and the **district courts** should be **the same**. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure…(emphasis added)

40. The phrase "to the extent possible" indicates that there are limits to the application of Part VII in order to achieve the overriding objective of its use, namely, to make practice in bankruptcy and district court the same. As a matter of fact, in district court the procedural vehicle for a "request" is a motion, not the commencement of a whole new case:

> FRBkrP 8011. Motions
>
> (a) Content of motions; response; reply
>
> > A **request** for an order or other relief **shall** be made by filing with the clerk of the **district court** or the clerk of the bankruptcy appellate panel a **motion** for such order or relief **with proof of service on all other parties** to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall **state** with particularity the **grounds** on which it is based, and shall **set forth** the o**rder or relief sought**.…(emphasis added)

41. The district courts apply the FRCivP in non-bankruptcy practice. Rule 7(a) provides for certain initial pleadings, but thereafter, relief is requested by motion alone:

FRCivP 7. Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim, denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if **a person who was not an original party is summoned** under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An **application** to the court for an order **shall** be by **motion** which, unless made during a *hearing* **or** *trial*, shall be made in writing, shall **state** with particularity the **grounds** thereof, and shall **set forth** the **relief** or **order sought**. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. (emphasis added) (note that a hearing is not a trial)

42. FRBkrP 1001 on the Scope of Rules helps to limit the scope of Rule 7001 by stating that "these rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding", whereby it makes a distinction between a case and a proceeding. For this distinction to be meaningful, a case and a proceeding cannot be identical: Some provisions must apply to one but not to the other because each is used under some circumstances for some purposes but not others. This allows Rule 7001 to be reasonably construed to mean that when an order to revoke requires a proceeding, for example, when "a person who was not an original party is summoned", then it is an adversary proceeding governed by Part VII, which affords that person all procedural formalities and safeguards; otherwise, the procedural vehicle for revocation involving only parties to an ongoing case is a "request" made by motion under Rule 9013. Only this construction makes it "just, speedy, and inexpensive" for parties to the case to "request" revocation by motion. (See *Stumpf v. McGee* (*In re O'Connor*), 258 F.3d 392 (5th Cir. 2001) supporting the view that liberal construction to allow disposing of matters without unnecessary formalities is consistent with Rule 1001.)

43. This view is compelled also by the consistent drafter rule of construction providing that where one construction of a provision will render it consistent with the rest of the instrument of which it forms part it is to be preferred over another construction that would make it inconsistent, for

the drafter of the instrument must be presumed to have reasonably intended all the provisions of the instrument to attain their individual objective while reinforcing each other as a means to attain the overriding objective of the whole instrument.

44. Moreover, the construction rule of subordination[1] states that a document that is intended to assist in the understanding and implementation of an instrument cannot be construed in a way that contradicts the instrument's provisions, for to do so would invert their relation, where the instrument is the principal controlling the subordinate assistant, and defeat its purpose. Such illogical construction would be especially confusing here since the term "on request" occurs throughout the Bankruptcy Code 48 times[2] (+ "upon request" 2 + "X requests" 7 + "X requested" 8 + "requesting party" 4). By contrast, "adversary proceeding" does not appear in the Code, which is the controlling instrument, even once –nor in BAPCPA of 2005, Pub. L. No. 109-8, 119 Stat. 23–, but is only a term introduced by its subordinate FRBkrP. So to force the subordinate Rules to substitute one of its terms for a well-defined and frequently used term of the principal Code and do so not even consistently, but rather sometimes reading it to mean that an adversarial proceeding is required and other times that a motion is necessary, would create ambiguity, and thus uncertainty that would impair the Code's understanding and implementation.

45. The application of the rule of subordination is required by the FRBkrP's enabling act, to wit, 28 U.S.C. §2075, which limits the scope of FRBkrP:

> 28 U.S.C. §2075
>
> The Supreme Court shall have power to prescribe by general rules, the forms of process, writs, pleadings and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge or modify any substantive right.

---

[1] The Legislative Statements accompanying 11 U.S.C. §102 state that "Section 102 specifies various rules of construction but is not exclusive. Other rules of construction that are not set out in title 11 are nevertheless intended to be followed in construing the bankruptcy code".

[2] The count here and elsewhere result from applying the search function of Adobe Acrobat to the term in question in the Bankruptcy Code.

46. Thus, the Court of Appeals for the Second Circuit stated in *Term Loan Holder Comm. v. Ozer Group, L.L.C.* (*In re The Caldor Group*), 303 F.3d 161 (2d Cir. 2002) that forsaking the plain meaning of a provision of the Bankruptcy Code solely because that meaning conflicts with a bankruptcy rule would run afoul of 28 U.S.C. §2075. In the same vein, the Court for the Third Circuit in *Branchburg Plaza Assocs., L.P. v. Fesq* (*In re Fesq*), 153 F.3d 113, 116-118 (3d Cir. 1998), recognized the principle that FRBkrP cannot override the statutory terms of the Bankruptcy Code, particularly given the plain language of §1330.

47. It follows that Rule 7001(5) cannot be construed to require an adversarial proceeding whenever revocation is sought since that would contradict the plain language of §1330 and Rule 9013, which jointly provide for a "request by motion", and create interpretative inconsistency with every other section of the Code providing for action "on request" of a party. This harmful effect can be prevented by applying the rule of subordination. Its application is implicit in Rule 9009, which provides that "The Official Forms…shall be construed to be consistent with these rules and the Code".

48. To allow FRBkrP to disregard the plain language of §1330 would have an even more harmful effect on the whole Code because the term "on request" is used there frequently in tandem with the phrase "after notice [or "…to X"] and a hearing", which occurs 80 times in the Code. This reasoning flows objectively from the statements of the Code itself, which provides thus:

> §102 Rules of construction
> …
> HISTORICAL AND STATUTORY NOTES
> Revision Notes and Legislative Reports
> 1978 Acts.…Paragraph (1) defines the concept of "after notice and a hearing". **The concept is central to the bill** and to the separation of the administrative and judicial functions of bankruptcy judges. The phrase means after **such notice as is appropriate in the particular circumstances** (to be prescribed by either the Rules of Bankruptcy Procedure or by the court in individual circumstances that the Rules do not cover. In many cases, the Rules will provide for combined notice of several proceedings), and such opportunity for a **hearing as is appropriate in the particular circumstances**. Thus a hearing will not be necessary in every circumstance. If there is no objection to the proposed action, the action may go ahead without court action…(only emphasis added)

49. Hence, for FRBkrP to force upon "on request" a meaning incompatible with its complementing phrase "after notice and a hearing" would impair throughout the Code the understanding and implementation of both terms, one of which is "central" to the Code and its implementation by judges.

50. The fact that "notice" and "hearing" mean "such notice…[and] hearing as is appropriate in the particular circumstances" indicates that their use is subject to an element of discretion that differentiates them from the complaint and answer, which by contrast are required whenever an adversary proceeding is commenced, not to mention the trial, which is the purpose of such proceeding and the necessary procedural step for the court to determine it.

51. The analysis of the phrase "on request...after notice and a hearing", found not only in §1330(a) in connection with asking for revocation of plan confirmation, but also numerous times throughout the Bankruptcy Code, indicates that as a "central" concept it is intended to have the same meaning in each of its occurrences: As a rule, it identifies a petition within an ongoing judicial action for an intermediate act that is communicated among parties and a court already known to each other through the circumstantially flexible, speedy, and inexpensive procedural vehicle of a motion. Only in circumstantial exceptions does it refer to the rigid mechanism of an adversary proceeding for initially bringing parties under the jurisdiction of the court and conducting them through a series of time consuming and expensive procedural stages.

52. Actually, courts have recognized that even though an action is included in Rule 7001 as an adversary proceeding, a variety of circumstances have warranted their dispensing with such requirement and allowing action upon motion of a party (E:22), for example, where no objection to proceeding by motion has been raised –none was raised in the instant case-; the rights of the parties have been protected by the notice given –as was the case here since the DeLanos answered the motion and asked that it be denied (E:20)-; and speedy action is necessary –as is here since not revoking the plan confirmation allows the parties to the fraud to continue

benefiting from it to the detriment of other parties and the court as an institution-.

IV. Dr. Cordero was named and treated as a creditor by the DeLanos in their bankruptcy case and still has a stake in its outcome and can significantly affect it through his appeal so that he has standing as a party in interest to call by motion for the revocation due to fraud of their plan's confirmation

53. While the term "party in interest" is not defined in the Bankruptcy Code or FRBkrP, the Code does comment on it as follows:

> §102 Rules of construction
> …
> HISTORICAL AND STATUTORY NOTES
> Legislative Statements
> …the phrase "on request of a party in interest" or a similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting sua sponte. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.

54. Courts have construed "party in interest" as a broad term in light of the expansive and frequent use -64 times- that the Code makes of it. This is well illustrated in 11 U.S.C. §1109(b), where the Code not only uses the term, but also spells out what it includes by giving what under §102(3) are non-limiting examples. Courts have commented on this section thus:

> Although the term "party in interest" has not been defined anywhere in the Bankruptcy Code or Rules, it is to be construed broadly, in order to allow parties affected by a chapter 11 case to appear and be heard [*citations omitted*]. As the bankruptcy court noted in the *Johns-Manville* case, "[T]he concept of 'party in interest' is an elastic and broad one designed to give the Court great latitude to insure fair representation of all constituencies impacted in any significant way by a Chapter 11 case." *In re Johns-Manville Corp., 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984).* The basic test under section 1109(b) is "whether the prospective party in interest has a sufficient stake in the outcome of the proceeding so as to require representation." *In re Amatex Corp., 755 F.2d 1034, 1042 (3rd Cir. 1985).*

55. In deciding how to determine the scope of "party in interest", such as under §1144, which just as §1330(a), provides that "on request of a party in interest…the court may revoke such order [of confirmation]…if such order was procured by fraud", courts have reasoned thus:

> Party in interest is an expandable concept depending on the particular factual context in which it is applied. The purpose is to permit the involvement of those persons and interests which will be affected by the reorganization process. *In re River Bend- Oxford Assoc., 23 C.B.C.2d 535, 114 B.R. 111 (Bankr. D. Md. 1990)*. *See also In re Public Serv. Co. of New Hampshire, 88 B.R. 546, 550-51 (Bankr. D.N.H. 1988).*

56. It follows that the key factors in according "party in interest" status are the impact that a case can have on the rights of a person or entity and the need to allow such person or entity to participate in the case to protect their rights since the court is not permitted to act sua sponte to protect them. (See also 7 *Collier on Bankruptcy* § 1109.LH[2] p. 1109-23 (15th Ed. Revised)).

57. Dr. Cordero satisfies these criteria. Indeed, it was the DeLanos who named him as a creditor in Schedule F to their bankruptcy petition. For months they treated him as such, even producing documents **1)** at his sole instigation since none of the other 20 creditors requested any documents; **2)** although he was the only creditor to file with Judge Ninfo and serve on them written objections, dated March 4, 2004, to the confirmation of their plan; and **3)** despite his having objected to the plan at the meeting of creditors on March 8, 2004, which he was the only creditor to attend. Based on the objectively insufficient, token documents that they produced, Dr. Cordero showed in his written statement of July 9, 2004, filed with the Judge and served on the DeLanos, that the latter had engaged in bankruptcy fraud, particularly concealment of assets. In reaction thereto, on July 22, the DeLanos resorted to the artifice of a motion to disallow his claim so that through disallowance he would be stripped of standing. This would prevent him from further requesting that they be investigated for fraud and required to produce documents as obviously appropriate to support their petition as their bank account statements, but which could expose their fraud by revealing money flows leading to concealed assets, thereby calling into question all those who had disregarded the evidence. So Judge Ninfo disallowed Dr. Cordero's claim at a sham evidentiary hearing on March 1, 2005, and in his order of April 4, now on appeal, and confirmed their plan at a July 25 hearing and in his August 9 order (¶17 above; E:4).

58. It is undeniable that during the pendency of his appeal from the disallowance Dr. Cordero has an interest in the DeLanos' handling of their assets, for what would be the point of having his claim reinstated only to find out that even their known assets were unavailable to satisfy his claim? Likewise, if an investigation found that they, with the support of others, did commit and cover up bankruptcy fraud, in addition to that finding buttressing his claim, it would have a major impact on the DeLanos' estate, either by depleting it through criminal fines or expanding it by discovering concealed assets, both of which would affect his recovery. Hence, how can it be even questioned that Dr. Cordero does have §1330(a) party in interest status and should be allowed both to move for revocation and have evidence of the DeLano's fraud examined by the court?

V. Conclusion and Request for Relief

59. There is no doubt that the analysis presented above will be lost on Judge Ninfo and the others who like him have demonstrated their unwillingness and inability to analyze and apply the law. Yet, that analysis serves the purpose of preserving the objection in the hope that the appellate judges of the Court of Appeals, and all the more so the justices of the Supreme Court if they grant certiorari, will consider these legal points and address them in determining the case.

60. Those judges will have the inclination to consider also the facts that have occurred during the last 22 months since the DeLanos filed their petition of January 26, 2004. The facts show a series of acts of disregard for the law, the rules, and the facts forming a pattern of non-coincidental, intentional, and coordinated wrongdoing. To such series is added the latest one in which Judge Ninfo arbitrarily and discriminatorily deprived Dr. Cordero of the opportunity to appear and be heard on his own motion to revoke the DeLanos' plan confirmation, and then maneuvered to hold a hearing in the sole presence of Trustee Reiber, who had had not a word to counter Dr. Cordero's motion of August 23 in District Court challenging his scrap "Report" but who in Dr. Cordero's absence engaged in a "deliberation" (E:21) on it with Judge Ninfo, whereby

both blindsided him at yet another sham hearing. In its wake, the Judge denied the motion for revocation due to fraud through a fiat dictated by the self-preservation interest of not exposing, and implicating himself and others in, a bankruptcy fraud scheme. Thereby Judge Ninfo has denied Dr. Cordero his 5th Amendment right to due process of law and abused his judicial power in pursuit of objectives inimical to his office and the integrity of the courts. It is a travesty of justice to allow a case so tainted by fraud to remain in a court so determined not to examine it for fraud that it will not even identify the substantive issue of a motion by its name: *"fraud"!*

61. Therefore, Dr. Cordero respectfully requests that pending the appeal, the District Court:

a) withdraw to itself for cause shown in the interest of justice and judicial economy under 28 U.S.C. §157(d) *DeLano* and *Pfuntner;*

b) declare null and void as unlawful Judge Ninfo's order of November 22, 2005, denying Dr. Cordero's motion for revocation of the confirmation of the DeLanos' plan;

c) cause Judge Ninfo's order of August 9, 2005, confirming the DeLanos' plan to be revoked under 11 U.S.C.§1330(a) because the confirmation was procured by fraud;

d) cause Judge Ninfo to provide a statement of reasons for denying in his November 10 letter Dr. Cordero's request to appear by phone at the hearing of his revocation motion and then denying his request on the 14th to reply by fax before the hearing on the 16th;

e) cause Trustee Reiber to be removed under §324(a) from the *DeLano* case;

f) cause Judge Ninfo to be disqualified or to recuse himself from *DeLano* and *Pfuntner*;

g) grant Dr. Cordero every other fair and just relief.

Dated: December 7, 2005

Dr. Richard Cordero

Dr. Richard Cordero;
59 Crescent Street,
Brooklyn, NY 11208
tel. (718) 827-9521

Table of Exhibits

in support of the motion to withdraw the case below from the Bankruptcy Court to itself and declare null and void the order denying the motion to revoke plan confirmation and the order confirming the plan in *In re DeLano*

submitted on December 7, 2005,

to the District Court

by Dr. Richard Cordero

ToE:# = entry no. E:#=exhibit page no.

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. on the following parties a copy of my motion of December 7, 2005, to withdraw the case below from Bankruptcy Court to itself and nullify the orders denying his motion to revoke the confirmation of the DeLanos' plan and confirming such plan:

I. DeLano Parties

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
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fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225;
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Office of the United States Trustee
100 State Street, Room 6090
Rochester, NY 14614
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fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
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fax (212) 668-2255

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445
tel. (585)586-6392

II. Pfuntner Parties (02-2230, WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
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Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
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fax (585) 641-8080

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

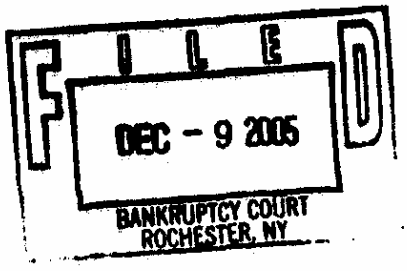
ORDER

The December 6, 2005 Motion by Dr. Richard Cordero To Quash the Order Denying the Motion to Revoke Due to Fraud the Order of Confirmation of the Delano's Plan, Revoke the Confirmation, and Remand the Case is in all respects denied.

SO ORDERED.

DATED: December 9, 2005

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE



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Revised 05/01 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant

v.

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

NOTICE of FILING
a motion in Bankruptcy Court

TO QUASH THE ORDER DENYING
the motion to revoke due to fraud the order confirming the DeLanos' Plan,
REVOKE THE CONFIRMATION,
and REMAND THE CASE

case no. 05-cv-6190L

Dr. Richard Cordero affirms under penalty of perjury as follows:

Attached hereto is a copy of my notice of motion and motion of December 6, 2005, under 11 U.S.C. §1330(a) in Bankruptcy Court, WBNY, Judge John C. Ninfo, II, presiding, for the latter to quash his order of November 22, 2005, denying my motion to revoke due to fraud the confirmation of the DeLano Debtors' debt repayment plan in *In re DeLano*, docket no. 04-20280; to revoke such confirmation; and to remand *DeLano* to this Court pending this appeal.

The factual considerations and the legal analysis contained in that 25-page motion arguing why the November 22 order denying revocation should be quashed have already been dispatched by Judge Ninfo with his "in all respects denied" one-liner order of December 9 that he issued peremptorily on the same day of the motion's arrival by skipping any discussion whatsoever of its detailed contents.

I file this copy of my motion and its two exhibits, that is, Judge Ninfo's November 22 and December 9 orders, with the intent that they be made part of the record in the above-captioned appeal.

December 16, 2005

Dr. Richard Cordero

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614-1387
tel. (585) 613-4200

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

NOTICE OF MOTION AND MOTION TO QUASH THE ORDER DENYING THE MOTION TO REVOKE DUE TO FRAUD THE ORDER OF CONFIRMATION OF THE DELANOS'S PLAN, REVOKE THE CONFIRMATION, AND REMAND THE CASE

Dr. Richard Cordero, creditor, states under penalty of perjury the following:

1. Dr. Richard Cordero hereby gives notice of his motion on submission for the Bankruptcy Court, Judge John C. Ninfo, II, presiding, to quash its order of November 22, 2005, denying his motion under 11 U.S.C. §1330(a) to revoke due to fraud the order confirming the DeLano Debtors' plan, on grounds that the November 22 order denied Dr. Cordero his constitutional right to appear and be heard, showed lack of impartiality, and resulted from yet another wrongful act in a series of non-coincidental, intentional, and coordinated acts in support of a bankruptcy fraud scheme.

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****

I. Judge Ninfo maneuvered Dr. Cordero's absence from the hearing of his own motion to revoke, thereby denying him his constitutional right to appear and be heard and engaging once more in the systematic avoidance of the examination of fraud that permeates the *DeLano* case and his handling of it

2. The Bankruptcy Court, Judge John C. Ninfo, II, presiding, by order of August 9, 2005, confirmed the DeLanos' debt repayment plan. (Exhibits page 4, infra=E:4) By motion pursuant to 11 U.S.C. §1330(a), dated November 5, 2005, and incorporated herein by reference (E:7), Dr. Cordero requested the revocation of that order due to the confirmation's procurement by fraud. He made it "returnable on November 16, 2005, or as soon thereafter as possible" and requested that at the hearing in Rochester he be allowed to appear by phone because he lives in New York City.

3. However, Judge Ninfo mailed to Dr. Cordero a letter, dated November 10, 2005, denying Dr. Cordero's request to appear by phone. (E:9) He did so without stating any reason, despite having allowed Dr. Cordero to appear before him by phone on 12 previous occasions and although other

parties are allowed to appear by phone. The Judge also pointed out that the notice did not indicate the time of day when the motion was supposed to be heard and that Dr. Cordero had to renotice it. He mailed his letter on Thursday, November 10. Mailing such letter from Rochester was not a reasonably calculated way, particularly since Friday, November 11, Veterans Day, was a legal holiday, of giving notice thereof to Dr. Cordero so that he could reply from New York City with letters to the Court and the parties timely informing them of the time of day for the motion before the hearing on Wednesday, November 16. Dr. Cordero became aware of such letter only because that Friday he checked PACER, where an electronic copy of the letter had been posted. Nevertheless, he called the Bankruptcy Court and recorded a voice mail for Deputy Clerk Todd Stickle asking authorization to fax a two-page letter requesting that Judge Ninfo state the reasons why he had denied his request to appear by phone to argue his motion to revoke the plan's confirmation.

4. At the opening of business on Monday, November 14, Dr. Cordero spoke, among others, with Clerk Stickle, who informed him that he had talked to chambers and that the judges would not allow him to fax his letter, that in the past they had allowed him to do so, but that faxing was not a regular way of filing; that he could either overnight his letter or bring it himself to the Court. Dr. Cordero remarked that it would be extremely expensive to do that and that he could not just drop everything that he was doing in order to travel to Rochester to be in the courtroom on Wednesday morning for a hearing that would just last some 15 minutes, as the previous ones, specially given Judge Ninfo's heavy calendar for that day (E:12), and that it was unreasonable for the Judge not to let him fax a two-page letter. Mr. Stickle said that if Dr. Cordero felt that way, he could bring a complaint against the judge and that "you know how to do that". It followed from that comment that Dr. Cordero's complaint against Judge Ninfo, which was supposed to be confidential, had become known to Judge Ninfo. It was payback time!

5. The fact is that at the hearing on July 19, 2004, of the motion by Trustee George Reiber for the

dismissal of the DeLanos' case due to their "unreasonable delay" in the production of documents, Judge Ninfo allowed Dr. Cordero to appear by phone. During the hearing, Dr. Cordero asked for the issuance of the order for document production by the DeLanos that he had requested in his Statement of July 9, 2004, in Opposition to the Dismissal Motion; in that Statement he had presented to the Judge evidence of the DeLanos' fraudulent concealment of assets. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the same text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo agreed and gave himself to Dr. Cordero his fax number although the Judge knew that the order in question was much longer than just two pages. Yet on the instant occasion, Judge Ninfo would not allow Dr. Cordero either to appear by phone or fax a letter, and that without stating any reason whatsoever and despite the fact that the motion day was only two days away.

6. It should be noted that Judge Ninfo never issued the proposed order although when he agreed to have it faxed to him he already knew its text in the format of a requested order. What is more, he did not even give the faxed proposed order to the clerks to have it docketed. Thereby he violated FRBkrP 7005 and FRCivP 5(e) providing that "the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and ***forthwith*** transmit them to the office of the clerk of court for filing". (emphasis added) By so acting, Judge Ninfo showed the unreliability of his word and his disregard for the rules. He had shown such conduct in a long series of similar acts before, going back all the way to 2002 in *Premier Van Lines*, docket no. 02-20692, and *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, and has shown it repeatedly since. No wonder Dr. Cordero did complain about him.
7. In that conversation on November 14, Dr. Cordero told Clerk Stickle that either that day or the following, the Court would receive on one sheet of paper a two-page document that he had

already mailed. Captioned as a Request for a Statement of Reasons (E:10), it set forth the time of 11:00 a.m. on November 16 for the motion subject to the Court's statement of the reasons why Judge Ninfo had denied Dr. Cordero's request to appear by phone. Dr. Cordero asked Clerk Stickle to docket it upon receipt and bring it to the attention of the Judge so that he could reply to it right away and Dr. Cordero could decide what to do concerning his revocation motion. Clerk Stickle said that as soon as he got it he would docket and bring it to the Judge's attention.

8. The U.S. Postal Service confirmed that the letter was delivered on Monday, November 14. That same day it was entered in the docket of *In re DeLano*, no. 04-20280:

1. Entry no. 150 on the *DeLano* docket, no. 04-20280, WBNY

11/14/2005	150	Request for a statement of reasons: Filed by Dr. Richard Cordero (RE: related document(s)146 Notice of Motion and Motion to Revoke the Order of Confirmaiton of Debtors' Debt Repayment). (Tacy, K.) (Entered: 11/14/2005)

9. Clerk Stickle kept his word.

10. For his part, Judge Ninfo failed to provide any reply. Despite the relief requested, he neither 'a) rescinded his order of denial and allowed Dr. Cordero to appear by phone', nor 'b) stated his reasons for denying the phone appearance request', just as he disregarded the request that "c) in either event, both advise Dr. Cordero of his decision and post it electronically in such timely fashion that Dr. Cordero and the other parties, respectively, can decide what to do".

11. On Wednesday, November 16, Dr. Cordero called Clerk Stickle and left a message for him. The Clerk returned the call and indicated that there was no reply from Judge Ninfo and that instead, there was the expectation that Dr. Cordero would appear in person at the hearing. Dr. Cordero told Clerk Stickle that he had already given notice in writing in his request docketed two days earlier, on November 14, that he was waiting for Judge Ninfo's statement of reasons in order to

decide what to do; and that in their conversation on the 14th he had stated to the Clerk that he, Dr. Cordero, could not drop everything else to travel to Rochester on such short notice to attend the hearing in person so that the ball was in the Judge's court, but that he was ready to appear by phone; otherwise, he was awaiting the Judge's reasons for denying his request to appear by phone, as he had done on 12 previous occasions. Hence, he pointed out that there could be no reasonable expectation that he would appear in person at the hearing. He asked the Clerk to make that statement known to the Judge and communicate the latter's response to Dr. Cordero.

12. The parties also could not have any reasonable expectation that Dr. Cordero would attend the hearing in person. Indeed, in his notice to each of them (E:18), mailed at the time he mailed to the Court his Request for a Statement of Reasons, docketed on Monday, November 14, he wrote:

> Please find the text of a request that I have made to the Bankruptcy Court, WBNY, concerning the motion that I noticed earlier this week. Kindly contact the Court or consult its electronic calendar in PACER (CM/ECF) before attending the hearing.

13. Since no reply to that request was posted to PACER and none was otherwise available from the Court, the only reasonable expectation could be that Dr. Cordero was waiting in New York City for the reply in order to decide what to do. The parties could not expect him to be in Rochester.

14. Before 11:00 a.m., Clerk Stickle called Dr. Cordero to inform him that Judge Ninfo had indicated that Dr. Cordero would not be allowed to appear by phone, but stated no reason therefor. Dr. Cordero told him that he had written in his motion that it was returnable "on November 16, 2005, or as soon as possible thereafter" (E:7), so that his motion was alive and that he was not withdrawing it; and that he expected to receive a reply from Judge Ninfo to his Request for a Statement of Reasons.

15. Instead, what Dr. Cordero received in the mail on Monday, November 28, was an order of Judge Ninfo with the following text (E:21):

Upon the Notice of Motion and supporting documents of Richard Cordero dated November 5, 2005, filed with this Court, and said Motion having been brought on before a Motion Term of this Court on November 16, 2005, and Christopher Werner, Esq., attorney for the debtors, having filed an answer in opposition to said Motion on behalf of said debtors, and the moving party, Richard Cordero, having not appeared in support of the Motion, and George M. Reiber, Chapter 13 Trustee, having appeared in opposition to said Motion, and due deliberation having been had, the Court hereby finds as follows:

1. That by prior order of this Court Richard Cordero has no standing in the above-entitled case;
2. That by prior order of this Court Richard Cordero is not a party in interest in the above-entitled case;
3. That the Bankruptcy Rules require a revocation of a Chapter 13 Plan to be done by adversary proceeding;
4. That Richard Cordero has no standing to file an Adversary Proceeding in the above-entitled matter; and
5. That all of the remaining relief requested by Richard Cordero in said Motion has been requested by him in previous motions and has been denied previously.

It is therefore

ORDERED that said motion of Richard Cordero is denied in all respects.

Dated: November 22, 2005
Rochester, New York

HON. JOHN C. NINFO II
Bankruptcy Judge

ENTER:

FILED
NOV 22 2005
BANKRUPTCY COURT
ROCHESTER, NY

II. Judge Ninfo and Trustee Reiber have a vested interest in neither discussing at a public hearing Dr. Cordero's motion presenting evidence for revoking due to fraud nor revoking the confirmation

16. Judge Ninfo had no legal basis for bringing on before the court the motion despite having received notice in writing that Dr. Cordero considered the denial without any reason of his request to be allowed to appear by phone arbitrary and discriminatory and was asking that it be

granted or that the Judge state the reasons for denying it. The Judge could not on a whim or in retaliation prevent Dr. Cordero from appearing in court to be heard on his own motion. Nor could he under such circumstances engage in a "deliberation" of it with Trustee Reiber, who, just as the Judge, could only reasonably expect that Dr. Cordero would not be present to argue it. This is particularly the case since Trustee Reiber did not give notice that he would either appear at all or appear in opposition, much less the legal and factual basis for opposing the motion.

17. Trustee Reiber shares an interest with Judge Ninfo in not revoking the order confirming the DeLanos' plan, for it was the Trustee who called for its confirmation:

2. Entry for June 23, 2005, on the *DeLano* docket, no. 04-20280, WBNY

06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)

18. The Trustee has an interest also in the denial of the revocation motion because it analyzes the three-page document entitled "Trustee's Findings of Fact and Summary of 341 Hearing". (E:1-3; revocation motion §I; E:8) The mere appearance of those pages with all their interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless and defacing jottings, even undated and missing signatures, shows them to be shockingly unprofessional and perfunctory scraps of paper that objectively fail to comply with the formal requirements of the local and the federal rules of procedure.

19. In addition, the motion's analysis of the substantive content of those scrap papers demonstrates that Trustee Reiber, contrary to Judge Ninfo's fact-disregarding assertion (*DeLano* dkt., entry 134), had conducted no investigation of the DeLanos, let alone one clearing them of fraud. In fact, the Trustee requested confirmation of their plan **1)** without even asking for the where-abouts of the $382,187 that they obtained during 30 years through a string of mortgages on the

same home in which now, when they near retirement, their equity is the pittance of $21,415 while their debt on it is $77,084.49; **2)** despite refusing to ask for even their bank account statements to find the $291,470 that they earned in the 2001-03 fiscal years; **3)** though willfully ignoring the $98,092 that they accumulated on 18 credit cards although the average credit card debt of Americans is $6,000; and **4)** while pretending that it was of no importance that Mr. DeLano has been an officer of financing and banking institutions, still employed as such, for 39 years!, and Mrs. DeLano a Xerox technician. Over $670,000 taken in by the financially savvy DeLanos, as shown by even the token documents that they produced to the Trustee, but that he allowed to go unaccounted for so that their plan could be confirmed! Something is wrong here!!

20. After Trustee Reiber evaded his duty under 11 U.S.C. §704(4) and (7) to investigate the debtors, Judge Ninfo pretended that those three pieces of scrap paper that he referred to as the "Trustee's Report" (E:4) constituted credible evidence that the Trustee had investigated the DeLanos for bankruptcy fraud, although the scrap "Report" did not even mention any investigation, let alone refer to the written objections of Dr. Cordero, who was the creditor that called for them to be investigated and to be required to produce documents. In so doing, Judge Ninfo knowingly disregarded the evidence gathered for over a year and a half before he confirmed the plan that Trustee Reiber never wanted to investigate the DeLanos and merely engaged in the pretense of asking them for documents that he either allowed them not to produce or that far from analyzing upon receipt, he failed even to look at to realize that they were missing pages.
21. Under those circumstances, it is obvious why Judge Ninfo denied without providing any reason at all Dr. Cordero's request to appear by phone at the hearing of his own motion and why he maneuvered a hearing in his absence to deny the motion after "deliberation" (E:21) with Trustee Reiber, who had as much interest as he did in such denial: The last thing that either of them wanted was to engage in a most embarrassing, to the point of being incriminating, discussion for

the record of Trustee Reiber's three piece scrap "Report" and how it could not support the Judge's patently unfounded assertion that the Trustee had investigated the DeLanos and cleared them of allegations of fraud, thus opening the way for plan confirmation. Why put themselves through that ordeal and leave a paper trail since they could not allow revocation by any means?

A. Revocation now would indict Trustee Reiber's and Judge Ninfo's disregard for the abundant evidence of fraud in *DeLano* as well as their supervisors' and raise suspicion about their motives and relations

22. Let a reasonable observer informed of all the circumstances of this case imagine what would happen if the plan confirmation were revoked now. To begin with, revocation would acknowledge the existence of sufficient evidence of bankruptcy fraud by the DeLanos, for fraud constitutes the sole ground for a plan to be revoked under §1330(a). This would imply that both Trustee Reiber and Judge Ninfo have for almost two years disregarded the evidence of fraud 1) contained in the DeLanos' petition and schedules, 2) rendered all the more suspicious because of Mr. DeLano's insider knowledge as an officer that handles the bankruptcies of borrowers of his employer, M&T Bank; 3) aggravated by even the token documents subsequently produced; and 4) analyzed in detail in numerous documents by Dr. Cordero.

23. Actually, a revocation would expand an investigation of the DeLanos by the FBI and facilitate their indictment for bankruptcy fraud by DoJ prosecutors under 18 U.S.C. Chapter 9, and §§1519 and 3571. That would confront them with charges carrying a maximum penalty of 20 years in prison and $500,000 in fines or more. Faced with that prospect, the DeLanos would be inclined to trade up in a plea bargain where in exchange for partial or total immunity they would disclose all they know about fraud engaged in or supported by others of higher status than they, including officers high, perhaps very high, in the official hierarchy. This expectation is founded on the evidence of a pattern of disregard for the law that has emerged from just the four cases of

Premier, *Pfuntner*, *DeLano*, and the appeal *Cordero v. DeLano*, docket no. 05cv6190, WDNY, in all of which Mr. DeLano is involved. It follows that he must have learned during his 39 years in finance and banking about so many past and ongoing bankruptcy fraud schemes as to make him a witness worth keeping quiet by some and talkative by others.

24. In fact, a true investigation of the DeLanos will lead the reasonable observer informed of all the circumstances to want to find out why Trustee Reiber's supervisors, namely, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre A. Martini -both of whom Dr. Cordero has served with every paper that he has filed in *DeLano* and its appeal to District Court- have allowed Trustee Reiber to accumulate an unimaginably heavy caseload:

3. Illustrative row of PACER's presentation of Trustee George Reiber's 3,909 *open* cases in Bankruptcy Court, WBNY, 3,907 of them before Judge Ninfo, as of April 2, 2004

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

25. There is no way that with a caseload of 3,909 *open* cases Trustee Reiber's supervisors expected him to discharge his duty under 11 U.S.C. §704(4) and (7) to investigate the debtors at his own initiative or on request of a creditor. So the reasonable observer and the criminal investigators would quickly ask what conceivable benefit for the bankruptcy system that Trustees Schmitt and Martini are supposed to supervise under 28 U.S.C. §586(a)(3), let alone a benefit for the creditors that Trustee Reiber is supposed to represent, as stated in the Legislative Report on §704, were those supervisors aiming at by allowing him to rubberstamp thousands of cases, pretend to investigate them, and confirm them with shockingly unprofessional and perfunctory "Reports", as he has the *DeLano* case?; otherwise, have all of them handled *DeLano* with exceptional deference because Mr. DeLano knows too much and could disclose it to their detriment?

26. Likewise, for more than a year Dr. Cordero has sent to Trustees Schmitt and Martini letters

requesting that they express their position on the documents produced by the DeLanos themselves that contain evidence of their fraud and on Trustee Reiber's manifest unwillingness and inability to analyze them as well as his pretense of investigating the DeLanos. Yet, they have failed even to answer any of those letters, which they should have done if only out of a sense of institutional responsibility for the system entrusted to their supervision, not to mention toward a citizen exercising his constitutional right under the 1st Amendment "to petition the Government for a redress of grievances". They have also failed to remove and replace Trustee Reiber, as requested by Dr. Cordero. Why have they shown such crass indifference to even documentary evidence of fraud and the facts warranting removal of their supervisee?

27. It is reasonable to imagine that by asking these and similar obvious questions of these officers the investigation would soon implicate ever higher officers and their assistants and trigger the mentality of 'every person for himself or herself' and the reaction of pointing fingers at others. This process, which in no time would spin out of control, they could not allow to start.

28. Hence, far from Judge Ninfo complying with his duty under 18 U.S.C. §3057(a) to refer evidence of bankruptcy fraud to the United States Attorney, he did not even allow Dr. Cordero to appear at a public hearing to discuss for the record yet more evidence of fraud presented in his motion for revocation. (cf. E:8¶3) The Judge would not even discuss it in his order denying the motion if only to comply with the requirement to act "in the best interest of the creditors and the estate", 11 U.S.C. §1307(c), by insuring that neither he as a judicial officer nor the court as an institution had been misused as a "means forbidden by law", §1325(a)(3), to evade debts, conceal assets, and obtain an unlawful benefit. So much so that he did not even risk using the word "fraud" in his order, not even to competently identify the motion that he was denying and contribute to the proper understanding of his order, for doing so could have dangerously brought what was at stake to the attention of those appellate judges and many others whom he by now

must be certain, positive, absolutely sure will be asked by Dr. Cordero to review his order.

29. To minimize that risk, in his order Judge Ninfo referred simply to a "Motion" rather than a "motion under 11 U.S.C. §1330(a)…for the revocation of the order confirming the DeLano Debtors' plan that was entered by this Court, Judge John C. Ninfo, II, presiding, on August 9, 2005, on grounds that the confirmation was procured by fraud", as the motion was described in the first paragraph of Dr. Cordero's November 5 notice (E:7), or "...motion to revoke the confirmation of the DeLanos' plan due to its procurement through fraud", as in the caption of Dr. Cordero's November 11 Request for a Statement of Reasons for denying his request to appear by phone (E:10). Rather, he tried to distract reviewing peers and others with procedural matters, which due once more to his lack of analysis he nevertheless got wrong, whereby he will attract their critical eyes anyway. Let's see.

III. Section 1330(a) provides for a request to be filed for the revocation of the confirmation of a plan; the Bankruptcy Code does not require that such a request be made only by adversary proceeding; FRBkrP explicitly provides for requests to be made by motion; and case law allows for a request to be made by motion even where an adversary proceeding is provided for it

30. To avoid even using the word "fraud" in his denial of the revocation motion, Judge Ninfo reeled off conclusory statements on procedural grounds without engaging in any discussion of legal principles or factual elements at all, as if the uncritical observance of procedure provided a perfect excuse for ignoring the motion's substantive considerations. So he just stated that 'Richard Cordero is not a party in interest and has no standing to file the adversary proceeding required for revocation' (¶15 above; E:21). Let's subject these procedural grounds to legal analysis.

31. Dr. Cordero's motion for revocation of the confirmation of the plan was raised explicitly under 11 U.S.C. §1330(a), which provides as follows:

> 11 U.S.C. §1330. Revocation of an order of confirmation
>
> (a) **On request** of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title,

> and after **notice and a hearing**, the court may revoke such **order** if such order was **procured by fraud**.
>
> (b) If the court revokes an order of confirmation under subsection (a) of this section, the **court shall dispose of the case under section 1307** of this title, unless, within the time fixed by the court, the debtor proposes and the court **confirms** a modification of the plan **under section 1329** of this title. (emphasis added)

32. Section 1330 does not require an adversary proceeding in order for a party in interest to seek revocation of plan confirmation. By its own terms, it only requires that a "request" be made. The procedural vehicle of that "request" is clearly identified by subsection (a) itself, which provides that the "request" is dealt with "after notice and a hearing", rather pleadings, pre-trial conference, discovery, and a trial. Hence, the procedural vehicle of a "request" is a motion.

33. This is unambiguously proved by FRBkrP 9013, which provides as follows:

> FRBkrP 9013. Motions: Form and Service
>
> A **request** for an order, except when an application is authorized by these rules, **shall** be by written **motion**, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall **set forth the relief or order sought**. Every written motion other than one which may be considered ex parte **shall be served** by the moving party on the trustee or debtor in possession and **on those entities specified by these rules** or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs. (emphasis added)

34. Such a motion provides all the constitutional safeguards for judicial process, namely, that notice of the relief or order at stake be given through service on the entities at risk of enforcement against them. The additional formalities and safeguards of an adversary proceeding are not required where all such entities have already been brought under the jurisdiction of the court and are parties to the case. (Cf. 11 U.S.C. §945) To require the time consuming and expensive additions of an adversary proceeding where the "request" concerns only parties to the case so that such proceeding adds no safeguard for justice would contravene the clear mandate of FRBkrP 1001 that "…These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding".

35. Moreover, the Bankruptcy Code explicitly pursues the consistent and unambiguous construction of terms. To that end, it provides definitions under §§101, 741, 781, 901(b), 902, 1101, and 1162. The FRBkrP too aim to provide clarity of meaning and when one term is to be read as another term it provides for such automatic substitution, as under Rules 1018 and 7002.

36. The difference between the terms in question here is also made clear. Hence, Rules 2002 and 4006 leaves no doubt that a notice is not the summons or the complaint referred to under Rules 7003 and 7004 and required to commence an adversary proceeding. Likewise, Rule 5005(a)(1) establishes unambiguously that complaints and motions are different types of papers and that those terms are not interchangeable.

37. It is quite obvious that an entity that is already a party to the case and that is requesting the revocation of the confirmation of a plan against other parties to that case could not reasonably be required to proceed as if "a civil action is commenced by filing a complaint with the court", as provided under FRBkrP 7003 and FRCivP 3. A "request" for revocation cannot be equated either in practical or conceptual terms with the commencement of a civil action between parties to a case that may have been commenced years earlier by the filing of a bankruptcy petition with notice of all its details given to those parties in the plethora of schedules and the plan or even a series of modified plans, not to mention all the documents produced at the request of the trustee or a party in interest in application of §§1302(b)(1) and 704(4) and (7). Requiring the filing and service of a summons and complaint between parties that have already produced and been notified of all those details is implicitly forbidden by common sense and the mandate for "just, speedy, and inexpensive determination of every case and proceeding" required not only by FRBkrP 1001, but also by FRCivP 1 for "the determination of every action".

38. Consequently, when §1330(a) provides that revocation of plan confirmation is made by "request", it means a "request" made by motion, not a summons and complaint. In fact, a

consistent construction of the terms of this subsection in the context of Chapter 13 leads to this result inevitably, for this section makes reference to other sections that use "request" to refer indisputably to asking by motion for court action.

a) Section 1330(b) provides that upon revocation "the court shall dispose of the case under section 1307".

    1) For its part, §1307(b) provides that "On request of the debtor at any time…the court shall dismiss the case". There can be no doubt that a debtor is not required to file an adversary proceeding to request dismissal; he accomplishes that through a motion.

    2) Likewise, §1307(c) provides that "…on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter".

    3) Again, it is beyond question that to "request" such conversion, either that party or the trustee would only be required to notice a motion and the court to hold a hearing, not a trial. As a matter of fact, when Trustee Reiber requested dismissal of the DeLanos' "case pursuant to 11 U.S.C. Section 1307 of the Bankruptcy Code for unreasonable delay" the vehicle that he used was a motion, dated June 15, 2004.

    4) In the same vein, §1307(c)(5) provides for conversion or dismissal upon "denial of a request made for additional time for filing another plan or a modification of a plan".

b) Section 1330(b) itself refers to confirmation by the court of "a modification of the plan under section 1329". Subsection (a) of §1329 provides that "At any time after confirmation…the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim". Nobody would dare suggest that every time any of them seeks such modification they must file an adversary proceeding rather than just a "request" by motion. Such a proceeding would be extremely impractical and superfluous for the protection of anybody's right. Consequently, §1329(b)(2) provides that it is "after notice and a hearing", not pleadings, pre-trial conference, discovery, and a trial, that "the plan as modified becomes the plan…unless…disapproved". Sections 942, 1127, and 1229 also command this common sense and practical construction for modifications of plans.

c) The reference in §1330(b) to §1307 includes the latter's subsection (c)(5) dealing with "denial of a request made for additional time for filing another plan". The procedural vehicle used

for such request is illustrated by analogy to Rule 1007, which provides for using a motion:

> FRBkrP 1007(a)(4) Extension of time
>
> > Any **extension of time** for the filing of the lists required by this subdivision may be granted only **on motion** for cause shown **and on notice** to the United States trustee and to any trustee, committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code, or **other party as the court may direct.** (emphasis added)

39. All this goes to showing that the proper procedural vehicle for making a "request" is a motion. This conclusion cannot be contradicted by FRBkrP 7001(5), which provides that "a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan" is an adversary proceeding governed by the rules of Part VII. For one thing, the Advisory Committee Notes to this section limits the scope of Part VII by stating its purpose:

> ADVISORY COMMITTEE NOTES
>
> …
>
> These Part VII rules are based on the premise that **to the extent possible practice** before the **bankruptcy** courts and the **district courts** should be **the same**. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure…(emphasis added)

40. The phrase "to the extent possible" indicates that there are limits to the application of Part VII in order to achieve the overriding objective of its use, namely, to make practice in bankruptcy and district court the same. As a matter of fact, in district court the procedural vehicle for a "request" is a motion, not the commencement of a whole new case:

> FRBkrP 8011. Motions
>
> (a) Content of motions; response; reply
>
> > A **request** for an order or other relief **shall** be made by filing with the clerk of the **district court** or the clerk of the bankruptcy appellate panel a **motion** for such order or relief **with proof of service on all other parties** to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall **state** with particularity the **grounds** on which it is based, and shall **set forth** the o**rder or relief sought**.…(emphasis added)

41. The district courts apply the FRCivP in non-bankruptcy practice. Rule 7(a) provides for certain initial pleadings, but thereafter, relief is requested by motion alone:

FRCivP 7. Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim, denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if **a person who was not an original party is summoned** under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An **application** to the court for an order **shall** be by **motion** which, unless made during a *hearing* **or** *trial*, shall be made in writing, shall **state** with particularity the **grounds** thereof, and shall **set forth** the **relief** or **order sought**. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. (emphasis added) (note that a hearing is not a trial)

42. FRBkrP 1001 on the Scope of Rules helps to limit the scope of Rule 7001 by stating that "these rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding", whereby it makes a distinction between a case and a proceeding. For this distinction to be meaningful, a case and a proceeding cannot be identical: Some provisions must apply to one but not to the other because each is used under some circumstances for some purposes but not others. This allows Rule 7001 to be reasonably construed to mean that when an order to revoke requires a proceeding, for example, when "a person who was not an original party is summoned", then it is an adversary proceeding governed by Part VII, which affords that person all procedural formalities and safeguards; otherwise, the procedural vehicle for revocation involving only parties to an ongoing case is a "request" made by motion under Rule 9013. Only this construction makes it "just, speedy, and inexpensive" for parties to the case to "request" revocation by motion. (See *Stumpf v. McGee* (*In re O'Connor*), 258 F.3d 392 (5th Cir. 2001) supporting the view that liberal construction to allow disposing of matters without unnecessary formalities is consistent with Rule 1001.)

43. This view is compelled also by the consistent drafter rule of construction providing that where one construction of a provision will render it consistent with the rest of the instrument of which it forms part it is to be preferred over another construction that would make it inconsistent, for

the drafter of the instrument must be presumed to have reasonably intended all the provisions of the instrument to attain their individual objective while reinforcing each other as a means to attain the overriding objective of the whole instrument.

44. Moreover, the construction rule of subordination[1] states that a document that is intended to assist in the understanding and implementation of an instrument cannot be construed in a way that contradicts the instrument's provisions, for to do so would invert their relation, where the instrument is the principal controlling the subordinate assistant, and defeat its purpose. Such illogical construction would be especially confusing here since the term "on request" occurs throughout the Bankruptcy Code 48 times[2] (+ "upon request" 2 + "X requests" 7 + "X requested" 8 + "requesting party" 4). By contrast, "adversary proceeding" does not appear in the Code, which is the controlling instrument, even once –nor in BAPCPA of 2005, Pub. L. No. 109-8, 119 Stat. 23–, but is only a term introduced by its subordinate FRBkrP. So to force the subordinate Rules to substitute one of its terms for a well-defined and frequently used term of the principal Code and do so not even consistently, but rather sometimes reading it to mean that an adversarial proceeding is required and other times that a motion is necessary, would create ambiguity, and thus uncertainty that would impair the Code's understanding and implementation.

45. The application of the rule of subordination is required by the FRBkrP's enabling act, to wit, 28 U.S.C. §2075, which limits the scope of FRBkrP:

> 28 U.S.C. §2075
>
> The Supreme Court shall have power to prescribe by general rules, the forms of process, writs, pleadings and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge or modify any substantive right.

---

[1] The Legislative Statements accompanying 11 U.S.C. §102 state that "Section 102 specifies various rules of construction but is not exclusive. Other rules of construction that are not set out in title 11 are nevertheless intended to be followed in construing the bankruptcy code".

[2] The count here and elsewhere result from applying the search function of Adobe Acrobat to the term in question in the Bankruptcy Code.

46. Thus, the Court of Appeals for the Second Circuit stated in *Term Loan Holder Comm. v. Ozer Group, L.L.C.* (*In re The Caldor Group*), 303 F.3d 161 (2d Cir. 2002) that forsaking the plain meaning of a provision of the Bankruptcy Code solely because that meaning conflicts with a bankruptcy rule would run afoul of 28 U.S.C. §2075. In the same vein, the Court for the Third Circuit in *Branchburg Plaza Assocs., L.P. v. Fesq* (*In re Fesq*), 153 F.3d 113, 116-118 (3d Cir. 1998), recognized the principle that FRBkrP cannot override the statutory terms of the Bankruptcy Code, particularly given the plain language of §1330.

47. It follows that Rule 7001(5) cannot be construed to require an adversarial proceeding whenever revocation is sought since that would contradict the plain language of §1330 and Rule 9013, which jointly provide for a "request by motion", and create interpretative inconsistency with every other section of the Code providing for action "on request" of a party. This harmful effect can be prevented by applying the rule of subordination. Its application is implicit in Rule 9009, which provides that "The Official Forms…shall be construed to be consistent with these rules and the Code".

48. To allow FRBkrP to disregard the plain language of §1330 would have an even more harmful effect on the whole Code because the term "on request" is used there frequently in tandem with the phrase "after notice [or "…to X"] and a hearing", which occurs 80 times in the Code. This reasoning flows objectively from the statements of the Code itself, which provides thus:

> §102 Rules of construction
> …
> HISTORICAL AND STATUTORY NOTES
> Revision Notes and Legislative Reports
> 1978 Acts.…Paragraph (1) defines the concept of "after notice and a hearing". **The concept is central to the bill** and to the separation of the administrative and judicial functions of bankruptcy judges. The phrase means after **such notice as is appropriate in the particular circumstances** (to be prescribed by either the Rules of Bankruptcy Procedure or by the court in individual circumstances that the Rules do not cover. In many cases, the Rules will provide for combined notice of several proceedings), and such opportunity for a **hearing as is appropriate in the particular circumstances**. Thus a hearing will not be necessary in every circumstance. If there is no objection to the proposed action, the action may go ahead without court action…(only emphasis added)

49. Hence, for FRBkrP to force upon "on request" a meaning incompatible with its complementing phrase "after notice and a hearing" would impair throughout the Code the understanding and implementation of both terms, one of which is "central" to the Code and its implementation by judges.

50. The fact that "notice" and "hearing" mean "such notice…[and] hearing as is appropriate in the particular circumstances" indicates that their use is subject to an element of discretion that differentiates them from the complaint and answer, which by contrast are required whenever an adversary proceeding is commenced, not to mention the trial, which is the purpose of such proceeding and the necessary procedural step for the court to determine it.

51. The analysis of the phrase "on request…after notice and a hearing", found not only in §1330(a) in connection with asking for revocation of plan confirmation, but also numerous times throughout the Bankruptcy Code, indicates that as a "central" concept it is intended to have the same meaning in each of its occurrences: As a rule, it identifies a petition within an ongoing judicial action for an intermediate act that is communicated among parties and a court already known to each other through the circumstantially flexible, speedy, and inexpensive procedural vehicle of a motion. Only in circumstantial exceptions does it refer to the rigid mechanism of an adversary proceeding for initially bringing parties under the jurisdiction of the court and conducting them through a series of time consuming and expensive procedural stages.

52. Actually, courts have recognized that even though an action is included in Rule 7001 as an adversary proceeding, a variety of circumstances have warranted their dispensing with such requirement and allowing action upon motion of a party (E:22), for example, where no objection to proceeding by motion has been raised –none was raised in the instant case-; the rights of the parties have been protected by the notice given –as was the case here since the DeLanos answered the motion and asked that it be denied (E:20)-; and speedy action is necessary –as is here since not revoking the plan confirmation allows the parties to the fraud to continue

benefiting from it to the detriment of other parties and the court as an institution-.

IV. Dr. Cordero was named and treated as a creditor by the DeLanos in their bankruptcy case and still has a stake in its outcome and can significantly affect it through his appeal so that he has standing as a party in interest to call by motion for the revocation due to fraud of their plan's confirmation

53. While the term "party in interest" is not defined in the Bankruptcy Code or FRBkrP, the Code does comment on it as follows:

> §102 Rules of construction
> …
> HISTORICAL AND STATUTORY NOTES
> Legislative Statements
> …the phrase "on request of a party in interest" or a similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting sua sponte. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.

54. Courts have construed "party in interest" as a broad term in light of the expansive and frequent use -64 times- that the Code makes of it. This is well illustrated in 11 U.S.C. §1109(b), where the Code not only uses the term, but also spells out what it includes by giving what under §102(3) are non-limiting examples. Courts have commented on this section thus:

> Although the term "party in interest" has not been defined anywhere in the Bankruptcy Code or Rules, it is to be construed broadly, in order to allow parties affected by a chapter 11 case to appear and be heard [*citations omitted*]. As the bankruptcy court noted in the *Johns-Manville* case, "[T]he concept of 'party in interest' is an elastic and broad one designed to give the Court great latitude to insure fair representation of all constituencies impacted in any significant way by a Chapter 11 case." *In re Johns-Manville Corp., 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984).* The basic test under section 1109(b) is "whether the prospective party in interest has a sufficient stake in the outcome of the proceeding so as to require representation." *In re Amatex Corp., 755 F.2d 1034, 1042 (3rd Cir. 1985).*

55. In deciding how to determine the scope of "party in interest", such as under §1144, which just as §1330(a), provides that "on request of a party in interest…the court may revoke such order [of confirmation]…if such order was procured by fraud", courts have reasoned thus:

> Party in interest is an expandable concept depending on the particular factual context in which it is applied. The purpose is to permit the involvement of those persons and interests which will be affected by the reorganization process. *In re River Bend- Oxford Assoc., 23 C.B.C.2d 535, 114 B.R. 111 (Bankr. D. Md. 1990)*. *See also In re Public Serv. Co. of New Hampshire, 88 B.R. 546, 550-51 (Bankr. D.N.H. 1988).*

56. It follows that the key factors in according "party in interest" status are the impact that a case can have on the rights of a person or entity and the need to allow such person or entity to participate in the case to protect their rights since the court is not permitted to act sua sponte to protect them. (See also 7 *Collier on Bankruptcy* § 1109.LH[2] p. 1109-23 (15th Ed. Revised)).

57. Dr. Cordero satisfies these criteria. Indeed, it was the DeLanos who named him as a creditor in Schedule F to their bankruptcy petition. For months they treated him as such, even producing documents **1)** at his sole instigation since none of the other 20 creditors requested any documents; **2)** although he was the only creditor to file with Judge Ninfo and serve on them written objections, dated March 4, 2004, to the confirmation of their plan; and **3)** despite his having objected to the plan at the meeting of creditors on March 8, 2004, which he was the only creditor to attend. Based on the objectively insufficient, token documents that they produced, Dr. Cordero showed in his written statement of July 9, 2004, filed with the Judge and served on the DeLanos, that the latter had engaged in bankruptcy fraud, particularly concealment of assets. In reaction thereto, on July 22, the DeLanos resorted to the artifice of a motion to disallow his claim so that through disallowance he would be stripped of standing. This would prevent him from further requesting that they be investigated for fraud and required to produce documents as obviously appropriate to support their petition as their bank account statements, but which could expose their fraud by revealing money flows leading to concealed assets, thereby calling into question all those who had disregarded the evidence. So Judge Ninfo disallowed Dr. Cordero's claim at a sham evidentiary hearing on March 1, 2005, and in his order of April 4, now on appeal, and confirmed their plan at a July 25 hearing and in his August 9 order (¶17 above; E:4).

58. It is undeniable that during the pendency of his appeal from the disallowance Dr. Cordero has an interest in the DeLanos' handling of their assets, for what would be the point of having his claim reinstated only to find out that even their known assets were unavailable to satisfy his claim? Likewise, if an investigation found that they, with the support of others, did commit and cover up bankruptcy fraud, in addition to that finding buttressing his claim, it would have a major impact on the DeLanos' estate, either by depleting it through criminal fines or expanding it by discovering concealed assets, both of which would affect his recovery. Hence, how can it be even questioned that Dr. Cordero does have §1330(a) party in interest status and should be allowed both to move for revocation and have evidence of the DeLano's fraud examined by the court?

V. Conclusion and Request for Relief

59. There is no doubt that the analysis presented above will be lost on Judge Ninfo and the others who like him have demonstrated their unwillingness and inability to analyze and apply the law. Yet, that analysis serves the purpose of preserving the objection in the hope that the appellate judges of the Court of Appeals, and all the more so the justices of the Supreme Court if they grant certiorari, will consider these legal points and address them in determining the case.
60. Those judges will have the inclination to consider also the facts that have occurred during the last 22 months since the DeLanos filed their petition of January 26, 2004. The facts show a series of acts of disregard for the law, the rules, and the facts forming a pattern of non-coincidental, intentional, and coordinated wrongdoing. To such series is added the latest one in which Judge Ninfo arbitrarily and discriminatorily deprived Dr. Cordero of the opportunity to appear and be heard on his own motion to revoke the DeLanos' plan confirmation, and then maneuvered to hold a hearing in the sole presence of Trustee Reiber, who had had not a word to counter Dr. Cordero's motion of August 23 in District Court challenging his scrap "Report" but

who in Dr. Cordero's absence engaged in a "deliberation" (E:21) on it with Judge Ninfo, whereby both blindsided him at yet another sham hearing. In its wake, the Judge denied the motion for revocation due to fraud through a fiat dictated by the self-preservation interest of not exposing, and implicating himself and others in, a bankruptcy fraud scheme. Thereby Judge Ninfo has denied Dr. Cordero his 5th Amendment right to due process of law and abused his judicial power in pursuit of objectives inimical to his office and the integrity of the courts. It is a travesty of justice to allow a case so tainted by fraud to remain in a court so determined not to examine it for fraud that it will not even identify the substantive issue of a motion by its name: *"fraud"!*

61. Therefore, Dr. Cordero respectfully requests that the Bankruptcy Court:

a) quash as unlawful Judge Ninfo's order of November 22, 2005, denying Dr. Cordero's motion for revocation of the confirmation of the DeLanos' plan;

b) revoke under 11 U.S.C.§1330(a) Judge Ninfo's order of August 9, 2005, confirming the DeLanos' plan because the confirmation was procured by fraud;

c) provide a statement of reasons for Judge Ninfo denying in his November 10 letter Dr. Cordero's request to appear by phone at the hearing of his revocation motion and then denying his request on the 14th to reply by fax before the hearing on the 16th;

d) remove under §324(a) Trustee Reiber from the *DeLano* case;

e) remand, in the interest of justice and judicial economy pending the appeal, *DeLano* and *Pfuntner* to the U.S. District Court for the Western District;

f) disqualify Judge Ninfo from *DeLano* and *Pfuntner* or cause him to recuse himself;

g) grant Dr. Cordero every other fair and just relief.

Dr. Richard Cordero

Dated: December 6, 2005

59 Crescent Street,
Brooklyn, NY 11208

Dr. Richard Cordero;
tel. (718) 827-9521

Table of Exhibits

(the exhibits not previously served or not available on the online docket are attached to the motion)

in support of the motion to quash the order denying revocation of the confirmation of the plan in *In re DeLano*, revoke confirming order, and remand the case to WDNY

submitted on December 6, 2005, to the Bankruptcy Court

by Dr. Richard Cordero

ToE:# = entry no. E:#=exhibit page no.

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. on the following parties a copy of my notice of motion and motion of December 6, 2005, to quash the order in Bankruptcy Court denying revocation of the confirmation of the plan in *In re DeLano*, revoke the confirming order, and remand the case to the District Court:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

On December 9, 2005, appellant filed a motion to withdraw two cases, *In re DeLano*, No. 04-20280, and *Pfuntner v. Gordon et al.*, No. 02-2230, from the United States Bankruptcy Court, pursuant to 28 U.S.C. § 157(d), and for other miscellaneous relief. (Dkt. #28).

Appellant's motion is denied in all respects. No cause has been shown to warrant withdrawal under 28 U.S.C. § 157(d), and there is no basis for the other relief that appellant has requested.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
December 19, 2005.

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