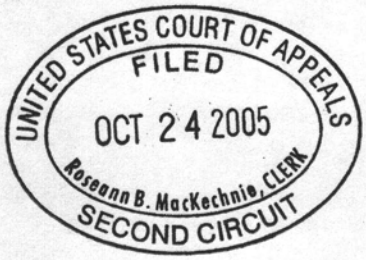
UNITED STATES COURT OF APPEALS
For The
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse at Foley Square, in the City of New York, on the 24th day of October, two thousand and five,

PRESENT: Hon. John M. Walker, Jr.,
Chief Judge
Hon. Dennis Jacobs
Hon. Guido Calabresi
Hon. José A. Cabranes
Hon. Chester J. Straub
Hon. Rosemary S. Pooler
Hon. Robert D. Sack
Hon. Sonia Sotomayor
Hon. Robert A. Katzmann
Hon. Barrington D. Parker, Jr.
Hon. Reena Raggi
Hon. Richard C. Wesley
Hon. Peter W. Hall,
Circuit Judges.



IT IS HEREBY ORDERED, that the Local Rules of the United States Court of Appeals for the Second Circuit are hereby amended on an interim basis by: (1) the adoption of Interim Local Rule 32(a)(1), and the adoption of Interim Local Rule 25. **These interim Local Rules will take effect on December 1, 2005,** following which permanent adoption will be considered. Anyone wishing to comment should do so, in writing, to the Clerk of Court, 40 Foley Square, Room 1802, New York, NY, 10007. Comments should be submitted by November 30, 2005.

Local Rule 32. Briefs and Appendix.

(a) **Form of Brief**

1. **Briefs in Digital Format.**

(A) Filing requirement. Every brief filed by a party represented by counsel must be submitted in a Portable Document Format (PDF), in addition to the required number of paper copies, unless counsel certifies that submission of a brief as a

PDF document is not practical or would constitute hardship. A party not represented by counsel is encouraged, but is not required, to submit a brief as a PDF document, in addition to the required number of paper copies. The PDF version of the brief must be submitted as an email attachment to <briefs@ca2.uscourts.gov>. Any party, whether represented by counsel or not, who does not provide a brief in PDF format, must file one unbound copy of the paper brief.

(B) Content. The PDF document must contain the entire brief, and need not, but may contain any supplemental material that is bound with the paper brief. A manual signature need not be included on the PDF copy.

(C) Format. The digital version of the brief must be in Portable Document Format (also known as PDF or Acrobat format). Converting a document into PDF format by scanning the document does not comply with this rule.

(D) Time for filing. The PDF version of a brief required by this rule must be filed no later than the time for filing the paper copies of a brief.

(E) Virus protection. Each party submitting a PDF brief must provide a signed paper document which certifies that the PDF brief has been scanned for viruses and that no virus has been detected. The signed paper certificate should be filed along with the paper briefs. A PDF version of the certificate, which need not include a manual signature, must accompany a PDF brief.

(F) Identifying Information. A party submitting a PDF brief shall provide the following identifying information in the "Subject" or "Re" box of the header of an email that transmits an attachment: the docket number; the name of the party on whose behalf the brief is filed; the nature of the brief, *i.e.*, "appellant's brief," "appellee's brief," "appellant's reply brief," "amicus brief;" and the date the PDF brief is submitted to the Court.

(G) Corrections. If a PDF brief is corrected, a new email attachment with the corrected version shall be submitted, and the label, in addition to the Identifying Information required in subsection a (1) (F), shall add the date the corrected version is submitted to the court.

(H) Email Service. A copy of the PDF version of a brief must be emailed to all parties represented by counsel who have not been exempted from filing a PDF brief, and to those parties not represented by counsel who elected to submit a PDF brief.

Local Rule 25. Filing and Service

To facilitate the Clerk's Office's ability to scan documents, any paper filing, except a paper brief accompanied by a PDF brief submitted pursuant to Local Rule 32(a)(1)(A), must include one unbound copy (papers not stapled together or otherwise attached). The use of paper clips and rubber bands is permitted. When only the original document is filed, the original copy must be unbound.

IT IS SO ORDERED.

FOR THE COURT:

Roseann B. MacKechnie

Roseann B. MacKechnie
Clerk of Court

Date: October 24, 2005

United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

IN RE: DAVID G DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

SSN #1: XXX-XX-3894
SSN #2: XXX-XX-0517

MOTION TO ALLOW CLAIMS

Pursuant to 11 U.S.C. 704(5), the trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

Claim #	Name and Address of Creditor	Amount	Forgive %	Classification
001	SHERMAN ACQUISITIONS LP / D/B/A/RESURGENT CAPITAL SERVI PO BOX 10587 / GREENVILLE, SC 29603	1,991.00	87.3900%	Unsecured
002	BANK OF AMERICA / P O BOX 970 NORFOLK, VA 23501	3,335.08	87.3900%	Unsecured
003	B-FIRST, LLC / % WEINSTEIN TREIGER & RILEY, P.S. 2101 FOURTH AVE., STE. 900 / SEATTLE, WA 98121	10,203.24	87.3900%	Unsecured
004	B-FIRST, LLC / % WEINSTEIN TREIGER & RILEY, P.S. 2101 FOURTH AVE., STE. 900 / SEATTLE, WA 98121	5,317.97	87.3900%	Unsecured
005	BANK ONE / CARD MEMBER SERVICE P O BOX 15153 / WILMINGTON, DE 19886-5153	None	87.3900%	Not Filed .00
006	BANK ONE/FIRST USA BANK / PO BOX 517 RECOVERY DEPT / FREDERICK, MD 21705-0517	None	87.3900%	Not Filed .00
007	CAPITAL ONE / P O BOX 85147 RICHMOND, VA 23285	None	87.3900%	Not Filed .00
008	CAPITAL ONE / P O BOX 85147 RICHMOND, VA 23285	None	87.3900%	Not Filed .00
009	CAPITAL ONE AUTO FINANCE / P O BOX 260848 PLANO, TX 75026	6,900.00 8.2500%	From 07/25/2005	Secured
009	CAPITAL ONE AUTO FINANCE / P O BOX 260848 PLANO, TX 75026	3,853.28	87.3900%	Unsecured
010	CAPITAL ONE / C/O TSYS DEBT MANAGEMENT P.O. BOX 5155 / NORCROSS, GA 30091	None	87.3900%	Not Filed .00
011	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	11,616.06	87.3900%	Unsecured
012	CHASE MANHATTAN BANK USA / JP MORGAN CHASE 1820 E SKY HARBOR CIRCLE SOUTH / PHOENIX, AZ 85034-9701	None	87.3900%	Not Filed .00
013	CITIBANK/CHOICE / P O BOX 6305 EXCEPTION PYMT PROCESSING / THE LAKES, NV 88901-6305	None	87.3900%	Not Filed .00
014	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	2,227.57	87.3900%	Unsecured
015	SHERMAN ACQUISITIONS LP / D/B/A/RESURGENT CAPITAL SERVI PO BOX 10587 / GREENVILLE, SC 29603	4,170.45	87.3900%	Unsecured
016	DISCOVER FINANCIAL SERVICES / P.O. BOX 8003 HILLIARD, OH 43026	5,755.97	87.3900%	Unsecured
017	DISCOVER FINANCIAL SERVICES / P.O. BOX 8003 HILLIARD, OH 43026	None	87.3900%	Not Filed .00
018	DR RICHARD CORDERO / 59 CRESCENT STREET BROOKLYN, NY 11208-1515	None	87.3900%	Unsecured
019	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	2,137.64	87.3900%	Unsecured
020	GENESEE REGIONAL BANK / F/K/A LYNDON GUARANTY BANK 3380 MONROE AVE. / ROCHESTER, NY 14618			DirectPay 76,300.71
021	HSBC BANK USA / P.O. BOX 4215 BUFFALO, NY 14273-4215	9,447.80	87.3900%	Unsecured
022	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	6,812.31	87.3900%	Unsecured

United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

IN RE: DAVID G DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

SSN #1: XXX-XX-3894
SSN #2: XXX-XX-0517

MOTION TO ALLOW CLAIMS

Pursuant to 11 U.S.C. 704(5), the trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

Claim #	Name and Address of Creditor	Amount	Forgive %	Classification
023	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	19,272.56	87.3900%	Unsecured
024	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	3,931.23	87.3900%	Unsecured
025	CITI CARDS / PO BOX 20363 ATTN: BK DEPT / KANSAS CITY, MO 64195-0363	3,970.30	87.3900%	Unsecured
026	CITI CARDS / PO BOX 20363 ATTN: BK DEPT / KANSAS CITY, MO 64195-0363	None	87.3900%	Not Filed .00
027	WELLS FARGO FINANCIAL NY INC / 4137 121ST STREET URBANDALE, IA 50323	980.22	87.3900%	Unsecured
028	THE RAMSEY LAW FIRM / P.O. BOX 201347 ARLINGTON, TX 76006	None	87.3900%	Unsecured
029	GULLACE & WELD / 500 FIRST FEDERAL PLAZA ROCHESTER, NY 14614	None	87.3900%	Unsecured
030	BECKET AND LEE LLP / P.O. BOX 35480 NEWARK, NJ 07193	None	87.3900%	Unsecured
	Total	101,922.68		

CHRISTOPHER K WERNER, ESQ BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000	9,948.00	Debtor's Attorney

Your Trustee has examined the claims and recommends to the Court that they be deemed allowed for the amounts claimed, payable in the manner classified subject to the provisions of the plan and other Court orders.

WHEREFORE, the Trustee prays that the foregoing claims be allowed as set forth above.

/s/ George M. Reiber
George M. Reiber
Standing Chapter 13 Trustee

NOTICE

At Rochester, NY

PLEASE TAKE NOTICE that the above claims are allowed as recommended by the Trustee and payable as provided by the debtor's plan. The debtor and debtor's attorney of record are hereby advised that written application for modification of this notice must be made within 30 days from the date of the certificate of mailing of this notice. The motion to allow claims is deemed approved without a separate order of this Court, absent a written application for modification.

CLERK /s/ Paul R. Warren

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Notice was sent electronically or by ordinary US Mail, postage prepaid on _____ to the debtor and attorney for the debtor.

/s/ _____

Trustee Reiber's list of 12/7/05 of allowed claims that forgive 87.39% of DeLanos' debt

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

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U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK [LIVE] (Rochester)
CIVIL DOCKET FOR CASE #: 6:05-cv-06190-DGL

Cordero v. DeLano et al
Assigned to: Hon. David G. Larimer
Cause: 28:0158 Notice of Appeal re Bankruptcy Matter (BA

Date Filed: 04/22/2005
Jury Demand: None
Nature of Suit: 422 Bankruptcy Appeal (801)
Jurisdiction: Federal Question

Appellant

Dr. Richard Cordero represented by **Richard Cordero**
59 Cresent Street
Brooklyn, NY 11208
PRO SE

V.

Appellee

David DeLano represented by **Christopher K. Werner**
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300, ext 1254
Fax: 484-238-9054
Email: cwerner@boylanbrown.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Appellee

Mary Ann DeLano represented by **Christopher K. Werner**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/22/2005	1	Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 2-04-20280-JCN. File received, filed by Richard

		Cordero. (Attachments: # 1 Designation of Items in the Record and Statement of Issues on Appeal)(BJB,) (Entered: 04/22/2005)
04/22/2005	2	ORDER directing thatAppellant shall file and serve its brief within twenty (20) days after entry of this order on the docket and that Appellee(s) shall serve and file its brief within twenty (20) days after service of appellant's brief. Signed by Hon. David G. Larimer on 4/22/05. (BJB,) (Entered: 04/22/2005)
05/02/2005	3	OBJECTIONS to Order, 2 filed by Appellant Richard Cordero. (EMA,) (Entered: 05/03/2005)
05/03/2005	4	ORDER re 3 Objections -- non-motion filed by Richard Cordero. Appellant Brief due by 6/13/2005. Signed by Hon. David G. Larimer on 5/3/05. (EMA,) (Entered: 05/03/2005)
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)
05/18/2005	7	MOTION to Strike and for additional time RE: 6 Order granting in part Appellant'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., by Richard Cordero.(BJB,) (Entered: 05/19/2005)
06/14/2005		Remark - Notified by Bankruptcy Court that appeal filing fee paid by Appellant on this date (BJB,) (Entered: 10/17/2005)
06/23/2005	8	NOTICE of attempts to obtain transcripts by Richard Cordero (BJB,) (Entered: 06/24/2005)
06/23/2005	9	MOTION to Join, MOTION to Stay by Richard Cordero.(BJB,) (Entered: 06/24/2005)
07/18/2005	10	MOTION to Stay by Richard Cordero. (Attachments: # 1 Proposed Order)(BJB,) (Entered: 07/18/2005)

07/18/2005	11	NOTICE of letter RE: Transcript Request by Richard Cordero (BJB,) (Entered: 07/18/2005)
07/19/2005	12	AFFIDAVIT in Opposition re 10 MOTION to Stay filed by Mary Ann DeLano. (Attachments: # 1 Covering Letter to Judge Larimer# 2 Certificate of Service Certificate of Service Statement Opposition Cordero Motion)(Werner, Christopher) (Entered: 07/19/2005)
07/22/2005	13	MOTION to have the Bankruptcy Court Reporter refferred to the Judicial Conference by Richard Cordero.(BJB,) (Entered: 07/22/2005)
08/31/2005	14	MOTION to Compel Production of Documents and Take Other Actions Over Bankruptcy Court and of Appellant's Right to Appeal and for the Proper determination of this Appeal by Richard Cordero. Attachments: #(1) Certificate of Service; #(2) Proposed Order; #(3) Exhibits 1 - 6; #(4) Exhibits 7 - 11; #(5) Exhibits 12 - 18. (JHF) (Entered: 08/31/2005)
09/02/2005	15	REPLY/RESPONSE to re 14 MOTION to Compel filed by James Pfuntner. (MacKnight, David) (Entered: 09/02/2005)
09/07/2005	16	RESPONSE to Motion re 14 MOTION to Compel filed by David DeLano, Mary Ann DeLano. (Attachments: # 1 Certificate of Service)(Werner, Christopher) (Entered: 09/07/2005)
09/07/2005	17	CERTIFICATE OF SERVICE by James Pfuntner re 15 Reply/Response (MacKnight, David) (Entered: 09/07/2005)
09/13/2005	18	ORDER denying, in all respects, 13 Motion requesting that bankruptcy court reporter be referred to Judicial Conference. Signed by Judge David G. Larimer on 9/13/05. (PR,) (Entered: 09/13/2005)
09/26/2005	19	MOTION for Reconsideration re 18 Order on Motion for Miscellaneous Relief by Richard Cordero.(JHF) (Entered: 09/29/2005)
10/14/2005	20	ORDER denying 19 Motion for Reconsideration. Signed by Judge David G. Larimer on 10/14/05. (PR,) (Entered: 10/14/2005)
10/17/2005	21	ORDER denying 9 Motion for Joinder, denying 9 Motion to Stay, denying 10 Motion to Stay, denying 14 Motion to Compel. Signed by Judge David G. Larimer on 10/17/05. (PR,) (Entered: 10/17/2005)
10/27/2005	22	NOTICE OF COMPLIANCE with the order by Richard Cordero re 20 Order on Motion for Reconsideration. Appellant has requested a copy of the 3/1/05 hearing transcript and submitted a check for $650 to the court reporter within the 14 day time period as specified in the order. (JHF) (Entered: 10/27/2005)
11/15/2005	23	TRANSCRIPT of Proceedings held on 3/1/05 before Judge Hon. John C. Ninfo, II, U.S. Bankruptcy Court, Western District of New York.

		Court Reporter: Mary Dianetti. Paper copy maintained in Clerk's office. (JHF) (Entered: 11/15/2005)
11/17/2005	24	NOTICE OF FILING A MOTION IN BANKRUPTCY COURT to Revoke for Fraud the Confirmation of Debtors' Plan by Richard Cordero (JHF) (Entered: 11/17/2005)
11/17/2005	25	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 by Richard Cordero (JHF) (Entered: 11/17/2005)
11/17/2005	26	MOTION for the Court to comply with the FRBkrP for docketing the transcript, entering the appeal, and scheduling the appellate brief by Richard Cordero.(JHF) (Entered: 11/17/2005)
11/21/2005	27	ORDER granting in part and denying in part re 26 MOTION filed by Richard Cordero. Appellant shall file and serve his brief 12/23/2005. Appellees shall file and serve their briefs by 1/20/2006. In accordance with Fed. R. Bankr. P. 8008(a), briefs are deemed filed on the day of mailing. The remainder of Cordero's motion is denied. Signed by Hon. David G. Larimer on 11/21/05. (EMA,) (Entered: 11/21/2005)
12/09/2005	28	MOTION to Withdraw Cases from Bankruptcy Court and Declare Orders Null and Void Pending Appeal by Richard Cordero.(JHF) (Entered: 12/10/2005)
12/19/2005	29	ORDER denying 28 Motion to Withdraw . Signed by Judge David G. Larimer on 12/19/05. (EMA,) (Entered: 12/19/2005)
12/27/2005	30	Appellant's BRIEF by Richard Cordero. Attachments: #(1) Proposed Order; and, #(2) Certificate of Service.(JHF) (Entered: 12/28/2005)
12/27/2005	31	ADDENDUM in Support of 30 Appellant's Brief. Manual filing - paper copy maintained in Clerk's office. (JHF) Modified on 12/28/2005 (JHF) (Entered: 12/28/2005)
12/30/2005	32	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 by Richard Cordero. *Please note: this document was originally received by the Clerk's office on 12/27/05, but not filed due to a non-original signature on page one. A new page one with original signature was received and filed on 12/30/05. Both pages are included in the filing.* (JHF) (Entered: 01/04/2006)
01/06/2006	33	ORDER denying appellant's oral request that the Court file [31] Addendum electronically. The Court orders that the document be filed conventionally and maintained in paper form in the file located in the

		Rochester Clerk's office. Signed by Hon. David G. Larimer on 1/4/06. (JHF) (Entered: 01/06/2006)
01/20/2006	34	Appellee's BRIEF by David DeLano. (Palmer, Devin) (Entered: 01/20/2006)
01/20/2006	35	CERTIFICATE OF SERVICE by David DeLano re 34 Appellee's Brief (Palmer, Devin) (Entered: 01/20/2006)
01/24/2006	36	ORDER granting appellant's request for an enlargement of time to file reply to 34 Appellee's Brief. Appellant may file his reply by 2/10/06 and the brief will be deemed filed on the day of mailing. Signed by Hon. David G. Larimer on 1/24/06. (JHF) (Entered: 01/24/2006)
02/16/2006	37	APPELLANT'S REPLY with Proposed Order and Post-Addendum Items filed by Richard Cordero. (JHF) (Entered: 02/16/2006)

PACER Service Center

Transaction Receipt

05/10/2006 20:36:52

PACER Login:		**Client Code:**	
Description:	Docket Report	**Search Criteria:**	6:05-cv-06190-DGL Start date: 12/1/2005 End date: 5/10/2006
Billable Pages:	1	**Cost:**	0.08

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[Pst:1186-1188 reserved]

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

ADMINISTRATIVE PROCEDURES GUIDE

Revised: June 2004

Table of Contents

ADMINISTRATIVE PROCEDURES

The U.S. District Court for the Western District of New York permits attorneys to file documents with the Court from their own offices over the Internet. Only registered attorneys, as Officers of the Court, or their authorized employees or agents as provided in Section 1.c.iv, below, are permitted to file electronically. The term "Electronic Filing System" refers to the court's system that receives documents filed in electronic form. The term "Filing User" is used to refer to those who have a court-issued username and password to file documents electronically.

1. REGISTRATION FOR THE ELECTRONIC CASE FILING SYSTEM

a. Designation of Cases

Beginning January 1, 2004, all civil and criminal cases currently pending and newly filed, except as expressly noted herein, shall be assigned to the Electronic Case Filing System ("System"). Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a case assigned to the Electronic Filing System must be electronically filed.

b. Username and Password

Attorneys admitted to practice in this Court and currently in good standing, including those admitted pro hac vice and attorneys authorized to represent the United States, may register as Filing Users of the court's Electronic Filing System.

c. Registration

i. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, Internet e-mail address and a declaration that the attorney is admitted to the bar of this court. A completed registration form, in the form attached, must be submitted to the court by each attorney. The form may be duplicated for use. This form is also available on our web site at: www.nywd.uscourts.gov . Registration as a Filing User constitutes consent to electronic service of all documents as provided herein in accordance with the Federal Rules of Civil

Procedure.

ii. All registration forms must be mailed or delivered to the Office of the Clerk, U.S. District Court, 68 Court Street, Buffalo, NY 14202.

iii. The registering attorney's username and password will be mailed to the attorney in an envelope marked "Confidential," unless the Clerk's Office is notified, in writing, at the time of registration that the attorney wishes an alternate delivery method. The attorney's username and password combination serves as a signature for purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. The login and password issued to an individual attorney may be used only to file documents on behalf of that attorney.

iv. The Clerk's Office Help Desk Line will be activated on January 1, 2004 to assist users, in accordance with Section 2.o.ii, below.

v. A registered attorney may share his or her username and password with an authorized employee or agent of that attorney's law office or organization for purposes of filing. This does not in any way alter the fact that the attorney's username and password combination constitute that attorney's official signature on electronically filed documents.

vi. Registered attorneys will be able to change their own passwords. In the event that an attorney believes that the security of an existing password has been compromised and that a threat to the System exists, the attorney shall change their password immediately. In addition, the attorney shall give immediate notice by telephonic means to the Clerk of Court, Chief Deputy Clerk or Systems Manager and confirm by facsimile in order to prevent access to the System by use of the old password. Users may be subject to sanctions for failure to comply with this provision.

vii. A registered attorney whose e-mail address, mailing address, telephone or fax number has changed from that of the original Attorney Registration Form shall timely e-file a notice of a

change of address in each of his or her pending cases, and serve a copy of the notice on all other parties. Registered attorneys are responsible for updating this information in their user accounts in the System.

viii. The Court reserves the right to revoke or otherwise restrict a registered attorney's access to the System at any time should the Court have reasonable cause to believe that the attorney has misused the System. Electronic and written notice of any such revocation or restriction shall be provided to the attorney.

ix. Once registered, a Filing User may withdraw from participation in the Electronic Filing System only by permission of the Chief Judge of the District for good cause shown. The Filing User seeking to withdraw must submit a written request to the Chief Judge explaining the reason(s) or justification(s) for withdrawal. Upon the Chief Judge's approval of the request, the Clerk of Court shall delete the Filing User's username and password from the system, and notify the Filing User of same. It is the Filing User's responsibility to notify opposing counsel in all pending cases that the Filing User has been granted permission to withdraw from the Electronic Filing System and that all future service must therefore be made by conventional means.

2. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

a. Filing

i. Beginning January 1, 2004 all documents, except sealed papers and as expressly provided for in these guidelines, shall be electronically filed on the system. Electronic transmission of a document to the Electronic Filing System consistent with these procedures, whether accomplished by the Filing User or a Court User, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55. A document shall not be considered filed for purposes of the Federal Rules of Civil and Criminal Procedure until the filing party receives a System-generated

Notice of Electronic Filing.

(1) E-mailing a document to the Clerk's Office or to the assigned judge shall not constitute "filing" of the document.

ii. If the document to be filed requires leave of court such as an amended complaint or a document to be filed out of time, the proposed document shall be attached as an exhibit to the motion. If the motion is granted, the attorney must file the document electronically with the Court as a separate document.

iii. Courtesy copies of certain documents may be required. Filers should refer to the "Who Wants Paper" matrix published on the Court's website, www.nywd.uscourts.gov .

iv. Before filing a scanned document with the court, a Filing User must verify its legibility.

b. Official Court Record

i. The Clerk's Office will not maintain a paper court file in any case begun on or after January 1, 2004, except as otherwise provided herein. The official court record shall be the electronic file as stored by the court, and any conventional documents or exhibits filed in accordance with these procedures.

ii. Original documents must be retained by the filing party and made available, upon request, to the Court and other parties for a period of five years following the expiration of all time periods for appeals.

c. Complaints, Petitions, Summons and Charging Instruments

i. Complaints and petitions shall be filed, fees paid, and summonses issued and served in the traditional manner rather than electronically. Charging instruments in criminal cases shall be filed in the traditional manner rather than electronically. In addition, attorneys shall provide the complaint, petition or charging instrument in electronic format on a disk or CD, in PDF format, with signatures in accordance with Section 2.g, below.

If the complaint, petition or charging instrument is not provided in electronic format on a disk or CD, in PDF format, the document or documents will be scanned and uploaded to the System by Clerk's Office staff.

d. Attachments and Exhibits

i. Attachments and exhibits larger than five megabytes shall be filed electronically in separate five-megabyte segments.

ii. Filing Users must submit in electronic form all documents referenced as exhibits or attachments, except as otherwise provided herein. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The court may require parties to file additional excerpts or the complete document. A Filing User must request leave of the Court to file a document exhibit or attachment in non-electronic form.

iii. Exhibits such as videotapes and tape recordings shall be filed in the conventional manner with the Clerk of Court, and a Notice of Manual Filing shall be electronically filed by the filing party.

e. Timely Filing of Documents

i. A document will be deemed timely filed if filed prior to midnight Eastern Time, unless otherwise ordered by the Court. A document will be considered untimely if filed thereafter.

ii. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.

iii. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight

local time where the court is located in order to be considered timely filed that day.

f. Service of Documents by Electronic Means

i. By participating in the electronic filing process, parties consent to the electronic service of all documents, and must make available electronic mail addresses for service during the registration process. Upon the filing of a document by a party, a Notice of Electronic Filing, with a hyperlink to the filed document, will be automatically generated by the electronic filing system and sent via electronic mail to the e-mail addresses of all parties participating in the electronic filing system in the case. Electronic service of the Notice of Electronic Filing constitutes service of the filed document for all purposes of the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure and the Local Rules of this Court.

ii. A certificate of service on all parties entitled to service or notice is still required when a party files a document electronically. The certificate must state the manner in which service or notice was accomplished on each party so entitled. A certificate of service should be filed as an attachment to the document. A sample certificate of service is attached to these guidelines, and is also available on the Court's website at: www.nywd.uscourts.gov.

iii. A party who is not a registered participant of the System is entitled to a paper copy of any electronically filed pleading, document, or order. The filing party must therefore provide the non-registered party with the pleading, document or order according to the Federal Rules of Civil and Criminal Procedure. When mailing paper copies of documents that have been electronically filed, the filing party may include the "Notice of Electronic Filing" to provide the recipient with proof of filing.

iv. E-mailing or faxing a pleading or document to any party shall not constitute service of the pleading or document.

g. Signatures

i. Non-Attorney Signature Generally. If the original document requires the signature of a non-attorney, the filing party shall obtain the signature of the non-attorney on the document.

(1) The filing party or attorney then shall file the document electronically, or submit the document on disk to the Clerk's Office, indicating the signatory's name in the form **"s/(name)."**

(2) A non-filing signatory or party who disputes the authenticity of an electronically filed document or the authenticity of the signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

ii. Defendant Signatures in Criminal Cases. A document containing the signature of a defendant in a criminal case will be filed in a scanned format that contains an image of the defendant's signature.

iii. Attorney Signature. The username and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. A pleading requiring an attorney's signature must include a signature block in the following format:

s/attorney's typed name
Attorney for [plaintiff/defendant]
Firm Name
Address
Telephone Number
Email Address

For certificates of service, affidavits, affirmations and declarations only, the signature block may be in the following format:

s/attorney's typed name

(1) Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

iv. Multiple Signatures: For all judges except Judge Elfvin, the following procedure applies when a stipulation or other document requires two or more signatures:

(1) The filing party or attorney shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall obtain the signatures of all parties on the document.

(2) The filing party or attorney then shall file the document electronically indicating the signatories, e.g., **"s/Jane Doe," "s/John Smith," etc.**

(3) A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signatures themselves must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

v. Originals of all documents containing signatures must be retained by the filing party and made available, upon request, to the Court and other parties for a period of five years following the expiration of all time periods for appeals.

vi. Judge Elfvin requires, for stipulations only, that the original document with the signatures be scanned and emailed to his proposed order mailbox (see p. 9), or the original document with the signatures be submitted on paper.

h. Fees Payable to the Clerk

i. Any fee required for filing of a pleading or paper in District Court is payable to the Clerk of Court by check, money order

or cash. The Clerk's Office will document the receipt of fees on the docket with a text-only entry. The court will not maintain electronic billing or debit accounts for lawyers or law firms.

i. Orders and Judgments

i. All signed orders and judgments, except those under seal, will be electronically filed by the Court. Any electronically signed order or judgment has the same force and effect as a conventional order or judgment.

ii. The assigned judge, if appropriate, may issue routine orders by a text-only entry upon the docket. In such cases, no PDF document will issue; the text-only entry shall constitute the court's only order on the matter.

iii. Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Civ.P. 77(d) and Fed.R.Crim.P. 49(c). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

j. Proposed Orders

i. Proposed orders should be attached to an Internet e-mail sent to the e-mail address of the assigned judge. The e-mail addresses are as follows:

Chief Judge Arcara	arcara@nywd.uscourts.gov
Judge Larimer	larimer@nywd.uscourts.gov
Judge Skretny	skretny@nywd.uscourts.gov
Judge Siragusa	siragusa@nywd.uscourts.gov
Judge Curtin	curtin@nywd.uscourts.gov
Judge Elfvin	elfvin@nywd.uscourts.gov
Judge Telesca	telesca@nywd.uscourts.gov
Judge Foschio	foschio@nywd.uscourts.gov

Judge Scott . . . . . scott@nywd.uscourts.gov
Judge Feldman . . . . . feldman@nywd.uscourts.gov
Judge Schroeder . . . . . schroeder@nywd.uscourts.gov
Judge Payson . . . . . payson@nywd.uscourts.gov

No other documents, pleadings or electronic communications may be sent to the above e-mail addresses

ii. All proposed orders must be submitted in a format compatible with WordPerfect, which is a "Save As" option in most word processing software. Judges will not accept proposed orders in PDF format.

k. Title of Docket Entries

i. The party electronically filing a pleading or document shall be responsible for designating a docket entry title for the document by using one of the docket events prescribed by the court.

l. Correcting Docket Entries

i. Once a document is submitted and accepted it becomes part of the case docket. The System will not permit the non-court electronic filer to make changes to the document(s) or docket entry.

ii. A document incorrectly filed in a case may be the result of posting the wrong PDF file to a docket entry, or selecting the wrong document type from the menu, or entering the wrong case number and not catching the error before the transaction is completed. **The filing party should not attempt to re-file the document.**

iii. A soon as possible after an error is discovered, the filing party should telephone the Court's Help Desk number with the case number and document number for which the correction is being requested. If appropriate, the court will make an entry indicating that the document was filed in error. The filing party will be advised **if** the document needs to be re-filed. In such

cases, the Court will make a determination on the timeliness of the re-filed document.

m. Privacy

i. Redacted Documents. To comply with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, Pub. L. No. 107-347, filing parties shall omit or, where inclusion is necessary, partially redact the following personal data identifiers from all pleadings, documents, and exhibits, whether filed electronically or on paper, unless the assigned judge orders otherwise.

(1) Minors' names: Use the minors' initials;

(2) Financial account numbers: Identify the name or type of account and the financial institution where maintained, but use only the last four numbers of the account number;

(3) Social Security numbers: Use only the last four numbers;

(4) Dates of birth: Use only the year; and

(5) Other data as permitted by order of the court.

ii. Partially Redacted documents. In addition, the filing party may omit or, where inclusion is necessary, partially redact the following confidential information from all pleadings, documents, and exhibits, whether filed electronically or on paper, unless the assigned judge orders otherwise.

(1) Personal identifying number, such as driver's license number;

(2) Medical records, treatment and diagnosis;

(3) Employment history;

(4) Individual financial information; and

(5) Proprietary or trade secret information.

iii. Unredacted Documents. With leave of the court, a party may file under seal a document containing the unredacted personal data identifiers above. In Social Security review cases only, an unredacted copy of the complaint shall be provided to the Clerk's Office, and served on the opposing party or parties, upon the filing of the redacted complaint, as further provided in Section o.i.(5)(a) hereof.

(1) The party seeking to file an unredacted document shall file a motion or application to file the document under seal pursuant to the E-Government Act of 2002. A proposed order shall be submitted pursuant to procedures outlined in these guidelines.

(2) If the assigned judge grants the motion or application, the party shall deliver the unredacted document to the Clerk's Office for conventional filing under seal. The court will retain this paper document as part of the record.

(3) In granting the motion or application to seal, the assigned judge may require the party to file a redacted copy for the public record.

iv. The responsibility for redacting personal data identifiers rests solely with counsel and the parties. The Clerk's Office will not review documents for compliance with this rule, seal on its own motion documents containing personal data identifiers, or redact documents, whether filed electronically or on paper. Nothing in these redaction procedures shall be construed to create or constitute any type of evidentiary or discovery privilege.

n. Conventional Filing of Certain Types of Cases

i. Miscellaneous Civil and Miscellaneous Criminal cases traditionally filed under seal shall be filed conventionally. Such

cases will not be available electronically, except to court users, until such time as they are unsealed by order of the Court.

o. Conventional Filing of Documents

i. The following procedures govern documents filed conventionally. The court, upon application, may also authorize conventional filing of other documents otherwise subject to these procedures.

(1) Documents to be filed under seal. Documents ordered to be placed under seal must be filed conventionally and not electronically unless specifically authorized by the court. Except as otherwise provided herein, a party wishing a document to be filed under seal shall submit a paper motion to seal, along with the paper document to be sealed in a sealing envelope, and deliver same directly to chambers. If approved, the Judge will sign the sealing envelope and both the motion and the sealed document will be maintained in the envelope. The documents shall then be delivered to the Clerk's Office for conventional filing under seal. If the motion is denied, the documents will be returned to the attorney.

(2) Transcripts of Proceedings. Transcripts of court proceedings will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because transcripts will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the transcript is available in paper form at the Clerk's Office.

(3) Magistrate Judge Consents. Pursuant to Fed.R.Civ.P. 73(b), parties' filings of consent to jurisdiction by United States Magistrate Judge will continue to be treated as non-public documents until all parties have consented. Therefore, parties must file their consent forms in paper (either mailed or delivered to the Clerk's Office), because electronic filing of a Magistrate Judge consent form will create a public document. If all parties consent

to the jurisdiction of the Magistrate Judge, the Clerk will scan all consent forms which will then become public documents.

(4) Pro Se Filers. Pro Se filers shall file paper originals of all complaints, pleadings, motions, affidavits, briefs and other documents which must be signed or which require either verification or an unsworn declaration under any rule or statute. The Clerk's Office will scan these original documents into an electronic file in the System, but will also maintain a paper file.

(5) Habeas Corpus Cases. The administrative record in habeas corpus cases will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because the administrative record will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the record is available in paper form at the Clerk's Office.

(6) Affidavit in Support of a Motion to Withdraw as Counsel will be conventionally filed under seal, without prior application to the Court.

(7) In a criminal case, Affidavits in Support of a Rule 5K1.1 or Rule 35 Motion will be conventionally filed under seal, without prior application to the Court.

(8) Social Security Cases. Absent a showing of good cause, and except as provided in Section o(i)(4) above, all documents, notices and orders in social security reviews will be filed and noticed electronically, except as noted below.

(a) The complaint and other documents typically submitted at the time a social security case is filed initially will be filed and served according to 2.c of these procedures. In addition, an unredacted copy of the complaint, clearly marked as such,

shall be provided to the Clerk to be maintained in the case file.

(b) The administrative record in Social Security cases will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because the administrative record will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the transcript is available in paper form at the Clerk's Office.

(c) All other documents in the case, including briefs, will be filed and served electronically unless the court otherwise orders.

(d) To address the privacy issues inherent in social security review, Internet access to the individual documents will be limited to counsel and court staff. Docket sheets, however, will be available over the Internet to non-parties. Further, non-parties will continue to have direct access to the documents on file at the Clerk's Office.

p. System Availability

i. Although parties can file documents electronically 24 hours a day, attorneys are strongly encouraged to file all documents during normal working hours of the Clerk's Office (8:00 a.m. to 5:00 p.m. Eastern Time).

ii. The Clerk's Office has established a Help Desk Line to respond to questions regarding the electronic filing system and the registration process and to receive voice mail messages. The Help Desk Line will be staffed business days from 8:30 a.m. to 4:45 p.m. Eastern Standard Time (or Daylight Time when in effect), and will be available at all other times to record voice mail messages. Voice mail messages will be returned within one business day.

q. Technical Failures

i. A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

3. PUBLIC ACCESS TO THE SYSTEM

a. Public Access at the Court. A person may review at the Clerk's Office filings that have not been sealed by the court. Only a Filing User may file documents. Electronic access to the electronic docket and documents filed in the System is available for viewing to the public at no charge at the Clerk's Office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. Section 1914.

b. Internet Access. Remote electronic access to the System for viewing purposes is limited to subscribers to the Public Access to Court Electronic Records ("PACER") system. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in civil cases, but excluding review of calendars and similar general information. Parties' initial access to a document filed electronically is free of charge. Parties are encouraged to download or print the filed document when it is initially accessed via the Notice of Electronic Filing generated by the System. If parties remotely access the document again, they will be charged a fee of seven cents per page, up to a maximum of $2.10 per document. Each attachment in CM/ECF is considered a separate document. Therefore the cap will apply separately to each attachment over 30 pages.

c. Conventional Copies and Certified Copies. Conventional copies and certified copies of electronically filed documents may be purchased at the Clerk's Office. The fee for copying and certifying will be in accordance with 28 U.S.C. Section 1914.

d. Restricted Remote Access to Specified Cases and/or Documents. Remote access to criminal cases on the System is restricted to counsel on the case and court users. Cases filed under seal are accessible to court users only. Documents in social security review cases are remotely accessible to counsel on the case and court

users only. Documents filed under seal will not be electronically filed on the System, but will be maintained in paper form in the Court's file.

(SAMPLE)

United States District Court
Western District of New York

Case No.

Certificate of Service

I hereby certify that on , I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

1.

2.

And, I hereby certify that I have mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participants:

1.

2.

/s/ name

FIRM ADDRESS

E-MAIL ADDRESS

TELEPHONE NUMBERS

NOTICE

Effective March 1, 2004

All filings submitted to the U.S. District Court for the Western District of New York must be filed using the ECF system or be provided in PDF format on either MS-DOS formatted diskettes or CD-ROMs.

By Order of Chief Judge
Richard J. Arcara

Order Date: 6 February 2004

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter of:

Mandatory Filing of Documents by Electronic Means

Administrative Order

WHEREAS, The court having established, by General Order dated October 1, 2003, electronic filing procedures applicable to all civil and criminal cases, and

WHEREAS, it being in the court's interest to ensure compliance with such procedures by the practicing bar without any undue delay, it is

ORDERED, that effective March 1, 2004, any document (other than documents specifically exempted from electronic filing under the Administrative Procedures Guide published by the District) filed by an attorney in a case shall be filed electronically, either over the Internet or on diskette in PDF format, and it is further

ORDERED, that the Clerk is hereby authorized to reject for filing any document not submitted in accordance with the foregoing specifications.

Richard J. Arcara
Chief United States District Judge

Dated: Buffalo, New York
February 6, 2004

Who Wants Paper in CM/ECF

Judge	Courtesy Copies Wanted
Chief Judge Arcara	All dispositive motions. Objections to a Magistrate Judge's report and recommendation or decision and order. Motions for Temporary Restraining Orders and Preliminary Injunction Orders. All Statements with Respect to Sentencing Factors. All sentencing-related motions (i.e. motions for downward or upward departure). All bankruptcy appeal briefs.
Judge Larimer	All submissions pertaining to summary judgment motions. All submissions pertaining to preliminary injunctions.
Judge Skretny	Will request when needed. Compliance with the mandate of Local Rule 65 for TRO's.
Judge Siragusa	All dispositive motions. Objections to a Magistrate Judge's report and recommendation or decision and order. Motions for Temporary Restraining Orders and Preliminary Injunction Orders. All Statements with Respect to Sentencing Factors. All sentencing-related motions (i.e. motions for downward or upward departure). All bankruptcy appeal briefs.

Judge Curtin	All dispositive motions. Objections to a Magistrate Judge's report and recommendation or decision and order. Motions for Temporary Restraining Orders and Preliminary Injunction Orders. All Statements with Respect to Sentencing Factors. All sentencing-related motions (i.e. motions for downward or upward departure). All bankruptcy appeal briefs.
Judge Elfvin	Motions and supporting materials. Original stipulations, unless scanned showing all signatures.
Judge Telesca	Exhibits only.
Magistrate Judge Foschio	Non-dispositive motions. Will request dispositive motions when needed. All filings in all criminal proceedings.
Magistrate Judge Scott	All filings.
Magistrate Judge Feldman	Motions and supporting papers.
Magistrate Judge Schroeder	All criminal motions, responses, replies, memoranda of law and exhibits clearly marked**.** Civil motions for summary judgment and motions to dismiss are required.
Magistrate Judge Payson	Motions and exhibits.
Magistrate Judge Bianchini	**No paper.**

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

2120 U.S. COURTHOUSE
100 STATE STREET
ROCHESTER, NEW YORK 14614-1387
(585) 613-4000 ★ FAX (585) 613-4035
WWW.NYWD.USCOURTS.GOV

RODNEY C. EARLY
CLERK

JEANNE M. SPAMPATA
CHIEF DEPUTY

January 3, 2006

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

RE: 05-CV-6190L

Dear Mr. Cordero:

Unfortunately, local court rules prohibit the Clerk's office from accepting electronic filings, such as your recently submitted computer disk, from pro se parties; accordingly, we have returned your disk as enclosed.

Thank you for your consideration.

Sincerely,

John H. Folwell
Deputy Clerk

enclosure: one computer disk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

v.

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

ORDER

05-CV-6190L

Dr. Richard Cordero, appellant, has orally requested that the Addendum in Support of Appellant's Brief (Dkt. #31) be filed electronically. The request is denied. Appellant requests that this document be filed electronically on the case docket sheet. The document, printed on both sides of the page, exceeds 1,300 pages. Scanning this lengthy document into the system would be very time consuming and is unnecessary.

The Clerk's Office has filed this document conventionally, meaning that the document is not available online but is available for viewing by any interested party during normal business hours in the Clerk's Office.

Pursuant to Rule 83(b) of the Federal Rules of Civil Procedure, "[a] judge may regulate practice in any matter consistent with federal law . . . and local rules of the district." Further, the Court's own CM/ECF Administrative Procedures, which govern electronic filing in this district,

states in section 2(o)(i) that "[t]he court . . . may . . . authorize conventional filing of other documents otherwise subject to these procedures." In addition, pursuant to section 2(o)(i)(8)(c), "[a]ll other documents in the case, including briefs, will be filed and served electronically unless the court otherwise orders."

Appellant will not be disadvantaged. The document will be available for review by the Court on the appeal. Therefore, it is hereby

ORDERED that appellant's oral request that the Court file his Addendum in Support of Appellant's Brief (Dkt. #31) electronically is denied. The Court orders that the document be filed conventionally and maintained in paper form in the file located in the Rochester Clerk's Office.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 4, 2006

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant and creditor

APPELLANT'S BRIEF

v.

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:

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A. Tables of Authorities Cited, References, and Headings

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i) Cases Cited in the Designated Items

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ii) Statutes Cited in the Designated Items

d. Other Authorities

iii) Other Authorities Cited in the Designated Items

e. Rules

1) FRBkrP

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iv) Rules cited in the Designated Items

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v) Regulations Cited in the Designated Items

f. Treatises

vi) Treatises Cited in the Designated Items

2. References in the Brief to Designated Items and the Addendum

a. References to the DeLano Debtors' Petition for Bankruptcy

1) Statement of Financial Affairs

2) Schedule A

3) Schedule B

4) Schedule F

5) Chapter 13 Debt Repayment Plan

b. References in the Brief to the Designated Items

c. References in the Brief to the Addendum

d. References in the Brief to the Transcript

3. Headings of the Body of the Brief

B. Basis of Appellate Jurisdiction

1. This appeal is filed under 28 U.S.C.§158.

C. Issues Presented and Standard of Appellate Review

2. The issues presented herein are all legal and thus, should be reviewed de novo, *In re Bell*, 225 F.3d 203, 209 (2d Cir. 2000).

   a. Whether the judge's bias and disregard for the law, the rules, and the facts so infect the proceedings that due process of law was denied and his orders were unlawful;

   b. Whether the DeLanos' motion to disallow Dr. Cordero's claim was an artifice to prevent him from proving their fraud and was granted to protect a bankruptcy fraud scheme;

   c. Whether District Court Local Rule 5.1(h) on asserting a claim under RICO, 18 U.S.C. §1961 et seq., is void as inconsistent with notice pleading and the enabling provisions of FRCivP;

   d. Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process, provides for forum shopping, and denies equal protection so that it is unconstitutional.

D. Statement of the Case

1. Nature of the case

3. This is an appeal from the disallowance by U.S. Bankruptcy Judge John C. Ninfo, II, WBNY, of a creditor's claim in the voluntary bankruptcy case filed jointly by Mr. David and Mrs. Mary Ann DeLano (the DeLanos) under 11 U.S.C. Chapter 13 (hereinafter *DeLano*; references to §# are to Title 11 unless the context requires otherwise).

2. Course of the Proceedings

4. The DeLanos filed their bankruptcy petition on January 27, 2004 (*In re David DeLano and Mary Ann DeLano*, docket no. 04-20280; Designated Items in the Record, pages 27-60=D:27-60). They listed 21 creditors, 19 as unsecured in Schedule F, where they included Dr. Richard

Cordero (references to Schedules (Sch:) and other petition parts are to D:27/…; here D:27/Sch:F). He filed his proof of claim on May 19, 2004 (D:142-146). Up to then they had treated, and for months thereafter continued to treat, him as a creditor. On July 9, 2004, he filed a statement showing on the basis of even the few documents that they had produced at his instigation (D165-188) that they had committed bankruptcy fraud, particularly concealment of assets, and requesting the documents that they had failed to produce (D:196§§IV-V; 207, 208) Only then did they come up with the idea of a motion to disallow his claim as a means to get rid of him before he could prove their fraud. Filed on July 22 (D:218), it was heard on August 25. After manipulating the request for documents (D:234§§II & IV) and disregarding the motion's defects of untimeliness, laches, and bad faith (D:253§§V & VI) and the presumption of validity in favor of the claim (D:256§VII), Judge Ninfo ordered that Dr. Cordero take discovery of Mr. DeLano until December 15, 2004, in the case that gave rise to his claim, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY (*Pfuntner;* Addendum to the Designated Items, page 534/after entry 13, infra=Add:534/after entry 13), and that the parties introduce their evidence at an evidentiary hearing (D:278¶¶3 & 4).

5. It was held on March 1, 2005, when Judge Ninfo abandoned his duty impartially to take in evidence and behaved as Chief Advocate for Mr. DeLano while the latter was the only witness examined and Dr. Cordero the only one to introduce evidence. Although Mr. DeLano made consistent admissions against self-interest, the Judge arbitrarily disregarded them in order to reach at the hearing the predetermined decision of disallowance. His written decision of April 4 (D:3) was followed by this appeal on April 11, 2005 (D:1).

3. Disposition in the Court Below

6. Judge Ninfo held that Dr. Cordero had not proved his claim in *Pfuntner* against Mr. DeLano and had no standing to further participate in *DeLano*; and restated his denial to stay his decision. (D:20)

4. Statement of Facts

7. Mr. David DeLano is not an average debtor: He has worked in financing for 7 years and at two banks as an officer for 32 years: 39 years managing money!…and counting, for he is still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), as a manager in credit administration (Transcript page 15, line 17 to page 16, line 15=Tr:15/17-16/15). As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. What is more, Mr. DeLano works precisely in the area of bankruptcies, collecting money from delinquent commercial borrowers and even liquidating their companies (Tr:17.14-19). Actually, he was in charge of the defaulted loan to Premier Van Lines, a storage company that filed for bankruptcy, *In re Premier Van Lines*, dkt. 01-20692 (*Premier*), and gave rise to *Pfuntner* (Add:891/fn.1); both cases were brought before Judge Ninfo. Thus, Mr. DeLano is a member of a class of people who should know better than to go bankrupt and that, because of their experience with borrowers that use or abuse the bankruptcy system, know bankruptcy officers and how to petition them rightfully or wrongfully but successfully for bankruptcy relief.
8. For her part, Mrs. Mary Ann DeLano was a specialist in business Xerox machines, and as such a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines.
9. Hence, the DeLanos are professionals with expertise in borrowing, dealing with bankruptcies, and learning and applying technical instructions. They must be held to a high standard of responsibility. Their bankruptcy petition warranted close scrutiny, particularly since it makes no sense that:
   a. they earned $291,470 in just the 2001-2003 fiscal years (D:27/Statement of Financial Affairs and D:186-188);
   b. but they declared having only $535 in cash or in bank accounts (D:27/Sch:B); yet, they and

their attorney, Christopher Werner, Esq., know they can afford to pay $18,005 in legal fees for over a year's maneuvering to avoid producing the documents requested by Dr. Cordero to find the whereabouts of their $291,470 (Add:872-875; 942), not to mention other funds;

c. indeed, they spread over 18 credit cards a whopping debt of $98,092 (D:27/Sch:F), although the average credit card debt of Americans is $6,000;

d. despite all that borrowing, they declared household goods worth only $2,910 (D:27/Sch:B…that's all they pretend to have accumulated throughout their combined worklives!, although they earned over a *100* times that amount, $291,470, in only the three years of 2001-03…unbelievable!;

e. moreover, they strung mortgages since 1975 to pay for the same home in which they still live:

Mortgages 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;	D:342	$26,000
2) another for $7,467 in 1977;	D:343	7,467
3) still another for $59,000 in 1988; as well as	D:346	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	D:176	59,000
5) owed $59,000 to M&T in 1988;	D:176	59,000
6) another mortgage for $29,800 in 1990;	D:348	29,800
7) even another one for $46,920 in 1993; and	D:349	46,920
8) yet another for $95,000 in 1999.	D:350-54	95,000
	Total	$382,187.00

10. Yet today, 30 years later, they still owe $77,084 and have equity of merely $21,415 (D:27/Sch:A…*Mindboggling!* (Add:1058¶54)

11. Although the DeLanos have received over $670,000, as shown by even the few documents that they have reluctantly produced at Dr. Cordero's instigation, the officers that have a statutory duty to investigate evidence of bankruptcy fraud or report it for investigation have not only

disregarded such duty, but have also refused even to require them to produce any statements of their bank and debit card accounts, which can show the flow of their receipts and payments.

	Officer's name and title	Statutory duty to investigate	Request for documents	Response...if any
1.	George Reiber, Standing Chpt. 13 Trustee	11 U.S.C. §§1302(b)(1) and. 704(4) & (7)	D:66§IV D:113¶6 D:492, cf. D:477-491 Add:683	D:74, cf. D:83§A D:120, cf. D:124 and 193§§I-III none none
2.	Kathleen Dunivin Schmitt, Assistant U.S. Trustee	28 U.S.C. §586(a)(3)(C) & (F)	D:63§§I & III D:470, cf. D:461 D:471 D:475§c Add:685	D:70, cf. D:84§IV none none none none
3.	Deirdre A. Martini, U.S. Trustee for Region 2	28 U.S.C. §586(b)	D:104, cf. D:90§VII; D:137; Add:682	none D:139 , cf. D:141; D:154-157, cf. D:158; none
4.	Bkr. Judge John C. Ninfo, II	11 U.S.C. §1325 and 18 U.S.C. §3057(a) (Add:630)	D:198§V and D:199¶31; 207-210, 217; D:320§II D:370§C Add:1051§II Add:1133§§I & II	D:220, cf. D:232§§I & V D:327 D:3 Add:1065, cf. Add:1066; 1094 Add:1125
5.	District Judge David G. Larimer	18 U.S.C. §3057(a) (Add:630)	Add:885¶15, 900§§3 & B, Add:908§d, 951, 979§III Add:1098§I	 Add:1021 Add:1155

12. What has motivated them to protect the DeLanos by sparing them production of incriminating documents? (D:458§V) This questions is particularly appropriate because all of them have been informed of the incident at the beginning of case that not only to a reasonable person, but all the more so to one charged with the duty to prevent bankruptcy fraud, would have shown that the DeLanos had committed fraud and needed protection from exposure: The meeting of the DeLano's creditors, held pursuant to §341 on March 8, 2004, was attended only by Dr. Cordero. Yet, Trustee Reiber's attorney, James W. Weidman, Esq., unjustifiably asked Dr. Cordero whether and,

if so, how much he knew about the DeLanos' having committed fraud, and when Dr. Cordero would not reveal what he knew, Mr. Weidman, with the Trustee's approval, rather than let the DeLanos be examined under oath, as §343 requires, while officially being recorded on tape, put an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)

13. Far from any of those officers investigating this cover up, they attempted or condoned the subsequent attempt to limit Dr. Cordero's examination of the DeLanos at an adjourned meeting of creditors to one hour (D:70), which they knew to be unlawful since §341 provides for a series of meetings for the very broad scope of examination set forth under FRBkrP 2004(b) (D:283). Upon realizing how broadly Dr. Cordero would examine the DeLanos, the officers attempted or condoned the attempt to prevent the examination by not holding the §341 meeting at all! (D:296), 299§II) They also tried to put it off until after the evidentiary hearing (¶4 above), when Dr. Cordero's claim would be disallowed and he would be stripped of standing to even call for a meeting. (D:301, 302) They were acting in coordination to evade their duty!

14. An appeal to Trustee Martini was never replied to (D:307). On the contrary, Trustee Reiber reiterated his decision not to hold the meeting. (D:311, 316) Dr. Cordero analyzed the law in a motion for Judge Ninfo to declare that he had not prohibited and could not prohibit its holding. (D:321§III & ¶30.c) The Judge denied it while displaying again his unwillingness and inability to argue the law. (D:328¶4) Another appeal to Trustee Martini went by without response. (D:330)

15. Eventually Trustee Reiber agreed to hold a §341 meeting, but gave no explanation for his reversal in his letter to Dr. Cordero of December 30, 2004 (D:333). However, on December 15, Judge Ninfo had set the date for the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim (¶4 above) for March 1, 2005 (D:332). Now such meeting came in handy.

16. Indeed, the Judge had gone along with that motion without regard for the analysis by Dr. Cordero showing that it was an artifice to get rid of him and his requests for documents that

could prove the DeLanos' fraud. (D:240§IV, 253§V). The Judge required him to take discovery of Mr. DeLano in the case that had given rise to the claim (D:272/2nd¶, 278¶3), which he wrongly identified as Att. Werner had done in his cursory motion as "Adversary Proceeding in Premier Van Lines (01-20692)" (D:218) Had either read Dr. Cordero's proof of claim (D:144), they could have realized that the claim against Mr. DeLano arose in ***Pfuntner v. Trustee Gordon et al.***, no. 02-2230, not in *Premier*. They had decided to eliminate him regardless of his proof, which even by the time of the evidentiary hearing they neither had read nor had a copy of! (¶73 below)

17. To facilitate disallowance, both the DeLanos (D:314) and Judge Ninfo (D:327¶1) unlawfully denied *every single document* that Dr. Cordero requested (D:287§§A & C). However, he did not take discovery of any other *Pfuntner* party. So 'they had no clue what he could possibly do at the evidentiary hearing' (Tr:122/16-122/11). Hence, to find out in advance, the so-called meeting of creditors was set for and held on February 1, 2005. It was not intended for Dr. Cordero to examine the DeLanos, but rather for them to depose him! The facts prove it.

18. That is why Trustee Reiber allowed Att. Werner to micromanage the meeting. (D:464/4th & 5th¶¶) He allowed him to refuse to produce documents; even those few that the Trustee got the Attorney to agree to produce, he allowed him to produce them late, only after Dr. Cordero had reminded the Trustee that they were past due (D:341). Even then Att. Werner attempted to avoid production (D:473 & 477); produced incomplete documents (D:342); or only because of Dr. Cordero's insistence, produced objectively useless documents (D:477-491) until the Trustee just stopped answering Dr. Cordero's requests (D:492) and then the Judge disallowed the claim.

19. As for Trustee Schmitt, she attempted to avoid producing copies of the tapes of the February 1 meeting of creditors despite Dr. Cordero's request (D:474), sending instead tapes of a different meeting (D:476). Likewise, although Trustee Reiber wrote that "At the request of Dr. Cordero, I will have court reporter [sic] available as well as having a tape recording made of the meeting" (D:333),

when Dr. Cordero requested him a copy, Trustee Reiber denied it and told him to buy it from the reporter, preposterously alleging that the latter owns the copyright to it. But what the reporter produced is work for hire and Dr. Cordero was the reason why the Trustee hired a reporter.

20. That meeting of creditors was never intended to function as stated in the 1978 Legislative Report for §343: "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". Rather, it was an opportunity for the DeLanos and the trustees to pump information out of Dr. Cordero. It was another abuse of process, a coordinated charade! (Add:966§B)

21. Judge Larimer supported that charade by protecting Trustees Schmitt and Reiber from having to produce any tapes or transcripts of those meetings of creditors on March 8, 2004, and February 1, 2005. To that end, he dispatched Dr. Cordero's requests that he order their production (Add:885¶15, 907, 980§§a & b), if only "for the proper determination of this appeal", let alone "appellant's right of appeal" (Add:951 1001§III), with a lazy and conclusory "These motions are wholly without merit and they are denied in their entirety" (Add:1022).

22. What is more, Judge Larimer also repeatedly maneuvered to deprive Dr. Cordero of the transcript of the evidentiary hearing on March 1, 2005, where his colleague, Judge Ninfo, disallowed his claim in *DeLano*: He manipulated orders scheduling Dr. Cordero to file his appellant's brief by a date by which the Judge knew the transcript would not be ready for Dr. Cordero to use it in writing his brief or make it part of the record. The Judge did so although he still had no jurisdiction to issue orders in the case because the record consisted then only of Dr. Cordero's notice of appeal and designation of items so that it was incomplete under FRBkrP 8006 and 8007(b), and consequently, its transfer from Judge Ninfo's court to him had been unlawful. (Add:692, cf. 695; 831, cf. 836; 839).

23. When the orders manipulating brief-filing dates failed due to Dr. Cordero's objections to keep

the transcript from him, it was for Bankruptcy Court Reporter Mary Dianetti to refuse to agree to certify that her transcript of her own stenographic recording of the evidentiary hearing would be complete, accurate, and free from tampering influence (Add:867, 869). Although Dr. Cordero complained about the unreliability resulting from such refusal and requested that Reporter Dianetti be referred for investigation to the Judicial Conference of the United States under 28 U.S.C. §753 (Add:911), Judge Larimer just disregarded Dr. Cordero's factual and legal analysis and issued another lazy "The motion is in all respects denied" (Add:991).

24. Dr. Cordero pointed out in a motion for reconsideration how suspicious it was that although Reporter Dianetti could lose her job if referred to the Conference, particularly since this was the second time that she and Judge Larimer had tried to prevent him from obtaining a transcript, which they did in *Pfuntner* (Add:1011§A), she was so sure that the Judge would not refer her that she did not even bother to file an objection to the motion (Add:1001§§III & V, cf. 1034¶¶10-12). Again with no discussion of Dr. Cordero's factual and legal arguments, the Judge simply forced him to request the transcript from Reporter Dianetti and pay for it lest his appeal be dismissed. (Add:1020, cf. 1025, 1027)

25. Even after Dr. Cordero complied (Add:1031) and the transcript was prepared and filed by Reporter Dianetti and transmitted "forthwith" from the Bankruptcy Court to the District Court, the latter failed to file it as required under FRBkrP 8007(b), thus making it necessary for Dr. Cordero to move the Court to comply with its duty to docket it, enter the appeal, and schedule the appellant's brief (Add:1081). Judge Larimer rescheduled the filing date by his order of November 21, where he wrote that "It now appears that the record on appeal is complete, and no further action pursuant to Fed.R.Bankr.P. 8007 is required" (Add:1093). Thereby he unwittingly admitted that the record was incomplete when he issued his order of April 22 (Add:692) -*7 months earlier!* at a time when there was not even an arrangement for the Reporter to begin

preparing her transcript, let alone file it (Add:681, cf. 686-696, 831-845)- requiring Dr. Cordero to file his appellant's brief by May 12. Judge Larimer had willfully violated FRBkrP 8007 to deprive Dr. Cordero of the transcript.

26. By not referring Reporter Dianetti to the Judicial Conference, Judge Larimer was protecting not only her, but also himself from review that would have revealed the quality of their work: In her transcript everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. As a result, the participants at the hearing, though professionals, come across in the transcript as a bunch of speech impaired illiterates. Her transcript can hardly be representative of the standard of competency to which the Conference holds reporters. Therefore, if the Conference had reviewed such an objectively inferior reproduction of a court proceeding as Reporter Dianetti's transcript is, it would have called into question why nevertheless Judges Larimer and Ninfo customarily, and thus knowingly, accept work of such disturbing quality as the record on which they determine the rights, property claims, and maybe even the liberty of litigants…or do they pay no attention to any transcript?, for their own orders show that they rarely cite and never analyze the law or the rules, and never discuss the motions on which they rule, which points to their not even reading them. (¶36.a below)

E. The Argument

1. The transcript shows how Judge Ninfo, likely expecting it not to be available to Dr. Cordero before he would have to file his brief pursuant to an order from Judge Larimer manipulating its filing date, conducted a blatantly biased, arbitrary, and unlawful proceeding so that the motion to disallow his claim could be granted as needed by them, the DeLanos, and the trustees to eliminate Dr. Cordero before he could expose a bankruptcy fraud scheme

27. If Reporter Dianetti had been referred to the Judicial Conference as requested (Add:911), the

latter would have learned that she works for judges that: **1)** overlook the overwhelming defects of such a transcript, compounded by the misalignment of *every* page of its PDF version and the resulting discrepancy of the page numbers of that and the paper version; **2)** accept Trustee Reiber's shockingly unprofessional and perfunctory "Report" (¶36.d below); **3)** find it unobjectionable that a lawyer should come to the evidentiary hearing of his motion to disallow a creditor's claim without having even read the claim or brought a copy of it (¶73 below); **4)** allow lawyers to suborn perjury by signaling and mouthing answers to their client on the stand (¶76 below); **5)** are satisfied with lawyers' cursory, back-of-napkin like statements with no discussion of the law or facts or the opposing party's arguments (¶36.c below), because they are so closely patterned after **6)** the judges' own conclusory, fiat-like orders devoid of legal reasoning (¶36.a & b below). From these facts, the Conference would have inferred the judges' anything-goes mentality, tolerant of others' substandard performance and permissive in carrying out their own duties, that naturally leans to self-indulgent disregard for the law, the rules, and the facts while showing contemptuous indifference to legal, material, and emotional injury caused to litigants. Hence, by refusing to refer Reporter Dianetti to the Conference for her refusal to agree to certify that her transcript would not be incomplete, inaccurate, and tampered with, Judge Larimer was protecting himself as much as her and other officers and staff who work in that small federal building so propitious for the formation of a clique and who are willing to go along with what he feels like doing rather than comply with the requirements of their official positions. (¶22 above).

28. Such mentality and clique are evidenced by a consistent common pattern of conduct. So Judge Larimer joined Colleague Judge Ninfo (D:234§II, 362§2; Add:1098§§I & II), and the trustees (Add:882§II, 1041§I), in their refusal to request documentary evidence from the DeLanos. Undeniably, if any or all of those officers had obtained from the DeLanos documents as obviously pertinent to the proper disposition of any bankruptcy petition as the statements of the

debtors' bank accounts and debit card accounts, they would be in a far better position to determine whether the DeLanos filed a good or bad faith bankruptcy petition, for those documents could have led them to the whereabouts of the DeLanos' known inflow but unaccounted for sum of over two thirds of a million dollars! (¶11 above) Likewise, those documents would have allowed them to acquit themselves of their duty to find the facts in order to rely on them in determining the validity of a creditor's and a litigant's contention, namely, that the DeLanos raised in bad faith their motion to disallow the claim of Dr. Cordero as an artifice both to eliminate him before he could prove their bankruptcy fraud and to strip him of standing so that he could not oppose the confirmation of their plan under §1325 (Add:27/Plan, 941, cf. 1051§II, 1065, 1066, 1094, 1127, 1025) and later on the discharge of their debts under §1328. What is more, those officers could have used such documents to fulfill their broader responsibility to detect and report bankruptcy fraud in order to safeguard the integrity of the bankruptcy system and of judicial process. So why have they repeatedly engaged in a mutually reinforcing denial of documents that obstructs the performance of their duties and of justice?

29. The facts point to the answer: Mr. DeLano has been an insider of the financing and banking industries for 39 years and currently deals with precisely the bankruptcies of clients of M&T Bank, his employer. Thereby he has become familiar with the actors of the bankruptcy system. For instance, he is involved in three bankruptcy cases presided over by Judge Ninfo, handled by standing trustees and their supervisors, and affecting Dr. Cordero, to wit, *Premier*, *Pfuntner*, and *DeLano*. During his career, he has learned it all about systemic abuse of bankruptcy laws and procedure by debtors and officers (cf. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23). As a result, he cannot be allowed to be dirtied by criminal charges when he comes in calling on the system's debt removal cleaners to help him polish up his retirement golden pot. (D:379§3) If his own fraud were exposed and it led him and his

wife to face a prison term of 20 years and over $500,000 in fines under, among others, 18 U.S.C. Chapter 9, and §§1519 and 3571, he could consider it in his and his wife's self-interest to enter into a plea bargain in which for exchange of immunity he would disclose all the incriminating knowledge that he has about those officers and others even higher than them. He would create a situation described by an old technical legal term, namely, *"All hell would break loose!"*, known today as the exposure of a bankruptcy fraud scheme. (Add:600§D)

30. This explains why, in general, those officers engaged in a series of non-coincidental, intentional, and coordinated acts of disregard of the law, the rules, and the facts in order to keep exposure-threatening documents from Dr. Cordero (Add:966§B) and would neither refer Reporter Dianetti to the Judicial Conference nor abide by their duty to report the DeLanos' fraud to the Attorney General (D:382¶2; Add:975¶9).

31. It also explains why, in particular, Judge Larimer repeatedly manipulated brief-scheduling orders so as to keep from Dr. Cordero the transcript (Add:1031) since the Judge had opportunity to review and realize how damaging its contents were: Reporter Dianetti received Dr. Cordero's request for the transcript on November 2 and on November 4 she filed it, almost 200 pages (Tr:2nd /letter), although she took *more than 2½ months* to prepare the 27 pages of the first transcript (Add:918). Despite not only Dr. Cordero's request that she be referred to the Judicial Conference and the latter appoint another reporter, but also his refusal to pay her (Add:1024-1028), she had had to prepare it for review! Let's examine the evidence that they tried to suppress. (Add:1084§II)

    a. Judge Ninfo confronted Dr. Cordero at the evidentiary hearing with a lawyers directory stating that a Richard Cordero worked as an associate at a law firm specializing in litigation; Dr. Cordero stated under oath that he was not that person and had never practiced law; but the Judge assumed that he had lied and, without obtaining more evidence, in his decision on appeal portrayed him as a liar and a perjurer so as to destroy his credibility, whereby the Judge manifested his bias against and libeled Dr. Cordero, who proves here that he told the truth

32. Judge Ninfo alleged in his decision (D:6/fn.2 & Add:509/fn.2) that:

> [2] Although Cordero asserted that he advised the Court that he was an attorney in one of his initial appearances in the Premier Case, neither the Court nor any of the courtroom staff recalls such an admission.

33. The facts belie Judge Ninfo's allegation: Dr. Cordero gave notice on more than 30 occasions (Add:510) to Judge Ninfo and the parties that he was a lawyer, beginning with the very first letter that he ever wrote to him, dated September 27, 2002 (Add:513), of which the Judge acknowledged receipt on October 8, 2002 (Add:514). Dr. Cordero's notice registered not only with the staff, who identified him as "Esq." (Add:533/entry 10), but also the parties acknowledged that piece of information and even shared it with the Judge in their letters to him and filings. (Add:510/fn.1; see samples at Add:780, 782, 784, 809, 816)

34. How many times does Judge Ninfo need to get notice of something before his brain registers it? If that question appears to ridicule the Judge, the alternatives are far more damaging, for they impugn his competency and integrity: Did he read any part of Dr. Cordero's documents other than the Requested Relief, which he would instinctively deny? Did he read anything with the minimal degree of due care that, on the one hand, would have enabled him to perceive Dr. Cordero's legal knowledge and reasoning evinced by his documents and, on the other hand, is required of a lawyer and all the more so of a judge whose decisions affect directly the lives and property of other people? Or did he read them, notice that Dr. Cordero was a lawyer, but now denies that fact in order to pretend to his appellate peers that Dr. Cordero hid his professional identity and is untrustworthy? Let's examine the facts to determine who is unprofessional and untrustworthy.

35. To begin with, an appearance pro se is not reserved for the legal illiterate. Rather, it is mostly a function of whether a person can afford a lawyer (Add:623§2). This is particularly well illustrated in this case, where it would have cost Dr. Cordero hundreds of thousands of dollars to

hire a lawyer to search for his property since January 2002 and from New York City hundreds of miles away, where he resides; to defend against Plaintiff Pfuntner and bring counterclaims, cross-claims, third-party claims, and default applications, against 7 parties; communicating by letter and on the phone with those parties, trustees, a host of public officers, and other people; appeal from the Bankruptcy Court, to the District Court, to the Court of Appeals, to the Supreme Court; and in addition defend a claim in *DeLano*. Therefore, it was faulty reasoning for Judge Ninfo to assume that if Dr. Cordero was appearing pro se, he could not be a lawyer.

36. More significantly, it revealed grave deficiency in observation and deduction for Judge Ninfo to receive all those documents that he complains about having received from Dr. Cordero for years (D:8¶2) and still not be able to notice even obvious differences: Dr. Cordero's documents cite the law and rules, discuss their meaning, and apply them to the facts to produce a coherent and structured argument resulting from legal reasoning. The Judge could have contrasted them with:
    a. his own decisions (D:3; 220, 272, 327, 332; Add:719, 725, 729, 731, 741, 749, 1094, 1125);
    b. those of his Colleague Judge Larimer (Add:692, 831, 839, 991, 1019, 1021, 1092, 1155);
    c. the statements of Att. Werner, a truly experienced bankruptcy attorney (¶61 below; D:118, 205, 211 & 214-216, 271, 314, 325; Add:936, 988, 1069); or
    d. the shockingly unprofessional and perfunctory scraps of papers that *über*-experienced Trustee Reiber (Add:891/Tbl.) submitted to Judge Ninfo (Add:937-939, cf. 1041§I) and that he accepted as "the Trustee's Report" (Add:941/2nd ¶, cf. 1055§B, 1022, 1094).
37. Those written things show contemptuous disregard for the law and the rules by not citing them or not discussing them at all. Their lack of legal foundation shows that Lord Ninfo, enfeoffed by Lord Larimer, has carved the Fiefdom of Rochester out of the land of the law of Congress (Add:602¶¶31-33) in order to apply the law of personal relationships (D:361§1) and issue fiats on no other authority than 'I order this because I can'. No wonder he could not notice something

as irrelevant for his "local practice" (D:98§II, 362§2) as Dr. Cordero's legal and factual analyses. Hence, what does it show for Judge Ninfo not to be able to draw from those analyses that Dr. Cordero had a lawyer's command of the law, or not to notice the repeated identification of Dr. Cordero as a lawyer provided by himself and others, and instead for the Judge to need hearsay from a clerk for the possibility to dawn upon him that Dr. Cordero was a lawyer?

38. Indeed, Judge Ninfo states that "Cordero had a discussion with a Deputy Clerk about obtaining a CM/ECF password during which he indicated that he was an attorney". (D:6/fn.2; Add:509/fn.2) That was a conversation with Deputy Clerk of Court Todd Stickle on August 6, 2004, about how to insure that Dr. Cordero's documents were transmitted to the clerks for docketing rather than withheld from them by Judge Ninfo (D:232§§I & II). Mr. Stickle said that he remembered that Dr. Cordero had a degree from La Sorbonne and asked him whether he was a lawyer. Dr. Cordero said that he was and was admitted to the Second Department. Mr. Stickle said that if Dr. Cordero obtained authorization from a U.S. Bankruptcy Court in NY City to file electronically there, the court in Rochester would recognize such authorization; otherwise, he would have to take in Rochester the three hour-long e-filing course. While inquiring about the non-docketed documents that Dr. Cordero had faxed to Judge Ninfo, Mr. Stickle may have told the Judge and his assistants about that conversation and reminded them that Dr. Cordero was a lawyer. On August 9, Mr. Stickle informed Dr. Cordero of the allegation that his fax had not been received (D:207, 217).

39. However, Judge Ninfo's "attached New York State Attorney Directory Westlaw Search (the "Search")" bears the dates "2/28/2005" (Add:516 & 517) and "2/23/2005"(Add:515). Two inferences can be drawn from this considerable time lag. One is that on or about August 9 he was reminded that Dr. Cordero is a lawyer and since then, contrary to his pretense, 'has seen in that light' (cf. D:6/fn.2 & Add:509/fn.2) Dr. Cordero's documents and conduct and dealt accordingly with him at all hearings and when writing his *DeLano* decisions. If so, why did the Judge take more than

six and a half months from this reminder on August 9 until the end of February 2005 to stumble upon the astonishingly novel idea, which others carry into action reflexively, of doing that "Search" to find out whom he was dealing with?

40. The second inference can provide the answer. It is supported by the fact that at the evidentiary hearing on March 1, 2005, and precisely while asking to confirmation or deny his "Search" findings, the Judge criticized Dr. Cordero because "your petition to several - to the United States Supreme Court, although it may be somewhat carefully crafted I think, many times already almost purposely misleading with respect to your status as a pro se litigant" (Tr:4/13; cf. Tr.5/7-19) (cf. "makes much of his *pro se* litigant status", D:6/fn.2, Add:509/fn.2). The Judge was referring to a brief that he had no reason, of course, to know about, to wit, Dr. Cordero' petition of January 20, 2005, to the Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit (*Richard Cordero v. Kenneth W. Gordon, Trustee, et al.*, dkt. 04-8371, SCt.; Add:557-629). Because of the references therein to *DeLano* (Add:600§D), Dr. Cordero served it also on Att. Werner and Trustee Reiber, but certainly not on Judge Ninfo. These facts allow the inference that in preparation for the March 1 evidentiary hearing, the Judge had an ex parte communication in violation of FRBkrP 9003 with one of those served during which he received and reviewed a copy of that petition and, finding it in his backhand complimentary term "somewhat carefully crafted", was intrigued by who Dr. Cordero was and thus, conducted the "Search" to find out.[1] This explains why, even though the Judge made clear at the March 1 evidentiary hearing that he would disallow Dr. Cordero's claim, he did not write his decision until April 4, after the Supreme Court denied the petition on March 28…just in case the Court granted it, which would

[1] It remains to be determined to what extent Judge Ninfo betrayed other ex parte communications when in his August 30 order he wrote: "…the Court…notes that the Office of the United States Trustee, which Cordero has been in frequent contact with…" (D:274). See also the accounts of the ex parte communication between Att. MacKnight, Mr. Pfuntner's attorney, and Judge Ninfo (D:404§2; 433§D).

have induced him to rethink his decision and whether to issue it at all, for then his appellate peers would be of no help. If so, the Judge is using the statement that Dr. Cordero is a lawyer made by Mr. Stickle eight months earlier as a cover up for the ex parte communication that triggered the Judge's "Search" and led to his effort to portray Dr. Cordero as a liar and a perjurer.

41. Judge Ninfo's failure to read Dr. Cordero's documents or deduct therefrom that he must be a lawyer impugns his competency. His assumption that because Dr. Cordero was a pro se litigant he could not be a lawyer explains why he has disregarded the law, the rules, and facts in dealing with him and trampled on his rights (D:430§B): The Judge expected him not to be able to defend them and to resign himself to accepting such abuse, that is, if he even understood it as such. The Judge's assumption and his acting on them impugn his sense of fairness and judicial integrity.
42. What he next failed to do indicts him: Judge Ninfo looked up the NY State Attorney Directory (Add:515) and saw a Richard Cordero registered; looked up WestLaw (Add:516) and found a Richard Cordero listed as an associate of a law firm; and that was enough for him to jump to the conclusion that they had to be the same person. The elemental idea that in NY City with its 8.5 million people two persons can have the same name never popped up in his mind. The idea that one could have stolen the identity of another at a time when the FBI has stated that identity theft is the fastest growing crime in the United States never crossed the mind of a judge that is bound by law, e.g. §1325(a)(3) and 18 U.S.C. §§151-159, to on a daily basis examine bankruptcy petitioners for fraud. What a mind!
43. There is no intention to mock Judge Ninfo in that exclamation; there is only a set of facts that elicit it. Had he had the intellectual capacity to entertain those ideas, then he had the professional duty to take another step before ever thinking of asserting two pieces of data found online as true and correct and to the detriment of a person: He had to verify them! That was incredibly simple to do: pick up the phone and call the numbers listed on the WestLaw webpage and confirm with

that Richard Cordero the reported data about him, and if confirmed, ask him not only questions whose answers appeared in the public record of *Pfuntner* and *DeLano*, but also those that could be answered only by Dr. Cordero, who had already appeared before Judge Ninfo on the phone 11 times and in person twice. This cannot be too much to expect of a judge who is supposed to have a mind keen enough to spot fraud by persons who, very much unlike Dr. Cordero, do have a motive to lie, cheat, and hide their identity, namely, the powerful financial motive of concealing assets and evading their debts. (cf. ¶9 above)

44. Actually, one does not even have to expect Judge Ninfo to tax his mind at all to come up with that idea. He only had to read the one single page of the NYS Attorney Directory that he had downloaded (Add:515). By so doing, he would have found that it stated thus:

> If you need additional information, please contact the NYS Office of Court Administration, Attorney Registration Unit at 212-428-2800.

45. And he did need additional information. He needed it to prove whether the name Richard Cordero appearing on those webpages referred to the same Dr. Richard Cordero that had appeared before him and written so much in the last three years. Had he done so, Judge Ninfo would readily have obtained information from a disinterested official third party that would have alerted him to the fact that something was wrong and required further inquiry.

46. But Judge Ninfo did not do so, not even for the sake of his own professional image. Instead, he thought that he would use the raw data found on the Internet to ambush Dr. Cordero at the evidentiary hearing of the DeLanos' motion to disallow his claim. On that occasion, he asked Dr. Cordero whether he was a registered and licensed attorney (Tr.3/17 et seq.) and Dr. Cordero stated that he was; and the Judge asked whether he was an associate of the NYC law firm of Heller, Jacobs & Kamlet, and Dr. Cordero answered not only no, but also that he had never worked for any law firm and had never been a practicing lawyer (Tr.6/25).

47. Oh! how heady Judge Ninfo must have felt with his treasure trove of Internet data and its denial

by Dr. Cordero! The Judge had got him!, for Dr. Cordero's denial had to be false because… because…never mind any reason. Judge Ninfo just knew that it was false if coming from Dr. Cordero. How else to explain Dr. Cordero's performance as 'an experienced litigator' for hours at that evidentiary hearing that lasted from 1:30 to 7:00 p.m.? The Judge could not think for himself of any other explanation than that suggested by data on a webpage, namely, that Dr. Cordero could only have honed those skills by practicing at "a firm that the Search described as having ninety-eight percent (98%) of its practice devoted to litigation" (D:5; Add:509) So Dr. Cordero must have lied! This was the Judge's opportunity to disparage his character. And he snatched it!

48. Judge Ninfo proved unwilling and unable to ask himself, let alone find out, what conceivable motive Dr. Cordero could possibly have had to lie under oath and on the record…or as an impartial and cautious professional would have put it, motive for him to make statements in apparent conflict with easily accessible public data. Instead of using the more than a month between the evidentiary hearing on March 1 and his opinion on April 4, 2005, to check Dr. Cordero's statement, Judge Ninfo simply sat on his hands or jump on his feet for joy at the expectation of publicly, in a decision posted on the homepage, the very first page, of the court's site on the World Wide Web, www.nywb.uscourts.gov, portraying Dr. Cordero as a liar and a perjurer.

49. By contrast, a prudent person, one capable of performing with due diligence, would have as a matter of course considered that once Dr. Cordero confirmed the data on the NYS Attorney Registration website but denied the additional information on WestLaw, it was necessary to entertain the possibility that his assertion under oath might be true and that some data might be wrong. Such person would have phoned "the Attorney Registration Unit at 212-428-2800", and spoken with Mr. Samuel H. Younger, the Chief Management Analyst (Add:518), who would have indicated that Dr. Cordero was in fact registered and licensed in 1989; is the only attorney registered with the name of Richard Cordero, but has been retired from the practice of law since

1993! What is more, none of his nine registration statements indicates that he ever practiced law at, or was associated with, any law firm whatsoever!

50. Now the intellectually curious and unbiased person would have been intrigued. Having no agenda other than to get the facts straight, he would have opened his mind wider: He would have called the number listed by WestLaw for Heller, Jacobs & Kamlet, that is, (212)682-7000, only to find out that a recording stated that it was not in service and no further information was available. This would have piqued his curiosity and led him to do a Google search on that law firm with "(98%) of its practice devoted to litigation" where, as the Judge put it by jumping to a conclusion, Dr. Cordero had become 'an experienced litigator'. He would have found where that firm was: in bankruptcy!, filed by Geron & Associates, P.C., in NYC, tel. (212)682-7575, in the U.S. Bankruptcy Court, SDNY, docket no. 04-13127, Judge Burton R. Lifland presiding (Add:520).

51. A thorough person, not to mention a conscientious judge determined to exercise his judicial power responsibly, would have called that law firm to ask for the contact information of the former partners. Dr. Cordero did so and obtained affidavits from Mr. Kamlet (Add:526), who now works at the same firm as Mr. Jacobs, as well as from Mr. Heller (Add:519). They stated that the Richard Cordero that worked at their former law firm was a paralegal and was not represented by their firm as being a lawyer, was not Dr. Richard Cordero and was older than him, and that the firm of Heller, Jacobs & Kamlet ceased doing business at the end of 2003. What is more, acting with due diligence, Dr. Cordero contacted Martindale-Hubbell and FindLaw to determine how his name came to be associated with that law firm. Their replies show that it happened through an internal mistake or an indeterminate event, respectively. (Add:553-555)

52. This proves that a competent person could take common sense steps to determine whether two similar but not identical names identified the same or different individuals. A responsible and prudent person would have done so before presenting somebody to others as a liar and a perjurer.

A judge, duty-bound to be impartial and fair to everybody, 28 U.S.C. §453, had an obligation to take such steps before so disparaging anybody in a court decision, an official public document.

53. Judge Ninfo proved not to be that person and failed his duty. Yet, he managed to make it through law school, work for JAG, become a partner at Underberg & Kessler, the firm defending Mr. DeLano and M&T Bank from Dr. Cordero's claims in *Pfuntner*, and was appointed a bankruptcy judge in 1992. That leads one to assume his familiarity with the standards of the legal profession and respect for the oath of office. However, just before the evidentiary hearing on March 1, 2005, he allowed himself access to material not made available to him, but made available to Mr. Werner, the attorney that by then had appeared before him in over 525 cases (¶61 below) and who is defending Mr. DeLano from Dr. Cordero's charges of bankruptcy fraud and his documentary requests. Days before the hearing, the Judge looked up information about Dr. Cordero as a lawyer that he had not looked up in the years since Dr. Cordero first wrote to him on September 27, 2002. Although ever since Dr. Cordero has demonstrated to be cautious in his statements and deliberate in his conduct, at and after the hearing Judge Ninfo arbitrarily dismissed his statements under oath that he had never practiced as a lawyer or worked at a law firm and instead confirmed his prejudgment that 'the DeLanos are honest but unfortunate debtors who filed their petition in good faith' (D:276, Add:941; cf. D:378§2) while disregarding the evidence before him that they were currently engaged in fraud (D:373§1) as well as depriving himself so as to keep from Dr. Cordero every document that could prove the fraud that they had already committed (Tr:189/11-21).

54. This shows that Judge Ninfo was immune to duty and prudence, that he was predisposed against Dr. Cordero and toward Mr. DeLano, and seized on a statement explicitly denied and easily corroborated as wrong as a means to buttress the outcome of the evidentiary hearing that he had prejudged. The attitude motivating such conduct is bias. The consequence of such conduct is to raise a damning indictment against Judge Ninfo's professional competency and trustworthiness.

55. Judge Ninfo's bias led him to make defamatory statements not only negligently, but also with reckless disregard for their truth or falsity. (cf. Add:970§C) Bias is a defect of character incompatible with the office of judgeship, which requires fairness and impartiality in the administration of justice. (D:418§II) His bias becomes all the more real when put in the context of the series of his acts of disregard for the law, the rules, and the facts over the last three years consistently to the detriment of non-local Dr. Cordero and the benefit of the local parties. (D:234§§II-IV; 358§II; 392§I) Bias against non-locals, whether from another state or city, is so real that to combat it diversity jurisdiction was created. His bias requires his disqualification, especially since it is motivated by ill-will toward Dr. Cordero and an agenda not covered by any privilege because outside the scope, and contrary to the duty, of his office, to wit, to protect the locals from being exposed as participants in a bankruptcy fraud scheme (¶¶28-31 above, D:458§V).

56. Pending Judge Ninfo's disqualification (¶106 below), his appellate peers should be aware that the bias and substandard research and analysis that so grossly manifest themselves at the beginning of his decision on appeal also ooze from the rest of it (¶88 below). Such defects are substantive and sufficient to require the nullification of this and his other decisions, for they cast a shadow of distrust on all of them. This follows perversely from his own conclusion (D:6/fn.2 & Add:509/fn.2) that:

> Many of the pleadings, statements, actions and inactions of Cordero in and in connection with the Premier and DeLano Cases, in which he makes much of his *pro se* litigant status, can be seen in a far different light when one is aware that he is a licensed, experienced, and registered attorney.

57. Now that the facts are known, the logic that Judge Ninfo expressed there requires that 'Dr. Cordero's pleadings, statements, actions and inactions be seen not "in a far different light"', but rather in the light that Dr. Cordero cast on them: as the product of a non-practicing lawyer who appears pro se because he cannot afford the huge cost of legal representation and who will not stand to be abused as a non-local party (Add:1098§§I & II)by a biased judge supporting a

bankruptcy fraud scheme.

b. Judge Ninfo shows his bias by inconsistently criticizing Dr. Cordero for acting as "a typical pro se" litigant lacking legal representation and for being "an experienced attorney" who was able to confuse Mr. DeLano

58. The bias infecting his decision causes blemishing inconsistencies. So Judge Ninfo states that:

> Although, as an experienced attorney, Cordero was successful in confusing DeLano during his testimony and in eliciting from DeLano some most interesting statements as the result of that confusion, and even though DeLano insisted that he was not confused, what is clear from the Trial and DeLano's testimony at the Trial is that: (1) DeLano consistently asserted that: (a) in his interaction with Cordero, he was at all times acting within the scope of his employment as an officer and employee of M&T Bank; and (b) Cordero had no claim against him individually; and (2) there was nothing in DeLano's testimony at the Trial that demonstrated that Cordero had any valid claim or cause of action against him individually for negligence, recklessness or otherwise. (D:16)

59. So Judge Ninfo says in the same breath that because Dr. Cordero is pro se he does not know better than to file "a great number of...typical pro se procedural and tangential motions" (D:8) but because he is "an experienced attorney" he knows how to confuse a witness on the stand (D:16); and even says that Dr. Cordero gained that experience working at a firm "having ninety-eight per-cent (98%) of its practice devoted to litigation" (D:6), yet criticizes him as a "litigious pro se litigant [who is not] fully analyzing the merits of the request and the actual decision of the Court" (D:8) although at the March 1 evidentiary hearing the Judge remarked that Dr. Cordero had written an impresssively fine brief to the Supreme Court (¶40 above; Add:557). If you would rather appear pro se than let a lawyer of Judge Ninfo's performance level represent you, would you trust his capacity to dispose of people's rights in a way consistent with the laws, the rules, and the facts?

60. The fact is that Dr. Cordero's examination of Mr. DeLano was the first examination of a witness on the stand that Dr. Cordero conducted *in his whole life*. Judge Ninfo would have realized that had he performed with due diligence like a competent and unbiased lawyer, not to mention a judge, and run a search in WestLaw for all the cases in which Dr. Cordero had appeared as the attorney of record. Since the Judge claimed that Dr. Cordero is 'an experienced litigator', he

should have been able to find a long list of cases litigated by Dr. Cordero and in which he gained his experience "to confuse" a witness. But he would have found none.

c. Judge Ninfo misleads his appellate peers by pretending that Dr. Cordero abused his "experience" to "confuse" Mr. DeLano at the evidentiary hearing while the Judge withholds the fact that Mr. DeLano was accompanied by Att. Werner, who 'has been in this business" for 28 years and has appeared before him in more than 525 cases

61. Just as Judge Ninfo misleadingly referred to the March 1 evidentiary hearing as a "Trial" (but see D:332), he misleadingly omitted in his whole decision to say that Mr. DeLano appeared, not alone, but rather represented by a seasoned attorney, namely, Att. Christopher Werner (Tr.3/10), a truly experienced attorney who at the hearing on July 19, 2004, volunteered the statement that 'he has been in this business for 28 years'. For its part, PACER shows that as of February 28, 2005, he had appeared before Judge Ninfo in 525 cases! (Add:891/table; cf. Add:592§A)

62. It would be untenable for Judge Ninfo, after having allowed Att. Werner to appear before him in hundreds of cases, to pretend that the Attorney was all of a sudden incompetent to defend Mr. DeLano from being "confused" by Dr. Cordero…the one who for the first time ever was examining a witness on the stand. Nevertheless, if he deemed Mr. DeLano to be represented by incompetent counsel (Add:551/Canon 6), his duty was either to report Att. Werner to the bar for reassessment of his membership in it or to give Mr. DeLano an opportunity to find competent counsel, but he could certainly not do what he did: Judge Ninfo became Chief Advocate On the Bench for Mr. DeLano, as shown by the transcript (Tr.52/22-53/18, 107/1-24, 115/14-118/20, 119/5-14, 160/2-23, 173/5-17, 178/25-180/4, 182/16-183/8), the one that Judge Larimer repeatedly tried to suppress to protect his Colleague (¶22 above). Thereby Judge Ninfo disregarded his duty "to come to the hearing with an open and neutral mind and to render impartial judgment" (Ethical Consideration 7-19 of the ABA Model Code of Professional Responsibility).

d. Judge Ninfo shows his bias toward Mr. DeLano by dismissing as

"confused" **and withholding from his appellate peers Mr. DeLano's** "most interesting statements"**, which he made against legal interest and which support Dr. Cordero's claim against him, whereby the Judge misleads his peers with an unbalanced, incomplete account of the evidentiary hearing**

63. Judge Ninfo lacks any good faith basis to portray Mr. DeLano as a person easily "confused"…especially by what has turned out to be a non-practicing, first-time examiner, Dr. Cordero. A financing and banking officer for 39 years, Mr. DeLano was at the time of the events in 2002, an Assistant Vice-President at M&T Bank (Add:533/entry 6) and when *Pfuntner* comes to trial, he will be M&T's representative (Tr.184/2-12; ¶70.m below).

64. Hence, Mr. DeLano is an expert in banking and was testifying about his own actions in that field. Actually, Judge Ninfo concluded from his testimony that "he was at all times acting within the scope of his employment as an officer and employee of M&T Bank" (D:16; ¶58 above). Nevertheless, the Judge is so biased that he dismissed Expert DeLano's "most interesting statements", (id.) as "confused" without even considering the possibility that they may constitute admissions against legal interest by a witness who took his oath to tell the whole truth seriously. Thus the Judge, relinquishing his role as a neutral arbiter, tried as Chief Advocate on the Bench to contain the damaging admissions of his client, Mr. DeLano, by impeaching the latter's capacity to understand and respond to questions about his own actions in his field of expertise. However, the Judge was unable to state at the hearing, while there was an opportunity for clarification, what he thought Mr. DeLano was "confused" about. (Tr.187/5-20) Meantime, Att. Werner was Deferential Lower Chair, for who needs to speak when his boss the judge is doing so for their client (Tr.180/1-21)?…except to flatly contradict him: At the end of the hearing that lasted hours (Tr.185/14-18), Judge Ninfo asked Att. Werner whether he had any questions for Mr. DeLano and this is Att. Werner's assessment of Mr. DeLano's testimony:

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Tr.187/  8. THE COURT: I'm just waiting for you. Are
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9  you finished now?
21 DR. CORDERO: Very well, I have completed.
22 THE COURT: Mr. Werner?
23 MR. WERNER: I believe Mr. DeLano has given
24 a fair statement of his position and facts, your Honor,
25 I have no questions.
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65. Judge Ninfo pretends to know that "what is clear from the Trial and DeLano's testimony at the Trial is that: (1) DeLano consistently asserted that:..." (D:16) because the Judge is clear-minded and was not confused…but Judge Ninfo admitted that he himself was confused! (Tr.53/24-54/2; ¶67 below) And he still is, for how can he state that "DeLano consistently asserted" anything while pretending that Mr. DeLano was "confused" although the hallmark of being confused is precisely the incapacity to make consistent statements, the state of mind of one who contradicts himself and is incoherent? Is Judge Ninfo saying that Mr. DeLano made some inconsistent statements but also other consistent statements? Then Mr. DeLano was not so "confused" after all! (Tr.183/14-18) His state of mind allowed him to make "some most interesting statements" against his own legal interest. So the one who turns out again to be incapable of making consistent statements in a single sentence is Judge Ninfo. (¶59 above) Do you really want to risk your career and more by supporting this peer?

66. Judge Ninfo is not straightforward either with his appellate peers, for he alleges that "what is clear from the Trial and DeLano's testimony at the Trial...", thereby pretending that he has two sources for "what is clear". However, there was no "Trial" at all; just an evidentiary hearing. (Tr.132/5-8) In addition, at that hearing there was nothing other than Mr. DeLano's testimony because in pursuit of his agenda to eliminate Dr. Cordero from the case through a two-punch setup, the Judge denied him *every single document* that he had requested. (D:287, 314, 320§II, 325, 327¶1)

67. Nor is Judge Ninfo straightforward when he denies his peers an impartial and complete statement of facts by omitting Mr. DeLano's "most interesting statements" (D:16; ¶58 above). How can

a judge who admitted at the hearing that he was confused by Dr. Cordero's questions so as to offer Mr. DeLano a cue for him to recant his statements against legal interest (Tr.182/16-183/2), which instead resulted in that "DeLano insisted that he was not confused" (D:16, Tr.183/13-18), keep from his peers those "most interesting statements" that would have given them the opportunity to decide for themselves who was "confused" after all?

68. Judge Ninfo took an oath to 'administer justice fairly and impartially' (28 U.S.C.§453). When he writes a decision, he cannot become the partisan advocate of his own views in order to ensure that his decision is not reversed on appeal. He remains a lawyer and a member of the legal community, bound by the same standard of professional responsibility as any lawyer, for his observance of that standard is intended to achieve the same objective in his relation to any appellate court, that is, "to bring about just and informed decisions" (Add:552/EC7-24; EC 7-24 ABA MCPR).

69. Hence, a judge must present all the facts, whether favorable or unfavorable to his decision, and then argue their relative weight. That duty is patterned after the professional responsibility standard requiring that a lawyer present to the court "legal authority in the controlling jurisdiction directly adverse to the position of his client" (Add:551/EC7-23; ABA MCPR). This is in line with every witness' duty not just to tell the truth, but also "the whole truth" as opposed to only the part supporting his position. As for a judge, his duty to present all the facts, not only those supporting his decision, is equally compelling because while the appellate court can on its own find controlling legal authority that is adverse to the lower judge's decision, it may have no way of finding the facts other than those stated by the lower judge and may give them more credence than to the parties' statements of facts. Justice is as disserved when either the appellate court or the lower judge administers it on the basis of a partial and partisan, self-serving view of the facts. Judge Ninfo rendered such a disservice by withholding from his appellate peers Mr. DeLano's "most interesting statements".

70. Those "statements" bear on Mr. DeLano's handling of the containers storing Dr. Cordero's property. They are "most interesting" precisely because they establish his claim against Mr. DeLano:

a) David Palmer was the owner of Premier Van Lines, the moving and storage company that with a loan from M&T Bank bought containers where to store the property of Premier's clients, including Dr. Cordero, and warehoused them at a Jefferson-Henrietta warehouse; Premier went bankrupt and Mr. DeLano was in charge of liquidating the containers (Tr.101/10-16, 113/2-7);

b) Mr. DeLano told Dr. Cordero that he had seen the containers bearing his name and holding his property, but later on admitted that he had seen none (Tr.149/25-150/6, 101/17-19, 109/3-5, 111/9-24, 141/8-13);

c) Mr. DeLano was under pressure to have the containers moved out of the Jefferson-Henrietta warehouse because the latter was going to put a warehouse lien on the containers to secure unpaid warehousing fees (Tr.111/6-112/3), an action that would have delayed the sale and diminished Mr. DeLano's net recovery from liquidating M&T Bank's security interest in the containers;

d) So Mr. DeLano hired an auctioneer, John Reynolds (Tr.97/13-18), to sell the containers; and the auctioneer sold them in a private auction to the single warehouser that he contacted (Tr.115/4-17, 95/5-17, 96/21-23);

e) Mr. DeLano did not check and did not know whether the auctioneer checked the capacity of the buying warehouser, whose name he did not remember, to store property safely from damage or loss due to pests, water, humidity, extreme temperature, fire, and theft (Tr.95/18-19, 112/4-113/17, 120/22-17);

f) Mr. DeLano did not contact the owners of the property stored in those containers to inform them of how he intended to dispose of the containers and find out from them how they

wanted their property handled, such as by having it inspected before being removed, moving it to a place of their choice, or obtaining in advance from the prospective buying warehouser a statement of its terms and conditions, including storage fees (Tr.109/19-110/8);

g) Although Mr. DeLano did not think that Dr. Cordero's property was in any of the containers sold at the auction (Tr.105/14-17, 120/13-16), after the sale, Mr. DeLano directed him to the buying warehouser to deal directly with it about his property (Tr:152/1-21);

h) Dr. Cordero contacted the buying warehouser and its owner told him that Mr. DeLano had sent him an acknowledgment of receipt that included Dr. Cordero's name, but the owner would not sign it because he had not received any containers bearing Dr. Cordero's name among those sold to him by the auctioneer (Tr.104/5-9, 150/16-151/8, 150/20-151/18);

i) Mr. DeLano admitted that he had sent the owner of the buying warehouse such acknowledgment of receipt but that the owner turned out to be right because the containers with Dr. Cordero's property were not delivered to him given that they had *never* been in the Jefferson-Henrietta warehouse; Mr. DeLano explained that this may have happened because while checking the slips in the business records that Premier had in its office in the Jefferson-Henrietta warehouse, he may have seen a slip with Dr. Cordero's name and erroneously concluded that the containers that the slip referred to were also in that warehouse; (Tr.152/3-21, 153/4-23, 155/1-13);

j) but in fact Premier's owner, Mr. Palmer, had abandoned Dr. Cordero's containers at Mr. Pfuntner's warehouse in Avon and it was Dr. Cordero who had to invest his time and effort to find that out (Tr.154/2-24, 155/14-24, 157/22-158/5), and to travel there to inspect the containers and found his property in part lost or damaged (D:380¶¶72-74);

k) Mr. DeLano admitted that his mistakes could have caused Dr. Cordero confusion and anxiety and cost him a lot of effort, time, and money trying to find out where his property

could be, and that it was reasonable for Dr. Cordero to claim therefor compensation from him and M&T Bank and for them to compensate him to a degree. (Tr.155/14-156/25, 160/24-161/5, 174/5-175/8, 176/5-10);

l) Upon Mr. DeLano making that frank admission, Dr. Cordero said that such degree of compensation was what had to be determined at the *Pfuntner* trial where all the parties and all the issues could be tried as a whole, as opposed to trying to determine only the claim against Mr. DeLano in isolation in his bankruptcy case. (Tr.177/18-178/9);

m) Mr. DeLano also admitted that since he was the loan officer who handled the defaulted loan to Mr. Palmer and Premier and disposed of the containers in which Dr. Cordero's property was stored, he would be the one to represent M&T at the *Pfuntner* trial and bring any documents. (Tr.184/1-13)

71. No wonder Mr. DeLano's are "most interesting statements" given that they constitute an admission of his having dealt with the containers with the aim only of avoiding a warehouse lien, thus maximizing the liquidation of his Bank's interest in them, and with disregard for the property of other people, such as Dr. Cordero, that they contained. In so doing, Mr. DeLano proceeded negligently, recklessly, or fraudulently, which had direct, adverse consequences on Dr. Cordero, for which Mr. DeLano and M&T could be found liable to him at the *Pfuntner* trial. Likewise, his "statements" are also "most interesting" precisely because they corroborate Dr. Cordero's claims contained in his complaint served on M&T and Mr. DeLano on November 21, 2002 (Add:534/after entry 13, 797§D) concerning their mishandling of his stored property.

72. Moreover, Mr. DeLano admitted that "he had seen one or more storage containers at the [Jefferson-Henrietta] Warehouse which bore Cordero's name" (D:15; Tr.141/8-13). That admission can now be relied upon by Mr. Pfuntner and other parties at the *Pfuntner* trial to escape liability for Dr. Cordero's property not found at Mr. Pfuntner's warehouse during the inspection on May 19,

2003. Judge Ninfo himself required Dr. Cordero to undertake it and accepted his report at the hearing on May 21 on the loss of, or damage to, his property (D:398¶¶35, 50; Add:609¶B; Tr.141/16-19). They can rely on the Judge's **findings** that such containers could have been at the Jefferson-Henrietta warehouse (D:17/items (4)-(5); Tr.160/6-9) to argue that Mr. DeLano is liable for any conversion of those containers while he negligently or recklessly sold them through his agent, Reynolds Auction Co., to the buying warehouse. (Tr.186/9-187/4) Only incapacity to anticipate a legal argument, bias, and his need to protect Mr. DeLano can cause Judge Ninfo to negate that "there is any possibility" (D:21) that Mr. DeLano could be found liable to Dr. Cordero and grant his motion to disallow. Thus, if Mr. DeLano's admission was not sufficient for Dr. Cordero to prove by a preponderance of the evidence the validity of his claim against Mr. DeLano, what would?

e. Neither Mr. DeLano nor Att. Werner bothered to read the complaint or the proof of claim containing the claim that they had moved to disallow and in the middle of the hearing asked Dr. Cordero to lend them a copy!

73. In addition, Mr. DeLano's are "most interesting statements" because he admitted at the evidentiary hearing to not having read fully or at all the documents containing the very claim that he was moving to disallow. (Tr.54/6-55/5) Neither he nor Att. Werner brought a copy of either Dr. Cordero's complaint or proof of claim to the hearing (Tr.64/10-66/18). Judge Ninfo himself did not know key parties in the handling of the storage containers that held Dr. Cordero's property. (Tr.54/6-55/5, 121/18-123/11, 157/2-21)

74. So intensely did they feel the need under Dr. Cordero's questioning to find out right away what that claim was all about that during the first recess Mr. DeLano and Att. Werner walked out of the courtroom with Michael Beyma, Esq., attorney for both M&T Bank and Mr. DeLano in *Pfuntner* (Add:535/entry 24, Add:778). When Att. Werner and Mr. DeLano came back in, the former asked Court Attendant Larraine Parkhurst whether she had a copy of Dr. Cordero's

complaint against Mr. DeLano! He was told that it had been filed with the court. So he turned around and asked Dr. Cordero whether he had a copy. He said that he had copies and Att. Werner asked him for one! Dr. Cordero declined to lend him any. (Tr.49/13-50/25)

75. When Judge Ninfo came in and the hearing was back on the record, Dr. Cordero related the incident. The Judge found nothing objectionable in such irrefutable proof that neither Att. Werner nor Mr. DeLano had had before or had then any idea of the nature of the claim that they had moved to disallow. (Tr.124/4-20, 137/8-21, 143/17-145/13) This showed that their motion was raised in bad faith as a process-abusive subterfuge to eliminate Dr. Cordero from the case before he could prove the DeLanos' fraud. (Tr.60/19-61/13) Nor did the Judge find reprehensible that during an examination under oath, Att. Werner had attempted to take advantage of a recess to feed Mr. DeLano answers to key questions put to him by Dr. Cordero. The latter moved to dismiss. The Judge denied his motion out of hand although he had to acknowledge that they neither had a copy of Dr. Cordero's complaint nor knew its contents. (Tr.99/13-20)…but the lawyers had their hands and mouths to impermissibly signal answers to their testifying client.

f. Judge Ninfo looked on in complicit silence while Atts. Werner and Beyma signaled answers to Mr. DeLano during his examination under oath

76. At the evidentiary hearing, Dr. Cordero remained at his table. Relative to him, Mr. DeLano was on the witness stand to his right and in front of him; Att. Werner, at his table five feet away to his right; and in the first bench behind the bar and Att. Werner, some nine feet away, Att. Beyma, a partner at Underberg & Kessler, where Judge Ninfo too was a partner when he was appointed judge in 1992. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look away from him and toward his attorneys and as Dr. Cordero looked at them he caught one or the other signaling to Mr. DeLano with the arm! (Tr.28/13-29/4:Beyma, 75/8-76/3:Beyma, 141/20-143/16:Werner)

77. Dr. Cordero protested such utterly censurable conduct to Judge Ninfo. He was sitting some 25

feet in front and between Att. Werner and Dr. Cordero and some 30 feet from Att. Beyma. Yet, Judge Ninfo found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything. Indeed, from the distance and higher level of his bench he had an unobstructed view of the two attorneys and Dr. Cordero, who were in his central field of vision. So it was impossible for him not to catch the distraction of either of them flailing his arm. Nevertheless, his allegation was belied even more patently by what he did not say: He did not ask either of the attorneys on any of those occasions whether they had signaled an answer to Mr. DeLano. Even if, assuming arguendo, he had not seen them signaling, he did not care to find out either. Yet, he had every reason to ask about it precisely because neither protested Dr. Cordero's accusation, which they reflexively and indignantly would have done had it not been true that they had signaled to Mr. DeLano how to answer.

78. Judge Ninfo's toleration of conduct intended to suborn perjury shows his blatant disregard for due process. His disingenuous denials that he had not seen the reprehensible signaling that occurred three times right before his eyes cast an insidious meaning on his emphatic admonition to Mr. DeLano that 'you are not listening to Dr. Cordero's questions and you have to "think about the answer". (Tr.97/17-98/12, 114/9-115/2). Given his tolerance of subornation of perjury in open court by well-known locals (D:358§II), what else would he let them do behind close doors? One cannot imagine that those attorneys would have dare signal to their client on the witness stand had they been before a judge unknown to them at the court in Albany, NDNY. But one can understand their conduct in the context of a pattern of non-coincidental, intention, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (392§I)

g. Judge Ninfo misleads his peers by pretending that there was a "Trial", yet what he ordered and held was just an evidentiary hearing

79. Judge Ninfo misleadingly refers to a "Trial" although it was an evidentiary hearing what he ordered **1)** at the hearing on August 25, 2004, of Mr. DeLano's motion to disallow Dr. Cordero's claim; **2)**

in his decision of August 30 (D:277/1st whereas, 279); **3)** at the hearing on December 15, when he set the evidentiary hearing for March 1, 2005 (Tr.131/20-132/8); **4)** in his order of December 21, 2004 (D:332); and what he held **5)** on March 1, 2005 (Tr.132/5-8).

80. In Black's Law Dictionary, 8th edition, an evidentiary hearing is defined thus:

> evidentiary hearing. 1. A hearing at which evidence is presented, as opposed to a hearing at which only legal argument is presented. 2. ADMINISTRATIVE PROCEEDING.

81. FRBkrP 9014(e) concerning contested matters provides that "The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify". An evidentiary hearing is a proceeding for examining "witnesses with respect to disputed material factual issues", as FRBkrP 9014(d) provides, not for arguing issues of law. Hence, it is governed by FRCivP 43(a), as stated in the Advisory Committee Notes for the 2002 Amendment. This shows how misleading it is for Judge Ninfo to call an evidentiary hearing a 'trial', let alone to refer to it emphatically as a "Trial".

82. But by such ruse, Judge Ninfo criticizes Dr. Cordero for not having deposed other parties or taken discovery of them (D:14). Had Dr. Cordero done so, he would have walked right into the Judge's trap of trying *Pfuntner*, artificially limited to Dr. Cordero's claim therein against Mr. DeLano, within *DeLano*. In one fell swoop the Judge would have eliminated Dr. Cordero from both cases so as to insulate the local parties from liability to him. But Dr. Cordero had anticipated that ruse and objected to it (D:444§I) because his claim against Mr. DeLano cannot be disposed of in isolation from all the other issues in *Pfuntner* (D:444§I, Tr.186/10-187/20), lest the remaining parties resort to the expedient of off-loading their liability onto the dismissed parties, e.g. Trustee Gordon (D:393§1), and Judge Ninfo accept their ploy. (Tr.177/19-178/9) Thereby Dr. Cordero would be left to suffer the consequences of their negligence, recklessness, and fraud in dealing with his stored property without anybody being found responsible for its

loss or damage (Add:597§B).

83. This is not the first time that Judge Ninfo tries to mislead his appellate peers by pretending that he had moved the case along to a trial (Add:749) although the proceeding that he had held was nothing but a hearing by the terms of his own previous orders (D:430§A; Add:724). His conduct shows him not to be trustworthy.

h. Judge Ninfo shows blatant bias and bad faith in criticizing Dr. Cordero for not filing a "Pretrial Memorandum of Law", a type of paper not even mentioned in the rules, never required of him, and not filed by Att. Werner, who also filed no memorandum of law to support his motion to disallow

84. By referring to a "Trial", Judge Ninfo fabricated a pretext for his criticism that "Cordero did not file a Pretrial Memorandum of Law...regarding the merits of the Cordero Claim". (D:14) However, in connection with the motion to disallow, he only referred to an "evidentiary hearing" (¶79 above), which is for taking testimony, not for presenting legal arguments (¶81 above). So there was neither notice nor expectation that such paper had to be filed. Indeed, such term, let alone a related filing obligation, is not even contained in 1) the FRCivP, 2) the FRBkrP, 3) the local rules of the Bankruptcy Court, 4) the local rules of the District Court, 5) Moore's Manual--Federal Practice and Procedure, 2004 ed., or 6) Federal Litigation Guide, 2004 ed., by Matthew Bender & Co.

85. It is sheer bias that Judge Ninfo did not request any "Pretrial Memorandum of Law" from Att. Werner, who filed none, yet the Judge did not fault him therefor. Nor did he require Att. Werner to provide, let alone criticize him for not providing, a "Memorandum of Law" to support his motion to disallow. Nevertheless, Att. Werner had an obligation to provide not only such memorandum, but also substantial evidence to overcome the claim's presumption of validity under FRBkrP 3001(f) (¶94 below).

86. By contrast, Dr. Cordero wrote and filed several memoranda of law where he **1)** discussed on April 25 the validity of his claim (D:118¶1; 128§I), after which Att. Werner dropped the

challenge to it and did not renew it even though Dr. Cordero filed his proof of claim on May 15 (D:142); **2)** argued that Mr. Werner's July 22 challenge was untimely and barred by laches (D:255§VI, 447§A); **3)** demonstrated that the motion to disallow his claim was an artifice to eliminate Dr. Cordero from the case (D:253§V, 370§C, D:, 453¶39); **4)** contended that the motion could not overcome the presumption of validity attached under FRBkrP 3001(f) to Dr. Cordero's claim (D:256§VII, 446§II); and **5)** indicated that there was no justification for estimating the value of his claim because it was not legally necessary to distribute the assets and close the case at that time (D:450§§C-D). Yet Judge Ninfo disregarded the law, the rules, and the facts to dispose with a mere conclusory statement of Dr. Cordero's arguments on untimeliness and laches (D:372¶50) and on the motion as a process-abusive artifice (D:277/2nd¶). Worse still, the Judge betrayed his failure even to read such memoranda in breach of his duty to inform himself of a submission before ruling on it by stating "Cordero did not...make any other written submission regarding the merits of the Cordero Claim" (D:14)…or is he making an intentionally misleading statement to his peers to present Dr. Cordero in a false light?

87. It would have made no difference if Dr. Cordero had submitted a "Pretrial Memorandum of Law" since, as Judge Ninfo put it, "Cordero has filed a great number of motions and made numerous requests for relief" (D:8) in which he argued the law and the rules (D:231, 317, 355, 385, 426, 441; Add:535/entries 22, 75, 78, 93, 111, 157)…to no avail, for the Judge has skipped any discussion of his citations and arguments and jumped into his requested relief to deny it with his this-is-so-because-I-say-so orders, even resorting to sweeping "in all respects denied" fiats (D:327¶1; Add:548/entry 145, 1125). Judge Ninfo's faulting Dr. Cordero, but not Att. Werner, for not having filed a nowhere described and never required "Pre**trial** Memorandum of Law" was biased and done in bad faith.

i. Judge Ninfo pretends to provide legal authority, without discussing

it, for his decision, which on the contrary shows that with disregard for the law he disallowed the claim

88. Judge Ninfo opened "The Claim Objection Proceeding" section of his decision (D:10 & Add:637) by quoting 11 U.S.C. §502(a) and FRBkrP 3001(f) only to continue with a showing of his disregard for the law due to his unwillingness or inability to analyze it and then apply it to the facts.

89. Indeed, §502(a) provides that once a claim has had its proof filed, it "is deemed allowed" unless a party in interest objects because "the procedure for the allowance of claims for which there are no objections is an administrative proceeding by operation of Rule 3001(f), requiring no judicial participation", as stated at the top of the same page where appears Judge Ninfo's citation to Norton Bankr. L & Prac. 2d §41:7 (D:11/fn.5; Add:645). Hence, neither the clerk nor the court is empowered to take the initiative to review the proof substantively to determine whether the claim is valid in light of some unspecified, arbitrary criteria. It is only upon the objection of a party in interest that the court can take action. (*In re G. Marine Diesel Corp.*, 155 B.R. 851 (Bkr. E.D.N.Y. 1993)(because a properly executed and filed claim is deemed allowed in bankruptcy proceeding, the objecting party has the initial burden of producing sufficient evidence to rebut the claimant's prima facie case.)

90. Consequently, the court's action is not to review either the claim or its proof, for FRBkrP 3001(f) provides that the filing of a proof of claim "shall constitute prima facie evidence of the validity and amount of the claim". This means that "the burden is on the objecting party to go forward with evidence establishing the basis of the objection", as stated by Judge Ninfo's citation to Norton §41:7 (Add:645) The court can only review the **objection** to determine whether it overcame the presumption of validity already attached to the claim. Judge Ninfo disregarded his duty to review the objection, and instead took it upon himself to review the claim (D:11):

> Since Cordero failed to attach to the Cordero Claim those pages of the Cordero Premier Claims that specifically dealt with his alleged claims against DeLano, the Court made this statement only after it had reviewed

> in detail the Cordero Claim, DeLano's Objection to the Claim and the Cordero Premier Claims.

91. Judge Ninfo had no authority either to expect or require that any specific pages or documents be attached to Dr. Cordero's proof of claim. Nor could he take the initiative to go fetch any pages to determine whether Dr. Cordero had established a valid claim. By so doing, he impermissibly denied the claim's presumptive validity and took on the role of the objecting party, thereby becoming Mr. DeLano's advocate and forfeiting his position as an impartial judge.

92. The fact is that the motion to disallow (D:218) does not even mention "those pages of the Cordero Premier Claims". So unaware of "those pages" were Mr. DeLano and Att. Werner that they were nor even sure what Dr. Cordero's claim was all about, thus writing "Claimant **apparently** asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M&T Bank" (emphasis added; id). But Att. Werner did not have a clue of where to find "those pages". His actions at the evidentiary hearing confirm (¶73 above) that he did not have Dr. Cordero's complaint containing his claim against Mr. DeLano, had not read them, and did not know even remotely what they "specifically dealt with", whereby he could not refer to them when objecting to the claim (Tr.64/4-67/21). Had he read them, he would have known to refer the court to 'an Adversary Proceeding **in *Pfuntner v. Gordon et al* (02-2230)'**, rather than *Premier*. The latter was a bankruptcy case, had practically ended about a year before the commencement of *Pfuntner* when Mr. Palmer stopped participating in his own case, and in which Mr. DeLano was not a named party. Moreover, that "pending Adversary Proceeding" was not merely "relating to M&T Bank", but instead concerned Mr. DeLano directly as a named third-party defendant. Hence, Judge Ninfo, left to his own devices, mistakenly referred to "a cross-claim that Cordero had asserted against DeLano" (D:3). These people did not know what they were talking about!

93. How thereby Att. Werner doomed the objection is unwittingly confirmed by Judge Ninfo, who pretended to cite authority but disregarded its implications or was unable to apply it to the facts:

> The Second Circuit has clearly ruled that once the objecting party introduces substantial evidence in opposition, the burden shifts to the claimant to establish by a preponderance of the evidence that their claims are allowed under the law. (emphasis added; D:11 fn.5)

94. All Att. Werner filed on July 22, 2004, was a *stick-it*-like note in an Objection to Claim form (D:218):

> Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

95. If that is "substantial evidence", what would plain 'evidence' be? Black's Law Dictionary defines it:

> **evidence**, n. Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.

96. What Att. Werner provided was his personal opinion, which under no legal standard constitutes "evidence", and is not even proper to offer, let alone admissible (EC 7-24, ABA MCPR, Add:552). His opinion does not even reach the level of a legal argument, just barely that of a conclusory assertion (D:251§§II-IV). Since it is not evidence, then as stated in what Judge Ninfo unreflectively copied, it cannot be "sufficient to rebut the presumption of validity, [and no] burden of proof shifts to the claimant" (D:11/fn. 5 & Add:637/fn.5). He would have realized this had he read his own citations: "The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity.n5a", 9 Collier on Bankruptcy § 3001.09 [2] (Add:649). "Evidence must be offered by the objecting party to overcome the prima facie case", Norton Bankr. L & Prac. 2d §41:6 (Add:645). "Substantial evidence" must consist of financial information and factual arguments, not legal rhetoric", (Norton §41:8, Add:648/fn.93); or as stated in 9C Am. Jur 2d Bankr. §2368, cited by Judge Ninfo in his pretense at legal research (D:11/fn.5 & Add:637/fn.5) but either not read or deliberately ignored: "if the objecting party produces little[30] or no evidence, the claimant will prevail[31]…mere denial of the claim's validity or amount will not suffice[34]", (Add:640-641). (*In*

re Michigan-Wisconsin Transp. Co., 161 B.R. 628 (Bkr. W.D. Mich. 1993)(A party objecting to a claim must present affirmative evidence to overcome presumptive validity of a properly filed proof of claim; only after this has been done does the burden of persuasion shift to the creditor) Att. Werner presented no evidence whatsoever; consequently, he could not have rebutted the presumption of validity that attached to Dr. Cordero's proof of claim.

97. It attached when Dr. Cordero filed the official proof of claim form. In ¶8 it states (D:142): "If the documents are voluminous, attach a summary". So he attached key pages of the 31-page third-party complaint in *Pfuntner* containing his claim against Mr. DeLano and wrote in bold characters at the top of the first page: **"Summary of documents supporting Dr. Richard Cordero's proof of claim…"** (D:144) .Those pages were a proper summary since he had served on Mr. DeLano the whole complaint. (Add:785; 534/after entry 13) So aware was Mr. DeLano of the claim therein that he listed it when filing his petition (D:27/Sch.F) and was accompanied by his lawyer for that claim, Att. Beyma, to the meeting of creditors and the evidentiary hearing (Tr.2/9-12).

98. Judge Ninfo then cited *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000). (D:11/fn.5 & Add:637/fn.5) If he had only read it, even he might have realized that it has nothing to do with *DeLano*, but if it does, "Thus, in *Raleigh*…the Supreme Court held that the debtor [cf. Mr. DeLano!] bears the burden of proof in objecting to a proof of claim filed by the United States for federal employment taxes because it is the debtor's burden under substantive state law"…wait a moment!, this is in the Judge's own citation, 9 Collier on Bankruptcy §3001.09 (id.; Add:649) But because the Judge did not read either Collier or *Raleigh*, he did not realize that by citing them he was putting the burden of proof squarely on Mr. DeLano's shoulder! What a self-indictment by Judge Ninfo of his capacity to do legal research and apply the law to the facts at hand!

99. No wonder Judge Ninfo did not bother to cite anything more pertinent than *In re Youroveta* (D:11/fn.5 & Add:637/fn.5; Add:651) and *In re Burrows* (id.; Add:654), for the proposition that

"the ultimate burden to prove a valid and allowable claim rests with the creditor" (D:11 & Add:637), whereas he did not show a hint of awareness that the fact that those cases date back to 1924 and 1946, respectively, deprives them of authority therefor. This is so because in their days there was no official rule, not even clear dictum, giving a proof of claim prima facie validity. Rule 3001(f) was adopted only **decades** later. It formed part of the Federal Rules of Bankruptcy Procedure prescribed by the Supreme Court on April 25, 1983, where it became the current version of Rule 301(b) (411 U.S. 1042) of the former Bankruptcy Rules and Official Forms, which were first prescribed by the Supreme Court on April 24, 1973, pursuant to 28 U.S.C. §2075, (411 U.S. 989; 11 U.S.C.A. Bankruptcy Rules, pg. XXVII) and became effective on July 1, 1975 (Pub. L. 93-593, §3, Jan. 2, 1975, 88 Stat. 1959).

100. A century ago, it was still an open question "whether the sworn proof of claim is prima facie evidence of its allegations in case it is objected to…whether the sworn proof is evidence at all" (Add:652). This was a quote from Holmes, J., in *Whitney v. Dresser*, 200 U.S. 532, 534, 26 S.Ct. 316,317, 50 L.Ed. 584 (1906). *Youroveta* pointed out that "The common statement of the rule in matters like this is that, under Whitney…a sworn proof of claim puts the "burden of proof" on the objecting trustee. This is not an accurate statement [of what] Holmes, J., remarked" (id). Yet, *In re Burrows* states that "it is true that the proofs filed established the claims prima facie" (Add:655). This shows the unsettled state in those days of the evidentiary effect to be accorded a proof of claim. Hence, it is imprudent for a lawyer today who has read both cases, let alone one who has not, to cite them in support of a proposition that rests on such an unsettled basic statement.

101. The imprudence is particularly gross since one of those cases, *Youroveta*, applied the statement from Holmes, J., that "It is not a question of the burden of proof in a technical sense, a burden which does not change, whatever the state of the evidence", which negates the proposition for which Judge Ninfo cited it since the issue of an "ultimate burden" (D:11 & Add:637) could not arise because the

burden did not shift to begin with. Did Judge Ninfo try to take his appellate peers for fools because he knew that they would not bother to check his citations just as he did not bother to read them?

102. Not only does he not read his "authority", but he also disregards its mandate, which provides:

> An objection should state the grounds as to why the claim should be denied by giving facts and citing one of the nine subparagraphs of §502(b). A general objection without specific reference to a proper ground may be an insufficient objection and is subject to a motion to dismiss at, or prior to, a hearing. Norton Bankr. L & Prac. 2d §41:8 (D:11 fn.5, Add:637/fn.5; 648; cf. ¶75 above)

103. Att. Werner failed to provide any such grounds, just as did Judge Ninfo, who had a duty to do so, as stated in 11 U.S.C. §502's Historical and Statutory Notes, Revision Notes and Legislative Reports, 1978 Acts: "Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim".

104. Judge Ninfo does not even show awareness that §502(b) contains the grounds for disallowance, let alone that a "claim may be disallowed, not for just any reason, but only for one of the reasons enumerated by Congress; [for a] bankruptcy court has no discretion in this regard and cannot disallow a claim for reasons beyond those stated in statute", *In re Taylor*, 289 B.R. 379 (Bkr. N.D. Ind. 2003). Disregarding the law and instead engaging in "local practice" (D:98§II), the Judge granted the motion to disallow in order to protect the DeLano Locals (D:370§C) and biasedly injured Non-local Dr. Cordero (D:392§I). Hence, his decision to disallow his claim against them is a nullity because the motion to disallow was the DeLanos' artifice and the evidentiary hearing Judge Ninfo's sham to eliminate Dr. Cordero before he could prove a bankruptcy fraud scheme.

j. Judge Ninfo has shown such bias against Dr. Cordero and in favor of the local parties as to require the nullification of his decisions and his disqualification under 28 U.S.C. §455(a), which the Supreme Court has stated calls only for the appearance, not the reality, of bias and prejudice

105. Section 455(a) of 28 U.S.C. provides as follows:

> 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)

106. The Supreme Court recently reaffirmed in *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (REHNQUIST, C. J.) the standard for interpreting and applying this section thus:

> 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).*

107. Those surrounding facts and circumstances are to be assessed by "the 'reasonable person' standard which [28 U.S.C. §455(a)] embraces", *Microsoft Corp.* at 1303. (Cf. D:418)

108. The bias that Judge Ninfo has shown toward the DeLanos and the other local parties and against Non-local Dr. Cordero has infected all his decisions in *DeLano* as well as in the case that gave rise to Dr. Cordero's claim in it, that is, *Pfuntner*. Indeed, the Judge has inextricably linked both cases by stating in the *DeLano* decision on appeal (D:3) his findings of fact and conclusions of law about *Pfuntner* although discovery in the latter under FRBkrP 7026 and FRCivP 26 has not yet begun. Thereby he has prejudged the outcome of *Pfuntner* and done so to Dr. Cordero's detriment (Add:854§§I and IV). He has even given notice in the *Pfuntner* docket of his *DeLano* decision on appeal here and related it to a 2003 decision in *Pfuntner* (Add:549/after entry 156).

109. In effect, he has consolidated both cases. They now contain compelling evidence of his bias, his blatant failure to provide legal authority for his rulings, and his gross mistakes of fact. His decisions and conduct in those cases as well as the conduct of trustees, court staff, and other local parties show them to have participated in a series of acts of disregard for the law, the rules, and the facts so consistently in favor of the local parties and against Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing (D:392§I) in support of a common agenda: a bankruptcy fraud scheme. To protect it, he allowed the DeLanos' motion to disallow

Dr. Cordero's claim despite the motion's procedural and substantive defects (D:249), ordered Dr. Cordero to take discovery of Mr. DeLano in *Pfuntner* only to deny him every single document that he requested from Mr. DeLano, and then conducted a sham of an evidentiary hearing (D:378§2) in which he arbitrarily disregarded Mr. DeLano's admissions against self-interest and disallowed Dr. Cordero's claim. Consequently, Judge Ninfo has denied Dr. Cordero due process of law (cf. Add:613§C; Add:591§III.A). His bias and disregard for legality require his disqualification from both cases; render his decisions in both a nullity; and justify in the interest of justice the removal under 28 U.S.C. §1412 of both cases to an impartial court in another district.

2. Local Rule 5.1(h) suspiciously singles out RICO claims by requiring exceedingly detailed facts just to file them, thus violating notice pleading under FRCivP

110. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that "each averment of a pleading shall be simple, concise, and direct". For its part, FRCivP 83(a)(1) provides that "A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and §2075". As stated in the Advisory Committee Notes, 1985 Amendment to Rule 83, local rules shall "not undermine the basic objective of the Federal Rules", which FRCivP 84 sets forth as "the simplicity and brevity of statement which the rules contemplate". Thereby the national Rules, as indicated in the 1995 Amendments to Rule 83, aim at preventing that a local rule with "the sheer volume of directives may impose an unreasonable barrier". In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (s 1st Cir. 2000) stated that "Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose".

111. Yet such barrier is precisely what the District Court, WDNY, erects with its Local Rule 5.1(h)

(Add:633), which requires a party to provide over 40 discrete pieces of factual information to plead a claim under RICO, 18 U.S.C. §1961. This contravenes the statement of the Supreme Court that to provide notice, a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)). On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

112. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is "relaxed in situations where requisite factual information is peculiarly within defendant's knowledge or control", *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). This means that even in fraud cases the purpose of the complaint is to put defendants on notice of the claim, not to allow the court to prevent the filing of the case or enable it to dismiss the claim on the pleadings.

113. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances", by the absolute and strict standard of "facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party's RICO claim". To require "facts…in detail and with specificity" is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of "allegations and other factual contentions…likely to have evidentiary support after a reasonable opportunity for further investigation or discovery". Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that "We recognize that the degree of particularity should be determined in light of such circumstances as whether the plaintiff has had an opportunity to take discovery of those who may possess knowledge of the pertinent facts". By contrast, Local Rule 5.1(h)

provides no opportunity for discovery, but instead requires such "detail and specificity" in the pleadings as to make it easier to spot any "failure" to comply and "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a directive".

114. It is suspicious that Local Rule 5.1(h) singles out RICO and blatantly hinders the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting at the outset an evidentiary barrier that so starkly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose".

115. Given the bankruptcy fraud scheme supported by people doing business in the same small federal building housing the bankruptcy and district courts and the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI, why would a Local Rule be adopted that forestalls any RICO claim? It smacks of a pre-emptive strike carried out against any potential RICO claim through the abusive exercise of the local rule issuing power. In so doing, that Rule contravenes its enabling provision and is void. Moreover, it causes injury in fact to Dr. Cordero inasmuch as it erects an insurmountable barrier at the outset to his bringing a RICO count against the schemers, thus depriving him of the protection and vindication of his rights under that federal law.

3. Section 158 of title 28 U.S.C. provides for bankruptcy appellate review by judges of unequal degree of impartiality in violation of the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution and is unconstitutional

116. Section 158(b) of 28 U.S.C. (Add:630) allows different majorities of judges in individual districts or circuits to decide whether they want to set up or keep a bankruptcy appellate panel

(BAP). Likewise, it allows individual litigants to choose whether to let an appeal go to the BAP, if available, or to "elect to have such appeal heard by the district court" rather than the BAP initially chosen by appellant. It also allows judges and some parties to keep the appeal in district court for the time being by refusing to agree to a direct appeal to the court of appeals.

117. Section 158 prohibits any BAP judge to hear any appeal originating in his own district. The degree of independence that this provision is intended to provide is nevertheless defeated by allowing a majority of bankruptcy judges in a district to vote against the creation or retention of a BAP. Thereby they can keep appeals from their decisions in their own district and choose as their reviewer their friendly district judge, whom they may see and talk with every day. (¶27 above)

118. There is the reasonable presumption that bankruptcy judges will prefer to have one friend decide those appeals rather than three judges from other districts whom they may not even know. Hence, allowing judges to decide whether to set up a BAP goes against the protection from prejudgment and self-interest that 28 U.S.C. §47. "Disqualification of trial judge to hear appeal" intends to afford by providing that "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." The presumption of favoritism by district judges toward the judges in the "adjunct" bankruptcy court to which they refer cases under 28 U.S.C. §157(a) and with whom they may be "so connected" finds support, mutatis mutando, in the Advisory Committee Notes to FRBkrP 5002, which deals with "Restrictions on Appointments", as well as FRBkrP 5004, (b) Disqualification of judge from allowing compensation.

119. This presumption also supports a challenge to the appointment of bankruptcy judges by the court of appeals rather than Congress. Indeed, after the appeals court for the circuit appoints a bankruptcy judge under 28 U.S.C. §152(a)(1), that judge becomes their appointee. When a decision by that judge comes on appeal to that court of appeals, one, two, or three circuit judges who may have been among the appointing judges must then decide, not only whether the

bankruptcy judge's decision was legally correct, but also whether they were right in voting for him. The circuit judges are not so much reviewing a case on appeal as they are examining the work of their appointee under attack. Voting to reverse his decision amounts to voting against the wisdom of their own vote to appoint him. How many circuit judges would willingly admit that they made a mistake in making an appointment to office…or for that matter, any mistake?

120. Likewise, §158 allows local litigants, who may have developed a very friendly relation with the bankruptcy judge, to elect the district judge to hear an appeal as oppose to three judges in the available BAP, on the spurious consideration that "the friend of my friend is friend". The cases at hand illustrate how likely it is for local litigants to develop a close relationship, even friendship, with the local judges to the detriment of non-local ones: According to PACER, Att. Werner has appeared before Judge Ninfo in over 525 cases; and Trustee Reiber in more than 3,900! Would local attorneys similarly situated ever think of allowing an appeal from their judicial friends to go to an available BAP where their friendship would not play a role and they would have to engage in legal research and writing and present legal arguments to defend their clients? Hardly. The importance of providing a level field where locals and non-locals argue and decide appeals on legal considerations rather than personal relations grows ever more as does "an increasingly national bar". If in recognition of the latter the Judicial Conference provides for uniformity among judicial districts in connection with setting up standards governing the technological aspects of electronic filing, then providing for equal protection under the law when local and non-local counsel clash on appeal should assume even more importance (see the Advisory Committee Notes relating to the 1996 Amendments to FRBkrP 5005, Filing and Transmittal of Papers).

121. Hence, §158(b) impairs due process and denies equal protection. By Congress not setting up in advance a system for appellate review that is uniform nation-wide and that is generally applicable to all bankruptcy cases, it failed its duty to provide for judicial process on equal terms.

F. Conclusion and Relief Sought

122. Judge Larimer has shown himself willing to disregard the rule of law and the facts as well as unable to analyze and apply the law. Moreover, he has a conflict of interest because if he orders the production of the documents necessary for the proper determination of the issues in *DeLano* and *Pfuntner*, he also risks the finding of the whereabouts of at least two thirds of a million dollars and thereby the exposure of a bankruptcy fraud scheme and of the colleagues and others supporting it. Indeed, he has already given the appearance of partiality and of misusing his judicial power in his and the schemers' interest rather than using it in the interest of justice.

123. Therefore, Dr. Cordero respectfully requests that:

a) All of Judge Ninfo's decisions in *DeLano* and *Pfuntner* be declared null and void; and ;

b) Judge Ninfo be disqualified from both cases;

c) the disallowed claim of Dr. Cordero in *DeLano* be reinstated;

d) the proposed order attached hereto be issued, which concerns, inter alia, document production; withdrawal from the Bankruptcy Court, WBNY, and transfer to the District Court, NDNY, of *DeLano* and *Pfuntner*; removal of Trustee Reiber and appointment of a successor; production of a report on the DeLanos' financial affairs; referral of Reporter Dianetti for investigation under 28 U.S.C. §753 to the Judicial Conference as requested in Dr. Cordero's motions of July 18 and September 20, 2005, to the District Court in the instant appeal (docket entries 13 and 19 (Add:911) and 993)); and the report under 18 U.S.C. §3057(a) (Add:630) of *DeLano* and *Pfuntner* to U.S. Attorney General Alberto Gonzales;

e) District Court Local Rule 5.1(h) be stricken down;

f) 28 U.S.C. §158(b) be held unconstitutional.

Dated: December 21, 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 briefs submitted in his appeal, the Court orders as follows:

A. Persons and entities concerned by this Order

1. Respondents, David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors in *In re David DeLano and Mary Ann DeLano*, docket no. 04-20280, WBNY, (hereinafter *DeLano*, which shall be understood to include the above-captioned appeal);
2. 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;
3. 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.;
4. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585) 586-6392;
5. 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;

6. 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;
7. g)Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;
8. 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
9. Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents requested hereinafter.

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

10. 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;
11. 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;
12. 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;
13. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
    a. the source or recipient of funds or who made any charge or claim for funds;
    b. the time and amount of each such transaction;
    c. the description of the goods or service concerned by the transaction;
    d. the document closing date;

e. the payment due date;

f. the applicable rates;

g. the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document;

h. the beneficiary of any payment;

i. the surety, codebtor, or collateral; and

j. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;

14. 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;

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

16. Produce a document and/or a certificate concerning it whenever a reasonable person acting in good faith would:

a. believe that at least one part of such document comes within the scope of this Order;

b. be in doubt as to whether any or no part of a document comes within that scope; or

c. 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

17. File with the Court and serve on Appellant Dr. Richard Cordero at 59 Crescent Street, Brooklyn, NY 11028, (tel. (718) 827-9521), and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

18. 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; **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 Court or the Judicial Conference of the United States upon its request;

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 *DeLano,* docket entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing of the DeLanos' plan, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement 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, including but not limited to tuition, books, transportation, room and board, and any loan extended by a government or a private entity for the purpose of such education, regardless of whose name appears as the borrower on the loan documents;

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.

19. 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 of the United States.

20. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, (hereinafter *Pfuntner*), are withdrawn from the Bankruptcy Court to this Court pursuant to 28 U.S.C. §157(d).
21. The order of Bankruptcy Judge John C. Ninfo, II, WBNY, of August 9, 2005, confirming the DeLanos' plan is hereby revoked; his order of August 8, 2005, to M&T Bank shall continue in force and the Bank shall continue making payments to Trustee Reiber until the appointment of a trustee to succeed him and from then on to successor trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.
22. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*, but shall continue subject to the jurisdiction of this Court and this Order, and such jurisdiction shall continue after appointment of a successor trustee or transfer of *DeLano* to any other court;
23. The Court recommends that:
    a. the successor trustee be an experienced trustee from a district other than this district, WDNY, such as a trustee based in Albany, NY, who
    b. 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 will:
        1) exhaustively investigate the DeLanos' financial affairs on the basis of the documents described herein 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

2) 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

3) file in the court under whose jurisdiction this case shall be at the time, and serve upon the DeLanos and Dr. Cordero a copy of, such report together with a copy of its related documents, which shall include all documents obtained during the course of such investigation and any previous investigation conducted while the case was in the Bankruptcy Court or this Court.

24. 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 ¶23 above; and such firm shall produce a certificate equivalent to that required therein.

25. Court Reporter Mary Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference of the United States for investigation of her refusal to certify that the transcript of her recording of the evidentiary hearing held in the Bankruptcy Court, WBNY, on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim would be complete, accurate, and tamper-free; 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 and produce it for review and evaluation to the Conference, this Court, and Dr. Cordero.

26. *DeLano* and *Pfuntner* are reported 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 either of those cases and unacquainted with any of the parties to either of them, or court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

27. *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 either of those cases and unrelated and unacquainted with any of the parties to either of those case, or any court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated in connection therewith.

28. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and any party 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
, 2006.

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by UPS or U.S.P.S. on the following parties a copy of my appellant's brief in *Cordero v. DeLano*, docket no. 05cv6190L, WDNY:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD CORDERO,

Appellant,

- vs -

DAVID DeLANO, and
MARY ANN DeLANO,

Appellees.

APPEAL FROM BANKRUPTCY COURT

05-CV-6190L

BRIEF OF THE APPELLEES
DAVID DeLANO AND MARY ANN DeLANO

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BASIS OF APPELLATE JURISDICTION

Appellant Richard Cordero ("Cordero" or the "Appellant") has taken this appeal from the April 4, 2005 Decision and Order of the United States Bankruptcy Court, Western District of New York (the "Bankruptcy Court"), as permitted by 28 U.S.C. § 158(a).

ISSUES PRESENTED AND APPLICABLE STANDARD OF APPELLATE REVIEW

A district court reviews a bankruptcy court's finding of fact for clear error and its conclusions of law *de novo*. *See Bayshore Wire Prods. Corp.*, 209 F.3d 100, 103 (2d Cir. 2000); *State University Construction Fund v. D.A. Elia Construction Corp. (In re D.A. Elia Construction Corp.)*, 2000 U.S. Dist. LEXIS 13913 (W.D.N.Y. 2000). The issues presented in the instant appeal are whether clear error exists in the bankruptcy court's decisions:

a) denying the Appellant's motion to recuse the Honorable John C. Ninfo, II from the bankruptcy proceeding; and

b) finding the Appellant was not a creditor holding a valid claim against the Debtor, David DeLano ("DeLano" or the "Debtor").

While the Appellant has greatly expanded these two simple issues in his fifty (50) page Appellant Brief and 1,344 page Record on Appeal, Cordero's newly advanced ideas (including questioning the validity and constitutionality of Local Rule 5.1(h) and 28 U.S.C. § 158(b) [Cordero Brief pp. 45-49]) were either not presented in the underlying bankruptcy proceeding, or not included in his Rule 8006 Issues on Appeal [R. xiii-xiv]. They have therefore, been waived and are not within the scope of this appeal. *See Bank of*

China v. NBM LLC, 89 Fed. Appx. 751, 753 (2d Cir. 2004) (unpublished); *State Univ. Constr. Fund v. D.A. Elia Constr. Corp. (In re D.A. Constr. Corp.),* 2000 U.S. Dist. LEXIS 13913, *19 (W.D.N.Y. 2000) ("issues not raised in the bankruptcy court cannot generally be raised for the first time on appeal"); *In re CGM, P.C.,* 165 F.3d 1026, 1032 (5th Cir. 1999) ("failure of a bankruptcy appellant to designate issues as required by Bankruptcy Rule 8006 resulted in a waiver of those issues").

STATEMENT OF THE CASE

On December 20, 2001, Premier Van Lines, Inc. ("Premier") converted its bankruptcy reorganization into a Chapter 7 liquidation and began what the Appellant describes as a "nightmarish imbroglio." R. 787. According to Cordero, at that time Premier held personal property of his in a storage facility in Western New York. In January 2002, Premier's owner, David Palmer, and his associate David Dworkin on separate occasions "assured" the Appellant that his property was located at a Jefferson-Henrietta warehouse. R. 787. While containers may in fact have been labeled "Cordero" at that location [R. 17], Appellant was informed by a third party in the Summer of 2002 that his property was actually located in a warehouse in Avon, New York. (for what it is worth, Cordero has never alleged DeLano or M&T possessed information that the property was located in Avon rather than Henrietta prior to this point.)

At some point during this time frame, Cordero was also informed that M&T Bank ("M&T") held a security interest in certain assets of Premier, included those presumably located at the Jefferson-Henrietta warehouse. M&T allegedly conveyed its belief, consistent with that of Premier, that containers labeled "Cordero" were located in the Jefferson-Henrietta warehouse, and in an attempt to confirm as much for the Appellant,

M&T contacted David Dworkin to request a list of all Premier customers with belongings in the warehouse. R. 789-790. It is undisputed, however, that M&T "never took possession of or asserted control over the containers at the Avon Storage Facility where the Cordero Property was stored", nor "had any duty to Cordero with respect to the Cordero Property". R. 17-18.

As stated earlier, prior to receipt of this customer list, a third party determined Cordero's property was most likely located in Avon, New York. Assumingly based upon this information, M&T's attorney informed Cordero, by letter dated August 1, 2002, that it now believed his property was located at the Avon warehouse, and further provided Cordero the name and telephone number of both the owner of the Avon warehouse and his attorney. R. 784 By letter dated August 15, 2002, M&T's attorney reiterated that Cordero's property was located at the Avon warehouse, and again provided the Appellant the address and name of the owner of the warehouse, the name and telephone number of the owner's attorney, and if necessary, the name and telephone number of the bankruptcy trustee for Premier. R. 778. In this same letter, M&T also reiterated that it "claims no lien on your assets and M&T Bank consents to the removal of your stored assets", and "urge[d]" Cordero "to contact Mr. Pfunter so that you may obtain the contents of your storage cabinets." R. 778.

Despite the fact that the Record demonstrates every party involved, including M&T [R. 773, 778], DeLano [R. 773, 778] the Chapter 7 trustee [R. 773], and the Court [R. 7], encouraged Cordero to reclaim his property from the Avon warehouse, to the best of Debtor's knowledge, Appellant neither traveled to Henrietta, New York, nor Avon, New York to recover or even inspect his property. R. 9.

The next written communication in the Record between M&T and Cordero was the Third Party Complaint and Crossclaim (the "Complaint") filed in the Premier bankruptcy against several defendants including M&T employee and Respondent Delano. R. 785 In this 19 page, 108-paragraphed pleading, the only factual allegations against DeLano were that within the scope of his employment as an M&T employee: (a) he contacted David Dworkin to "request a list of all Premier customers with belongings in the Jefferson-Henrietta warehouse", (b) like Palmer and Dworkin, "said that he had seen crates with the label 'Cordero' in the [Jefferson-Henrietta] warehouse"; and referred Cordero to M&T's local counsel for any further communication regarding the matter R. 789-790.

Throughout the various proceedings in the Premier Bankruptcy, Cordero's submissions reveal a belief that the problems associated with the retrieval of his personal property were the direct result of anyone and everyone within earshot. No one appears blameless, as Cordero's odyssey-turned-manifesto includes numerous pointed allegations at the U.S. Trustee, chapter 7 trustee and his attorney, Court clerks, reporter and staff, as well as "Lord Ninfo", "Lord Larimer", and their "Fiefdom of Rochester". Cordero Brief, p. 15, ¶ 37. Also included in this buckshot approach was Mr. Delano, and despite the limited –yet still bizarre- allegations against him, it was Delano and his unwary wife who endured the brunt of Cordero's litigious attack when they too filed for Chapter 13 bankruptcy relief in late January 2004. As the voluminous record aptly reflects, the Appellant, under this guise of an actual creditor of the DeLanos, flooded the Court with requests, motions and various paperwork (including a motion for sanctions and compensation against Delano's attorney Christopher Werner, Esq., and his law firm

Boylan, Brown, Code, Vidgor & Wilson, LLP. [R. 258.]) objecting to the couple's bankruptcy due primarily to the fact DeLano, as a bank employee, "should know better than to go bankrupt". Cordero Brief p. 3, ¶ 7.

Finally, on July 22, 2004, the Debtors commenced an objection to the Appellant's claim as a creditor in their bankruptcy. After discovery and a six (6) hour trial, the Bankruptcy Court found that Mr. Cordero in fact "has no valid claim against DeLano individually which can be allowed in the DeLano Case". R. 22. The Appellant has appealed this Decision and Order, which also includes Judge Ninfo's decision denying Cordero's Recusal Motion.

ARGUMENT

A. The Bankruptcy Court did not abuse its discretion in denying Appellant's Recusal Motion.

Any federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. §455(a). *But see, In re Aguinda*, 241 F.3d 194, 201 (2d Cir. 2001) ("where the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited."); *Jones v. City of Buffalo*, 867 F. Supp. 1155, 1163 (W.D.N.Y. 1994), ("'Courts have an obligation and duty to sit when there is no valid reason not to do so. Reassignment of transfer of a case are serious matters that affect the parties as well as the new judge.'"), *quoting* Judge Larimer Docket No. 89-1088, Decision and Order dated March 20, 1990, pp. 3-5.

In this case, Cordero moved for the disqualification of Judge Ninfo for his alleged bias or prejudice, which courts have stressed "is a serious matter, and it should be required only when the bias or prejudice is proved by compelling evidence." *United*

States v. Balistrieri, 779 F.2d 1191, 1202 (7th Cir. 1985). To be successful, Cordero's motion must be "grounded on facts that would create a reasonable doubt—in the mind of the reasonable man" *United States v. Cowden*, 545 F.2d 257, 265 (1st Cir. 1976). *See also*, *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 128 (2d Cir. 2003). Further, a party moving to disqualify a judge must establish clearly and convincingly that disqualification is warranted. *See United States v IBM Corp. (In re IBM Corp.)*, 618 F.2d 923, 931 (2d Cir. 1980).

Applying Cordero's allegations to this standard, the Bankruptcy Court properly held that no "reasonable person, fully familiar with the facts and circumstances of the DeLano Case and the related pleadings, proceedings and correspondence, including any statements and decisions made by the Court in the DeLano or Premier Cases, would or could question the Court's impartiality or believe that it was biased or prejudiced toward Cordero." R. 7. On appeal, Cordero has failed to highlight any facts not properly incorporated in the Court's ruling or point to any case offering a more lenient standard for recusal.

In fact, in the 35 pages Cordero devotes to this subject in his Appellate Brief, it is difficult to comprehend what basis he actually purports to have for requesting Judge Ninfo recuse himself. The prominent theme seems to be that this bias is both based in and reflected by the numerous decisions and findings of the Judge against Cordero. "Judicial rulings alone" however, "almost never constitute [a] valid basis for a bias or partiality motion." *Litsky v. United States*, 114 S. Ct. 1147 (1994). As the Second Circuit has previously held, "a trial judge must be free to make rulings on the merits without the

apprehension that if he makes a disproportionate number in favor of one litigant, he may have created the impression of bias." *In re IBM Corp.*, 618 F.2d at 929.

Similarly, Cordero's entire argument bottoms upon Judge Ninfo's in court knowledge and actions, not any type of extrajudicial relationship or activity that caused a bias against Cordero. Courts have consistently held that a recusal "determination should be made on the basis of conduct extrajudicial in nature as distinguished from conduct within a judicial context", and must be found in a personal connection, relationship or extrajudicial incident, not in-court conduct and rulings. *In re IBM Corp.*, 618 F. 2d at 928. *See also, United States v. Grinnell Corp.*, 384 U.S. 563 (1966) ("the alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge has learned from his participation in the case."); *In re Criminal Contempt Proceeding against Gerald Crawford*, 133 F. Supp.2d 249 (W.D.N.Y. 2001) ("Generally, grounds for recusal may not be predicated on a judge's prior judicial rulings or involvement in the case, but must arise instead from some extrajudicial source.")

In addition, conclusory allegations sporadically tossed within the Appellate Brief, such as "Judge Ninfo's bias led him to make defamatory statements…" do not assist in Cordero's cause since a motion to disqualify based solely on conclusory allegations must also be denied. *Williams v. Johns-Manville Corp. (in re Johns-Manville Corp.)*, 43 B.R. 765, 769 (S.D.N.Y. 1984).

Oddly, much of Cordero's "argument" in support of the Judge's disqualification for prejudice is that despite his 14 years on the bench and 36 years in the field of bankruptcy law, Judge Ninfo is somehow lacking in "professional competency and

trustworthiness" and shows "contemptuous disregard for the law and the rules." Cordero Brief p. 22, ¶54. *See also* Cordero Brief p. 11, ¶ 27 ("the judge's own conclusory, fiat-like orders devoid of legal reasoning"); p. 18, ¶ 41 ("Judge Ninfo's failure to read Dr. Cordero's document or deduct there from that he must be a lawyer impugns his competency"); 14, ¶ 34 ("how many times does Judge Ninfo need to get notice of something before his brain registers it?"). These allegations, however, provide no support that the Judge's determinations were based on any type of bias or prejudice.

Finally, the only argument Cordero sets forth in support of his motion other than Judge Ninfo's in court actions and rulings seems to be the mere fact that he resides in Brooklyn, New York and is therefore, an "outsider" who is subjected to an inherent bias from the Court. Appellant, however, sites no case law (nor has the undersigned found a case in his independent search) in which the mere fact a party is not a resident of the jurisdiction in question rises to the level of bias rendering recusal of the judge. In fact, Cordero's belabored argument resembles yet another attempt at forum shopping, which both the Bankruptcy Court and this Court have previously addressed.

Based on the foregoing, the Appellant's motion to disqualify is factually and legally insufficient, and Cordero has provided no evidence the Bankruptcy Court abused its discretion in denying his recusal motion.

B. No clear error exists in the bankruptcy court's decision that the Appellant had no valid claim against the Debtor.

Surprisingly, Cordero spends the vast majority of his argument (pp. 10-45) on the alleged incompetence and bias of Judge Ninfo, and the few remaining pages of his Appellant Brief (p. 45-49) on the unconstitutionality of certain laws - and therefore fails to even address the issue of why error exists in the Bankruptcy Court's decision that he

had no claim in the Debtors' bankruptcy case. The topic is even absent from the Cordero's "Issues Presented" section of the Appellant Brief. Despite Cordero's decision not to brief or even address the topic, we feel it necessary to quickly highlight the basis for the Court's proper decision.

Pursuant to section 502(a) of the Code, "any party of interest may object to a claim," and therefore the DeLanos as Debtors had standing to file the claim objection against Cordero. 2006 COLLIER PAMPHLET EDITION BANKRUPTCY RULES, Rule 3007, Advisory Committee Note, p. 261. In addition, there is generally no deadline for the filing of an objection to claim in bankruptcy. *See generally*, 2006 COLLIER PAMPHLET ED. BANKR. RULES, at p. 260; *In re Towers Fin. Corp., 1999 U.S. Dist. LEXIS 8944 (S.D.N.Y. June 16, 1999); United States Lines v. United States (In re McLean Indus.),* 184 B.R. 10, 16, (Bankr. S.D.N.Y. 1995). Although some courts have applied a theory of laches to prevent claim objections filed well after a reorganization plan was confirmed and payments made thereon, the objection in this case came well before the Debtors' reorganization plan was even confirmed and merely 64 days from the date Cordero filed his claim. R. 3-4. As such, the Debtors' objection was timely. Finally, core proceedings include the allowance or disallowance of claims against the estate, except for personal injury tort or wrongful death claims, and must be tried in the bankruptcy court. *See* 28 USC §157(b)(2)(A); COLLIER ON BANKRUPTCY, FIFTEENTH ED. REVISED, 502-21 ¶ 502.03[1][c] (2000), *citing In re Johnson*, 960 F.2d 396 (4th Cir. 1992) (allowance of claims in bankruptcy is the exclusive right of the bankruptcy court). Therefore, jurisdiction and venue were also proper.

In the underlying action, Appellant argued that he filed a proof of claim, and pursuant to Rule 3001(f) it constitutes prima facie evidence of the validity and amount of that claim. R. 256. However, pursuant to 11 U.S.C. § 501 and Rule 3001, a legitimate claim can only be filed by a creditor or an indenture trustee. In addition, if the claim is based on a writing, in this case Cordero's Complaint against DeLano, Bankruptcy Rule 3001(c) directs that the original or a duplicate of that writing be filed with the proof of claim in order for the claim to be deemed properly executed and filed. *See also*, COLLIER ON BANKRUPTCY, FIFTEENTH ED. REVISED, Rules 3001-26 ¶ 3001.09[2] (2000). Thus, prior to Cordero's claim achieving prima facie evidence of its validity, it was the Appellant's burden to prove he was in fact a creditor of DeLano and that the document filed met these basic requirements to qualify as a claim.

The Appellant's May 19, 2004 claim that merely attaches three pages of the Complaint which do not even reference the Debtor, coupled with the allegations against DeLano actually included in the Complaint, clearly demonstrates that the Bankruptcy Court was correct in holding that the Appellant did not meet his initial burden. The Court found in both its Interlocutory Order and final Decision and Order that the Debtors' "Claim Objection on its face is compelling, because the Cordero Claim and its attachments set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case." R. 11, 275-276. The Court went on to state that while the Complaint may have been sufficient for basic pleading purposes, as a basis for a claim and:

> "for the purpose of determining the validity and allowability of the Cordero Claim in the DeLano Case, there was nothing in the allegations

> which demonstrated that: (1) either M&T or DeLano has any legal duty to Cordero with respect to the Cordero Property; (2) DeLano was any time acting other than as an employee of M&T Bank and within the scope of his employment; (3) M&T Bank or DeLano, as an officer and employee of M&T Bank, ever took possession of or exercised control over the Cordero Property, whether at the former Premier Jefferson-Henrietta Warehouse or at any other location; (4) M&T Bank or DeLano, as an officer and employee of M&T Bank, had any obligation to inventory the contents of the containers at the Warehouse that might contain the stored personal property of third parties, including Cordero; (5) anything that DeLano did, individually or as an officer and employee of M&T Bank, caused the loss of or damage to some or all of the Cordero Property; or (6) there was any loss of or damage to the Cordero Property. R. 13, 275-276.

In short, according to the Court in its Interlocutory Order, Cordero did not meet his burden under Bankruptcy Rule 3001 and Section 501 of the Bankruptcy Code because of his failure to demonstrate that he was a creditor of DeLano or that he had properly filed a valid proof of claim. As such, according to the Bankruptcy Court, "it was clear to Cordero, or it should have been clear to him as a licensed, experienced and registered attorney, that at the Trial he would be required to meet his ultimate burden of proof as an alleged creditor to demonstrate, by a preponderance of the evidence, that he had a valid claim against DeLano individually that was allowable in the DeLano Case." R. 14.

Even if we were to assume Cordero did meet his initial burden under Rule 3001 and Section 501, the evidence necessary to rebut the claimant's prima facie validity, need only have a probative force equal to that of the allegations of the creditor's proof of claim, and merely "be sufficient to demonstrate a true dispute." *Id., citing In re Wells*, 51 B.R.563 (D. Colo. 1985). In this case the Debtor's objection states the obvious – that the Appellant simply is not a creditor of the Debtor, and certainly sets forth "probative force" equal to both Cordero's cryptic claim and his underlying Complaint that alleged Delano

did nothing more than suggest he saw boxes labeled "Cordero" in a warehouse in Henrietta. Specifically, the Debtor's objection states in part

> Claimant sets forth no legal basis or facts substantiating any obligations of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M&T Bank, for whom David DeLano acted only as employee and has no individual liability.

With so little contained in either Cordero's claim and underlying Complaint, it is difficult to fathom what more the Debtor was required to include in its objection to "demonstrate a true dispute."

Once an objecting party overcomes this prima facie effect, the ultimate burden remains on the claimant to prove the validity of his claim by a preponderance of the evidence. COLLIER ON BANKRUPTCY, *supra* at Rules 3001.09[2] ("in any objection hearing, [the claimant] retains the burden of persuasion"), *citing Matter of Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988) ("the ultimate burden of proof always rests upon the claimant"); *See also, In re Allegheny Int'l Inc.*, 954 F.2d 167 (3rd Cir. 1992) (burden is always on creditor to establish proof of claim). As the Bankruptcy Court set out in the Interlocutory Order, it was Cordero's ultimate burden to demonstrate at trial that he was in fact a creditor of DeLano, and prove the validity of his claim by a preponderance of evidence.

Despite ample time for discovery and a six (6) hour trial, "Cordero failed to introduce any credible evidence which demonstrated that he held a valid claim against DeLano individually that could be allowed in the DeLano Case" and thus "failed to meet his burden of proof by a preponderance of the evidence." R. 14. In support of that conclusion of the Bankruptcy Court, Cordero called only one witness at trial and did not

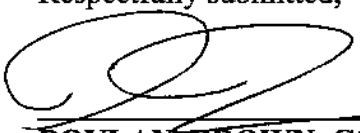
offer any documents for admission into evidence. R. 14. As stated earlier, on appeal Cordero has failed to even brief this issue, let alone point out evidence possibly overlooked by the Bankruptcy Court. Based on the foregoing, no clear error existed in the Bankruptcy Court's determination that Cordero had no valid claim against the Debtor, and the Appellant has not sited any part of the record or even briefed the issue to possibly suggest such an error.

CONCLUSION

Based on the foregoing, a review of the Bankruptcy Court's findings of fact and conclusions of law reveal no clear error or abuse of discretion. The Appellant's Appeal must, therefore, be denied.

Dated: January 20, 2006

Respectfully submitted,



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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
TO EXTEND TIME
FOR APPELLANT
TO FILE HIS REPLY

case no. 05-cv-6190L

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

1. Dr. Richard Cordero, who resides in New York City, received the Appellees' answer to his appellant's brief yesterday, Monday, January 23. Since he, as pro se appellant, does all his research and writing himself, he needs more time to prepare his reply than is left in the 10 day period provided for under FRBkrP 8009(a). The enlarged time will allow him to better state his legal arguments and will provide the Court with a better statement on which to determine the appeal.
2. Moreover, the Court, Judge David G. Larimer presiding, in his order of November 21, 2005, already took the initiative to provide the Appellees with an unrequested enlargement of time within which to file their answer, that is, not the 15 days provided for under FRBkrP 8009(a)(2), but rather 28 days.
3. Since "the district court [can] specif[y] different time limits" under FRBkrP 8009(a), Dr. Cordero respectfully requests that Judge Larimer issue an order allowing Dr. Cordero to file his reply brief by February 10, 2006, and that he state that, as provided under FRBkrP 8008(a), such brief will be "deemed filed on the day of mailing".
4. Dr. Cordero is faxing this written motion after having left an oral request on the voice mail of

Courtroom Deputy Paula Rand yesterday, January 23, and having be asked by Clerk Eileen this morning to put his request in writing and fax it to (585)613-4045 for Judge Larimer's attention.

5. By the same token and given that until the Judge makes a decision on this motion, Dr. Cordero has to work on his reply as if he had to file it within the short time provided for by the Rule, he respectfully requests that Judge Larimer make such decision as soon as possible and have one of his assistants call Dr. Cordero at (718)827-9521 to make arrangements to fax it to him to the same phone number.

Dated: January 24, 2006
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

Appellant Dr. Richard Cordero may file his reply brief by February 10, 2006, and the brief will be deemed filed on the day of mailing.

IT IS SO ORDERED,

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 24, 2006

Pst:1380

United States District Court
WESTERN DISTRICT OF NEW YORK

Richard Cordero
Appellant and creditor

v. 05-CV-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

APPELLANT's REPLY

with Proposed Order

and Post-Addendum Items

submitted on

February 8, 2006

by

Dr. Richard Cordero
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Dr. Richard Cordero

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February 10, 2006

Judge David G. Larimer
U.S. District Judge
U.S. District Court
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387

Dear Judge Larimer,

Kindly find herewith two copies of my reply brief of 8 instant in *Cordero v. DeLano*, 05cv6190L.

The record is complete and all briefs have been filed.

The case is ready for submission.

Sincerely,

Dr. Richard Cordero

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant and creditor

APPELLANT'S REPLY

v.

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:

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3. Headings of the Body of the Reply

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I. The Bankruptcy Abuse Prevention Act's finding of "absence of effective oversight to eliminate abuse in the system" renders all the more understandable the presence in this case of the Act's target: fraud **and a bankruptcy fraud scheme**

1. On April 20, 2005, Congress adopted the Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. 109-8, 119 Stat. 23, "Representing the most comprehensive set of reforms in more than 25 years". So it was described in the accompanying HR Report 109-31, which also stated that:

> "The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system…[to] respond to…the **absence of effective oversight to eliminate abuse in the system** [and] deter serial and abusive bankruptcy filings."**. (emphasis added)**

2. This is a case of such "absence of effective oversight". Actually, this case called not just for oversight, but rather close scrutiny. Indeed, the Debtors here are Mr. David DeLano and his wife, Mrs. Mary Ann DeLano. Of all people, Mr. DeLano is a most unlikely debtor in bankruptcy, for he has spent *39 years* managing debt professionally as an officer of financing and banking institutions. And he still works for the same major banking institution, Manufactures & Traders Trust Bank (M&T Bank) as he did in January 2004, when he and his wife filed for relief from their debts through a petition under Chapter 13 of the Bankruptcy Code (all §# references are to 11 U.S.C. unless the context requires otherwise). What is more, Mr. DeLano works precisely in the area of bankruptcies! There he learned about the weaknesses and the players of the bankruptcy system and how to use that knowledge to enter a debt-free retirement.

3. The likelihood that an insider to the financing and banking industries, such a Mr. DeLano, would abuse the bankruptcy system is only heightened by the fact that so many outsiders have done it. This follows from what Congress found after years of conducting extensive hearings on the Bankruptcy Abuse Prevention bill, which led it to conclude that:

> [One] factor motivating comprehensive reform is that the present bankruptcy system has loopholes and incentives that allow and—sometimes—even encourage **opportunistic personal filings and abuse**. A civil enforcement initiative undertaken in 2002 by the United States Trustee Program (a component of the Justice Department charged with administrative oversight of bankruptcy

> cases) has ‘‘consistently identified’’ such problems as ‘‘debtor misconduct and abuse, **misconduct by attorneys and other professionals**, problems associated with bankruptcy petition preparers, and instances where a debtor’s discharge should be challenged.’’ According to the United States Trustee Program, ‘‘**Abuse of the system is more widespread than many would have estimated.’**’ Such abuse ultimately hurts consumers as well as creditors. (emphasis added; footnotes omitted; HR Report 109-31)

4. The DeLanos’ bankruptcy petition is one such instance of “opportunistic personal filings and abuse” that gave rise to “more than 1.6 million cases filed in fiscal year 2004”, id. The opportunity here was rendered all the more enticing and risk-free because Mr. DeLano has during his very long banking career come to know about the “absence of effective oversight” from the officers that were supposed to oversee the system. Instead, they failed to insure that a petition complied with the rules so that it was fair to creditors, such as Dr. Richard Cordero, Appellant. Among those officers are Bankruptcy Judge John C. Ninfo, II, WDNY, before whom the DeLanos’ Attorney, Christopher Werner, Esq., had brought 525 cases by February 28, 2005, according to PACER; Standing Chapter 13 Trustee George Reiber; Assistant U.S. Trustee Kathleen Dunivin Schmitt; U.S. Trustee for Region 2 Deirdre A. Martini, and District Judge David G. Larimer, WDNY.
5. These officers have refused to order the DeLanos to produce documents that Bank Officer DeLano himself must have learned decades ago are key to assessing any loan application, not to mention managing any default on a debt: the statements of the DeLanos’ bank and credit/debit card accounts. They have also refused to order production of other documents (Dr. Cordero’s brief of December 21, 2005, page 4, table in paragraph 11=Br:4¶11/Tbl) that were likewise obviously pertinent to try to explain the chain of incongruous declarations that the DeLanos made in the Schedules A-J (referred to hereinafter as Sch:Letter) and other parts of their petition. In addition, the officers refused to investigate the DeLanos in spite of being confronted with the suspicious facts that Dr. Cordero established on the basis of even the very few documents that the DeLanos chose to produce, only at Dr. Cordero’s instigation, to Trustee Reiber:

a. The DeLanos earned $291,470 in just the 2001-2003 fiscal years (Designated Items in the Record, page 27=D:27/Statement of Financial Affairs and D:186-188);

b. but they declared having only $535 in cash or in bank accounts (D:27/Sch:B); yet, they have been able to come up with an enormous amount of money to avoid producing the incriminating documents requested by Dr. Cordero (¶59 below);

c. they spread a whopping debt of $98,092 over 18 credit cards (D:27/Sch:F), although the average credit card debt of Americans is $6,000;

d. despite all that borrowing, they declared household goods worth only $2,910 (D:27/Sch:B… that's all they pretend to have accumulated throughout their combined worklives!, although they earned over a *100* times that amount, $291,470, in only the three fiscal years of 2001-03;

e. moreover, they strung mortgages since 1975 to pay for the same home in which they still live:

Mortgages 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;	D:342	$26,000
2) another for $7,467 in 1977;	D:343	7,467
3) still another for $59,000 in 1988; as well as	D:346	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	D:346	59,000
5) owed $59,000 to M&T in 1988;	D:176	59,000
6) another mortgage for $29,800 in 1990;	D:348	29,800
7) even another one for $46,920 in 1993; and	D:349	46,920
8) yet another for $95,000 in 1999.	D:350-54	95,000
	Total	$382,187.00

6. Yet today, 30 years later, the DeLanos still owe $77,084 and have equity of merely $21,415 (D:27/ Sch:A)…*Mindboggling!* (Add:1058¶54) So over $670,000 (≈$291K + $382K) unaccounted for.

7. These are incontrovertible facts, for they are based on declarations made by the DeLanos themselves in documents such as their petition (D:23-60), their 1040 IRS forms (D:186-188),

and their mortgage instruments (D:341-354). Common sense should have prompted these officers to realize that these facts point to concealment of assets by the DeLanos. Their duty under §§1302(b)(1) and 704(4) & (7) and 1325(a)(3), as well as their training in how, to detect and prevent bankruptcy abuse should have prompted them to scrutinize the DeLanos' petition closely and require them to produce documents to track their in and out flow of money. (cf. D:63) Far from investigating the DeLanos, they confirmed their debt repayment plan (Add:937-943), approved it (Add:953§I, 1022), or failed even to respond when the evidence of fraud was brought to their attention (Br:5¶11/Tbl:rows 2&3). Thereby they opened the way for discharging the DeLanos from 78% of their debts (D:23&59)…or rather 87.39% (Post Addendum=Pst:1174).

8. This case shows the type of "misconduct by attorneys and other professionals" that led Congress to adopt the Bankruptcy Abuse Prevention Act. (¶3 above). When Dr. Cordero inquired about their petition and even pointed out their concealment of assets, judges, other officers of the court, and trustees engaged in a series of acts of disregard for the law, the rules, and the facts so consistently in favor of the DeLanos and to the detriment of Dr. Cordero, who resides in NY City (Br:23¶55; Add:603¶32), as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (D:232§§I-IV; D:358§II; D:392§I; D:429§II; Add:1031 & 1081; Add:1066, 1094, 1095, & 1125; Br:5¶¶12-26)

II. The Appellees replaced with their own issues, which are barred as untimely raised, Appellant's issues, which they did not even acknowledge, let alone discuss, whereby their answer is unresponsive

9. In his brief, Dr. Cordero showed how the DeLanos had concealed assets with the support of judges, trustees, and other court officers in the context of a bankruptcy fraud scheme and how to impede his exposing them, the bankruptcy judge eliminated him from the case while denying him due process of law guaranteed under the 5th Amendment. This showing developed his first

two issues on appeal presented in his brief thus (Br:1¶2§§a&b):

> a. Whether the judge's bias and disregard for the law, the rules, and the facts so infect the proceedings that due process of law was denied and his orders were unlawful;
>
> b. Whether the DeLanos' motion to disallow Dr. Cordero's claim was an artifice to prevent him from proving their fraud and was granted to protect a bankruptcy fraud scheme;

10. Common sense makes it obvious that if these are the issues presented, they have to be addressed by the Appellees in their answer. Yet this is precisely what the DeLanos' attorney, Devin Lawton Palmer, Esq., glaringly failed to do in his answer. Right on page 1 of his brief (P'br:1) he stated:

> **ISSUES PRESENTED AND**
> **APPLICABLE STANDARD OF APPELLATE REVIEW**
>
> A district court reviews a bankruptcy court's finding of fact for clear error and its conclusions of law *de novo*. *See Bayshore Wire Prods. Corp.*, 209 F.3d 100, 103 (2d Cir. 2000); *State University Construction Fund v. D.A. Elia Construction Corp. (In re D.A. Elia Construction Corp.)*, 2000 U.S. Dist. LEXIS 13913 (W.D.N.Y. 2000). The issues presented in the instant appeal are whether clear error exists in the bankruptcy court's decisions:
>
> a) denying the Appellant's motion to recuse the Honorable John C. Ninfo, II from the bankruptcy proceeding; and
>
> b) finding the Appellant was not a creditor holding a valid claim against the Debtor, David DeLano ("DeLano" or the "Debtor").

11. Att. Palmer did not even acknowledge the issues presented by the Appellant, Dr. Cordero. He failed to indicate why he was dissatisfied with the way they were stated. Nor did he rephrase them while preserving their substance. Instead, he ignored Dr. Cordero's issues and replaced them with others that he wished had been presented. Unbelievable! It is as if incapable of dealing with reality, he had created an alternative one and cocooned himself in it, never stepping out of it

to take stock of the true and concrete facts of everybody else's world. Thus, he went on a folly of his own to present his own issues and answer them, a) at page 5 and b) at page 8, and that's it!

12. In fact, in the 12½ pages that make up his brief out of the 50 that it could contain, he touched the surface of his own issues and then left blank the other 37½ where he could have done what he was supposed to do: answer the issues that appellant had raised and then developed with detailed arguments and facts, for 'the devil is in the details'. He needed to deal with those details because he complained in his next sentence (P'br:1) that 'Dr. Cordero's brief has 50 pages and his record on appeal 1,344' –which Dr. Cordero assembled in two volumes and in his brief and just the first volume made 341 cross-references to specific pages, sections, paragraphs, and even lines-.
13. By contrast, Att. Palmer created a replacement issue about a recusal motion of Dr. Cordero but did not give a reference to it or even its date, nor did he deal with the details of any such motion. It is as if Att. Palmer had only read about such a motion in Judge Ninfo's decision, ran with the notion of it into his atemporal alternative reality disconnected from any concrete place outside it, and in the refuge of his cocoon inflated it into a vague, abstract, and principal strawman to knock down. Did he expect the Court to wade through 1,344 pages to find such a motion, let alone bother to read it, or instead just take his word for granted that there was such a motion, that it was defective as he pretended it to be, and that the appeal should be decided on it? Before the Court starts wading, does it even know whether the motion to recuse that Att. Palmer is talking about was a written motion?; is it in the record at all?; or was it an oral motion made at the evidentiary hearing? Had Att. Palmer been responsible enough to go to the record to look for it and if he found it read it, rather than just look at a page number, he would have realized that the record does not even have so many pages. There are page numbers reserved, e.g. just in its second volume, the Addendum, Add:657-680, 697-710, 753-770, 846-850, 876-880, etc., so that its total page count is less than its last page number. Indeed, the devil is in the details…Devin is not.

14. There seems to be a pattern here: Att. Palmer's co-counsel and colleague in the same law firm, Christopher Werner, Esq., and their client, Mr. DeLano, went to the evidentiary hearing on March 1, 2005, of their own motion to disallow Dr. Cordero's claim, and they not only failed to bring a copy of Dr. Cordero's proof of claim that they were challenging, but also had not even read it! As a matter of fact, during a recess they went out of the courtroom with Michael Beyma, Esq., the attorney representing Mr. DeLano in the case where that claim arose –Att. Palmer does not even mention the name of that case-, and when they came back they asked Court Attendant Larraine Parkhurst whether she had a copy of Dr. Cordero's complaint against Mr. DeLano containing the description of the claim. Neither of them had the complaint either! Att. Werner was told that it had been filed with the court. So much he felt the need for it, though so inopportunely, that Att. Werner turned around and asked Dr. Cordero whether he had a copy. He said that he had copies and Att. Werner asked him for one! (Br:32§e)
15. Has Att. Palmer even considered the possibility that there is such a gap between the way they practice law and the standards of accepted professional conduct as to warrant Dr. Cordero's motion for sanctions and compensation against their law firm and Att. Werner that he complained about? (D:259; P'br:4) (How illustrative to point out here that if Att. Palmer were in the habit of making reference to records and had read anything in Dr. Cordero's or at least had read the latter's brief with any degree of attention to its details, he might have realized the usefulness of numbering the paragraphs of a brief, just as Dr. Cordero does on every document that he files.)
16. Att. Palmer never wrote any motion or responded to any of Dr. Cordero's; he just wrote a letter to a bankruptcy clerk. (Add:711) He never dealt in writing or at a hearing with the issues presented by Dr. Cordero. This was his opportunity to do so; it was his obligation too. But he missed the former and disregarded the latter. Instead, he chose to do only what he wanted to do: He asked his own questions and since in his own mind the answer was also simple, he gave

himself short answers…and so superficial, for no string of quotations from case blurbs that he then failed to apply to the details of any such motion to recuse and the facts of this case would turn them from a mimicry of a digest into a legal argument applicable to the concrete case at hand. A citation is no substitute for reasoning. Did Att. Palmer expect the Court to weave cited principles of law into the fabric of a motion and this case or did he assume that the Court would not bother to do that either and would rush to accept his conclusion? Any way, however he wanted the Court to deal with *his* issues, he had to present them in a cross-appeal. Yet he also missed the opportunity to do so. Thus, the presentation of his issues must be rejected as untimely.

17. Att. Palmer's loss of the notion of time is also revealed by the fact that his first issue relates to Judge Ninfo's denial of a motion to recuse himself "from the bankruptcy proceeding". (P'br: 1¶a; ¶10 above) This times that motion as raised on or before the evidentiary hearing on March 1, 2005. However, Dr. Cordero's brief is dated December 21, 2005, ten months later. His brief takes into account the events during that intervening period, so many that he collected the documents generated during it in the Addendum to the Designation of Items of April 9, 2005. In his December 21 brief, he makes numerous references to those events and documents. Yet Att. Palmer did not notice it! When he raced to the safe cocoon of his atemporal alternative reality time froze. There he spun his replacement issue about a recusal motion and left out in the cold 37½ blank pages of his answer at least 10 months of further developments and hundreds of pages of additional documents. This buttreses the evidence that he ignored the real issues on appeal and by so doing, Att. Palmer delivered an answer with an irreparable flaw: It is unresponsive!

III. The determining and unifying issue on appeal is fraud and the operation of a bankruptcy fraud scheme, which is unaffected by any decision on any motion to recuse

18. Att. Palmer failed to perceive the central issue of Dr. Cordero's brief and its support from what

Congress investigated and found with such unacceptable frequency as to require prevention through an Act: bankruptcy abuse. Nor did he notice that the conduct of judges, trustees, and other officers of the court that Dr. Cordero complained about confirms precisely what large bipartisan majorities concluded is the cause of the problem: "absence of effective oversight to eliminate abuse in the system" (¶0 above).

19. Consequently, Att. Palmer failed to notice the critical, outcome-determinative factor distinguishing the separate issues he fancied from, and unifying, the real issues presented in this appeal: Intentional abuse by those officers has been coordinated in a bankruptcy fraud scheme. This means that Mr. DeLano, relying on his 39 years of experience in banking and bankruptcies, was counting on the "absence of effective oversight" when he and his wife made a blatantly abusive (¶5 above) filing in the context of that scheme. However, their concealment of assets was detected by Dr. Cordero. His requests for documents and an investigation threatened to expose not only the DeLanos' fraud, but also the scheme and the schemers. (D:458§V) As a result, the schemers, that is, the officers and parties, such as the DeLanos, had to join in a cover up of the DeLanos' concealment of over $670,000. They had no choice but to protect each other, for if any one were investigated and ended up facing bankruptcy fraud charges carrying a penalty of up to 20 years in prison and devastating fines under, among others, 18 U.S.C. §§152-157, 1519, and 357, he or she could use his or her knowledge as a plea bargaining chip, whereby all of them would end up being investigated or even indicted. No doubt those who deal with criminal defendants know, and those who do not so deal should know, that:

> Sometimes the government is able to secure the cooperation of a co-conspirator. In such cases, at least one court has held that "the direct testimony of...an unindicted co-conspirator() of the illegal agreement to conceal assets from the bankruptcy trustee is sufficient in itself to convict the defendants." *United States v. Murray, 751 F.2d 1528, 1534* (9th Cir.), *cert. denied*, *474 U.S. 979, 106 S. Ct. 381, 88 L. Ed. 2d 335 (1985).* (1-7 Collier on Bankruptcy - 15th Edition Revised P 7.08*)*

20. Consequently, the unifying theme of the issues actually presented in this appeal provide the

theory of the case, namely, that to cover up their participation in the bankruptcy fraud scheme, the schemers had to disregard the law, the rules, and the facts and resorted to the artifice of a motion to disallow Dr. Cordero's claim and a sham evidentiary hearing where to grant it in order to get rid of him, and that in so doing, they denied him his constitutional right to due process of law. It follows that if fraud by the DeLanos is admitted or proven, thus establishing that both the motion to disallow and the bankruptcy petition were unlawful and filed in bad faith, all the decisions issued by both Judge Ninfo and Judge Larimer in this case are deprived of their premise that those instruments were lawful, whereby the decisions would become null and void. What is more, it would suffice to show that officers supported a bankruptcy fraud scheme by allowing it to remain in operation, regardless of their motive or their benefit from it but thereby breaching their duty to prevent it, for the decisions in this case to become tainted with bias and illegality and require their rescission.

21. Hence, even if Att. Palmer's replacement issue of Judge Ninfo's denial of a motion to recuse himself were extracted from his alternative reality and considered in this appeal as it really is, it is of little importance. This is so because if the Judge granted the DeLanos' motion to disallow in order to protect a bankruptcy fraud scheme, then however he decided a motion to recuse himself would not save him or his decisions. By definition, if he supported fraud, not to mention if he did so in the intentional and coordinated framework of a scheme, his decisions were issued, not in accordance with law, but rather in contravention of it and, as unlawful decisions, they are void. By the same token, if he supported fraud, then he becomes removable for misconduct from his position as judge under 28 U.S.C. §152(e), even in the absence of a recusal motion and even if in its presence he had recused himself after supporting the scheme. Worse still, if he supported fraud, then his denial of any recusal motion becomes null and void both because then he did show bias toward the fraudsters and because he took the decision, not on its legal merits, but in

self-interest as a means to remain in control of the case and protect himself and the fraudsters.

22. In the same vein, if Judge Ninfo was biased, no matter whether toward the DeLanos or against Dr. Cordero, or if his decisions disregarded the facts, which give rise to every controversy and must support every judicial decision, or disregarded the requirements of legality, and all the more so if these defects amounted to denial of due process, then however he decided any recusal motion and even in the absence of any such motion, his decisions are unlawful and thus a nullity.

IV. The Bankruptcy Code §101(10) and FRBkrP 3001 provide that a creditor is an entity holding a claim and a proof of claim is presumptively valid, thus making the filer a presumptive creditor, whereby Att. Palmer was wrong in pretending that Dr. Cordero had to prove first that he was a creditor in order to file a claim against Mr. DeLano

23. Att. Palmer wrote (P'br:10) that:

> pursuant to 11 U.S.C. §501 and Rule 3001, a legitimate claim can only be filed by a creditor or an indenture trustee […¶26 below] Thus, prior to Cordero's claim achieving prima facie evidence of its validity, it was the Appellant's burden to prove he was in fact a creditor of DeLano [….¶26 below] (emphasis in the original)

24. This assertion is wrong and shows superficial knowledge of the Code and lack of legal analysis. Let's show why. (cf. D:446§II)

11 U.S.C. §501

> (a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.
>
> (b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file proof of such claim.
>
> (c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim….

FRBkrP 3001 Proof of Claim

> (a) Form and content. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantively to the appropriate Official Form.
>
> (b) Who may execute. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.
>
> (c) Claim based on a writing. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate

shall be filed with the proof of claim.…

(d) Evidence of perfection of security interest. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected

25. Nowhere does any of those provisions require explicitly or implicitly that a creditor prove that it is such before it can file a claim, just as it does not require that "An entity…", or the debtor or the trustee prove their respective status before being allowed to file a claim. Moreover, the Revision Notes and Legislative Reports for §501 accompanying the 1978 Bankruptcy Act shows that the status of such "entity" can be of several types, for "Subsection (b) permits a codebtor, surety, or guarantor to file a proof of claim on behalf of the creditor", but none is required to prove its own or the creditor's status either. For its part, the caption of FRBkrP 3005 even adds an "Indorser", but the text of its subsections simply refers to "an entity" as being entitled to file proof of claim without being required to identify its status, let alone prove it. Thus, as a matter of fact, Att. Palmer wrongly asserted that "pursuant to 11 U.S.C. §501 and FRBkrP Rule 3001, a legitimate claim can **only** be filed by a creditor or an indenture trustee" (bold added; ¶23 above)

26. Att. Palmer also wrote (P'br:10) that:

> (…¶23 above) In addition, if the claim is based on a writing, in this case Cordero's Complaint against DeLano, Bankruptcy Rule 3001(c) directs that the original or a duplicate of that writing be filed with the proof of claim in order for the claim to be deemed properly executed and filed. (citation to Collier omitted) Thus, prior to Cordero's claim achieving prima facie evidence of its validity, it was the Appellant's burden to prove he was in fact a creditor of DeLano and that the document filed met these basic requirements to qualify as a claim.

27. Had Att. Palmer read the Advisory Committee Notes for Rule 3001, he would have noticed this:

> Subdivision (c). This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any **written security agreement** and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim…Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination **whether the claim is secured and properly perfected** so as to be valid against the trustee. (emphasis added)

28. Since Dr. Cordero did not claim a security agreement, he did not have to file with his proof of

claim any writing at all! Yet, he did so out of an excess of caution. In so doing, he followed the instruction of Official Form 10¶9, providing that "…If the documents are voluminous, attach a summary". (D:142; cf. D:24/4th row) Since his claim against Mr. DeLano was contained in a complaint 31 pages long (Add:785-815), he attached to his proof of claim precisely what the Form required, which he labeled in bold characters at the top of the first page **"Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court"** (D:144) followed by the caption of the Bankruptcy Court.

29. This Summary consisted of pages of what Att. Palmer referred to as Dr. Cordero's "Third Party Complaint and Crossclaim (the "Complaint")" (P'br:4). Had Att. Palmer put together that with what he had written on page 3, not to mention if had read Dr. Cordero's brief at page 31¶71, he should have realized that such Complaint was served on Mr. DeLano on November 21, 2002. Since then Mr. DeLano has known that Dr. Cordero has a claim against him. So much so that it was Mr. DeLano himself who listed Dr. Cordero among his unsecured creditors. (D:27/Sch:F) Hence, Att. Palmer made another wrong as well as misleading assertion when in defending the DeLanos' objection to Dr. Cordero's claim from a charge of barred by laches (D:447§A) he stated that "the objection in this case came…merely 64 days from the date Cordero filed his claim". (P'br:9) By July 22, 2004, when the objection was filed (D:218), Mr. DeLano had known about that claim for almost two years and had also treated Dr. Cordero as a creditor for half a year since filing his petition in January 2004. That is why their motion to disallow was untimely and barred by laches (Br:2¶4, 37¶86; D:255§VI) and motivated by the bad faith purpose of getting rid of Dr. Cordero as a creditor so that he could not keep requesting documents and an investigation that could prove that the DeLanos had committed fraud by concealing assets (D:253§V).

30. Dr. Cordero had been making such request since his Objection of March 4, 2004, to Confirmation of their debt repayment plan (D:63), which he filed on March 8, when he traveled

to Rochester and was the only creditor to attend the meeting of creditors. He had been given notice of that meeting (D:23) pursuant to §342 by the clerk of the bankruptcy court, who sent a proof of claim form to Dr. Cordero, who in turn filled it out and mailed it back for filing (D:142)…*wait a moment!* Both the DeLanos and the bankruptcy clerk treated Dr. Cordero as a creditor, sent him papers addressed to creditors, and for months after Dr. Cordero filed his proof of claim continued to treat him as a creditor until shortly after July 9, 2004, when he filed a paper showing that the DeLanos had committed fraud by concealing assets (D:194¶7)

31. So from where did Att. Palmer get the idea that Dr. Cordero had to prove that he was a creditor as prerequisite for filing a proof of claim? From his failure to analyze §501 and Rule 3001 and realize that when they provide that "a creditor…may file a proof of claim" sound legal reasoning requires, not to jump to the conclusion that "it was the Appellant's burden to prove he was in fact a creditor of DeLano" (¶23 above), but rather to ask 'who is a creditor?' and instinctively look up the Code's definitional section, which provides that:

> §101(10) "creditor" means- (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> §101(5) "claim" means- (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;

32. When adopting §101, it was explained that (H.R. Rep. No. 595, 95th Cong., 2d Sess. 309 (1978)):

> …The effect of the definition is a significant departure from present law. The definition [in the bill] adopts **an even broader definition of claim** than is found in the present debtor rehabilitation chapters…By this broadest possible definition and by the use of the term throughout the title 11…the bill contemplates that all legal obligations of the debtor, **no matter how remote or contingent**, will be able to be dealt with in the bankruptcy case. It permits the **broadest possible** relief in the bankruptcy court. (emphasis added)

33. Since the major reform of bankruptcy law in 1978, "claim" has been expanded to "the broadest possible" extent to enable the debtor to discharge the widest range of debts. Conversely, it allows the greatest range of entities to hold a claim assertable against the debtor, thereby becoming a

creditor. Consequently, Dr. Cordero did not need to prove that he was a creditor in order to be entitled to file a valid proof of claim; he only had to file it and thereby he became a creditor. The filing also conferred on his claim "presumptive validity [which] is not altered unless an objection is supported by substantial evidence", *Brown v. IRS (In re Brown)*, 82 F.3d 801 (8th Cir. 1996). The DeLanos raised only their objection (D:218), but failed to support it with any evidence at all (Br:40¶¶95-96). Hence, it should have been dismissed because "an objection to a claim does not deprive the claim of its presumptive validity unless the objection is supported by substantial evidence", *In re Hemingway Transp.*, 993 F.2d 915, 28 C.B.C.2d 1545 (1st Cir. 1993).

34. Just like the other 20 creditors of the DeLanos, none of whom had to prove that it was a creditor to be entitled to file a claim against them. Nor were their claims disallowed because they did not do so. What is more, the DeLanos listed Dr. Cordero together with other 18 unsecured creditors, who are credit card issuers (D:27/Sch:F). For those issuers to prove that they were their creditors, they would have had to file copies of the monthly credit card statements. But none of them did. Had they done so, when Dr. Cordero requested the DeLanos to produce those statements and they claimed under oath, as they did at the adjourned meeting of creditors on February 1, 2005, with the acquiescence of Trustee Reiber, that they neither had possession of, nor access to, them, the DeLanos would have committed perjury; otherwise, are they through Att. Palmer and with the Trustee's and Judge Ninfo's support discriminating against Dr. Cordero by requiring of him proof of his creditor status which they did not require of the other 18 unsecured creditors?

V. A sample of Att. Palmer's gross mistakes of fact reveals that he did not read even the brief, which detracts from his professional responsibility and the reliability of his cursory, superficial answer

35. Dr. Cordero discussed the validity of his claim and the DeLanos' failure to overcome its presumptive validity (Br:34¶86) and even dedicated a section to discussing in detail the

authorities that Judge Ninfo had cited when holding the claim invalid and disallowing it. (Br:37§i) However, Att. Palmer did not notice such discussion; so he alleged that:

> Surprisingly, Cordero spends the vast majority of his argument (pp. 10-45) on the alleged incompetence and bias of Judge Ninfo, and the few remaining pages of his Appellant Brief (p.45-49) on the unconstitutionality of certain laws- and therefore fails to even address the issue of why error exists in the Bankruptcy Court's decision that he had no claim in the Debtors' bankruptcy case. (P'br:8-9)

36. Att. Palmer must have seen in the headings page (Br:xxv) that "E. THE ARGUMENT" had only three numbers, that subheading no. 1 dealt with Judge Ninfo, that the other two did not deal with his own replacement issue whether it was error for the Judge to hold that Dr. Cordero had no valid claim, and without bothering to read even all the headings, assumed that Dr. Cordero had not discussed the issue of his claim's validity. Att. Palmer did not even detect that subheading no. 1 integrates Dr. Cordero's a) and b) issues on the next page (Br:1¶2§§a&b) dealing with the Judge's denial of due process and the DeLanos' motion to disallow, respectively. So he blurted "The topic [of having no claim in the Debtors' bankruptcy case] is even absent from the Cordero's "Issues Presented" section", as if his own replacement issue had to be present in the appellant's brief, and expressed exactly as the Attorney had fancied it, otherwise he would fail, as he did, to perceive it in the appellant's differently worded variation. So superficially did Att. Palmer read the headings that he did not even realize that subheadings nos. 2 and 3 (Br.xxvi§§2&3) do not deal both with "the unconstitutionality of certain laws", but rather that no. 2 deals with "Local Rule 5.1(h)…violating notice pleading under FRCivP" so that it does not concern either a law or the Constitution. Just as when he read, when he wrote his answer it was cursory and superficial.

37. Further evidence that Att. Palmer did not read the whole of Dr. Cordero's brief, much less its references to the record, yet presumed to be competent to comment on them is his gross mistakes of facts in his Statement of the Case (P'br:2). For instance, he writes that "to the best of Debtor's knowledge, Appellant neither traveled to Henrietta, New York, nor Avon, New York to recover or even

inspect his property. R. 9." But Dr. Cordero did travel to Rochester to inspect his property: on May 19, 2003, after which at a hearing on May 21 he reported his findings to Judge Ninfo! (Br:30¶j, 31¶72; Transcript, page 154, lines 2-24=Tr:154/2-24, 155/14-24, 157/22-158/5; Add:578§5)

38. Likewise, Att. Palmer wrote that (P'br:2-3):

> M&T allegedly conveyed its belief, consistent with that of Premier, that containers labeled "Cordero" were located in the Jefferson-Henrietta warehouse…It is undisputed, however, that M&T "never took possession of or asserted control over the containers at the Avon Storage Facility where the Cordero Property was stored", nor "had any duty to Cordero with respect to the Cordero Property".

39. There was no 'allegation'; rather, Mr. DeLano himself repeatedly admitted against legal interest at the evidentiary hearing on March 1, 2005, that he told Dr. Cordero that he had seen at the Jefferson-Henrietta warehouse the containers bearing his name and holding his property, but later on admitted that he had seen none (Tr.149/25-150/6, 101/17-19, 109/3-5, 111/9-24, 141/8-13; Br:29¶70). He also admitted that he was under pressure from that warehouse to remove from it the containers in which M&T held a security interest lest they be burdened with a warehouse lien; that he hired an auctioneer, John Reynolds (Tr.97/13-18), to sell the containers, but neither check on him or his sale, nor informed the owners of the property stored in those containers, such as Dr. Cordero, that their property would end up in somebody else's hand somewhere else under unknown terms and conditions. Since Mr. DeLano asserted control over the containers, he also necessarily asserted control over the property inside them, of which he had the power to, and did, dispose as he wanted. That is at the core of the dispute! Moreover, he was so sure that among those containers were the ones that he saw bearing Dr. Cordero's name that he subsequently sent a list of the names of the owners of the property inside them, including Dr. Cordero's name, to the buyer and asked him to acknowledge receipt, but the buyer refused to sign the list because he had not received any container bearing Dr. Cordero's name. (Br:30§§h-i)

40. If Att. Palmer had only read Dr. Cordero's brief, he would have noticed that not all containers

storing his property were found at the other warehouse, the one in Avon, NY, and might have understood the practical and legal implications of this fact, which Dr. Cordero laid out thus:

> 72. Mr. DeLano admitted that "he had seen one or more storage containers at the [Jefferson-Henrietta] Warehouse which bore Cordero's name" (D:15; Tr.141 /8-13). That admission can now be relied upon by Mr. Pfuntner and other parties at the Pfuntner trial to escape liability for Dr. Cordero's property not found at Mr. Pfuntner's warehouse during the inspection on May 19, 03. Judge Ninfo himself required Dr. Cordero to undertake it and accepted his report at the hearing on May 21 on the loss of, or damage to, his property (D:398¶¶35, 50; Add:609¶B; Tr.141/16-19). They can rely on the Judge's findings that such containers could have been at the Jefferson-Henrietta warehouse (D:17/items (4)-(5); Tr.160/6-9) to argue that Mr. DeLano is liable for any conversion of those containers while he negligently or recklessly sold them through his agent, Reynolds Auction Co., to the buying warehouse. (Tr.186/9-187/4) Only incapacity to anticipate a legal argument, bias, and his need to protect Mr. DeLano can cause Judge Ninfo to negate that "there is any possibility" (D:21) that Mr. DeLano could be found liable to Dr. Cordero and grant his motion to disallow. Thus, if Mr. DeLano's admission was not sufficient for Dr. Cordero to prove by a preponderance of the evidence the validity of his claim against Mr. DeLano, what would? (Br:31¶72)

41. That "Mr. Pfuntner" is James Pfuntner, the owner of the Avon warehouse and the plaintiff that in 2002 sued, among others, M&T and Dr. Cordero, who in turn brought in Mr. DeLano as a third party defendant (*Pfuntner v. Trustee Gordon et at.*, docket no. 02-2230, WBNY; Add:777; 785). But Att. Palmer does not know that due to his failure to read the brief, just as ignores the names of the buyer of the containers and his warehouse, to whom he is likely referring as "a third party" (P'br:2&3). Had he read at least the transcript of the March 1 evidentiary hearing, he would have realized that Mr. DeLano's total ignorance of them, whether their names, qualifications, or conditions, showed how negligently and recklessly he disposed of those containers and of other people's property contained in them.

42. Att. Palmer then pretends that he knows the record by stating that "The next written communication

in the Record [after the letter of August 15, 2002 [P'br:3] between M&T and Cordero was the Third Party Complaint and Crossclaim". (P'br:4) This is wrong and he would know it if he actually knew the record. (Add:578§5) The relevance of this mistake is that Att. Palmer cites the letters of "M&T's attorney [of] August 1, 2002, [and] August 15, 2002" (P'br:3) as if M&T had been diligent in finding out and informing Dr. Cordero of the whereabouts of his property. Had Att. Palmer read the brief (Br:30¶g) or the transcript, let alone the record, he would know that:

> Although Mr. DeLano did not think that Dr. Cordero's property was in any of the containers sold at the auction (Tr.105/14-17, Tr.120/13-16), after the sale, Mr. DeLano directed him to the buying warehouser to deal directly with it about his property (Tr:152/1-21)

43. Dr. Cordero had to spend his time, effort, and money dealing with the buyer, who found out where his property might be (Tr.154/2-24, 155/14-24, 157/22-158/5) and at Dr. Cordero's request informed M&T of this in July 2002, after which M&T's attorney wrote those letters to Dr. Cordero in August.

44. Att. Palmer alleges (P'br:12-13) that "Cordero called only one witness at trial and did not offer any documents for admission into evidence", and cites "R.14", that is, Judge Ninfo's decision (D:14). This shows that he is unaware that in his brief Dr. Cordero dealt in detail with those misleading statements by the Judge; and that the one about a "trial" is dealt with in a heading (Br:xxv¶g) showing that there was none but only an evidentiary hearing. In dealing with the implications thereof (Br:34§g), Dr. Cordero also stated that by calling no other witness but the key one, Mr. DeLano, he avoided being taken by Judge Ninfo's ruse for trying *Pfuntner* piecemeal in *DeLano* and eliminating Dr. Cordero from both cases simultaneously (Br:35¶¶82-83). He also explained that he could not introduce any document because Judge Ninfo, after requiring Dr. Cordero to take discovery of Mr. DeLano in *Pfuntner*, together with Mr. DeLano denied him *every single document* that he requested. (Br:7¶17, 27¶66, 44¶109) Three times Dr. Cordero stated that, but Att. Palmer did not notice it because he did not read the brief that he pretended to be answering.

VI. The purpose of the Statement of Issues on Appeal is to afford the appellee the opportunity to determine whether appellant's Designated Items in the Record is sufficient to prepare the appellee's answer and, if not, to designate additional items; whereby the Statement, which is not even part of the record, does not limit the issues on appeal

45. Mr. Palmer alleges that the other two issues presented by Dr. Cordero (¶54 below) were waived because "not included in his Rule 8006 Issues on Appeal" (P'br:1). Again he strings together case citations while failing to apply legal reasoning to them to develop an argument. Yet, FRBkrP 8006 itself reveals the unimportance of the statement of issues presented by not even making it part of the record, the contents of which it describes thus:

> FRBkrP 8006…The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court.

46. Likewise, FRBkrP 8009(b)(1)-(9) does not include that statement among the excerpts of the record that the appellant must include in an appendix and serve and file when the appeal is taken to a bankruptcy appellate panel.

47. The designation of items by appellant and any by appellee give rise to certain duties in the bankruptcy clerk: "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". (FRBkrP 8007(b)) The clerk does not even have to transmit the appellant's statement of issues to either clerk, for under FRBkrP 8006 "The record consists of those matters set out in the rule", which does not include such statement (10-8006 Collier on Bankruptcy - 15th Edition Revised P 8006.09).

48. Moreover, the bankruptcy clerk transmits the record, not to a judge, but rather to another clerk, whether at the district court or a panel. In turn, such clerk enters the appeal on the docket and gives notice thereof to the parties. Under Rule 8009(a), that entry triggers automatically, without the need for any judge to issue any scheduling order, let alone review the record, the dates for the parties to serve and file the appellate brief, the answer, and any reply. This means that it is only

upon receipt of those briefs that the district judge or the panel judges have any reason to consider the record, in which anyway appellant's Rule 8006 statement of issues is not even included.

49. That statement's non-inclusion in the record explains why FRBkrP 8010(a)(1)(C) requires the inclusion in the **brief** of "A statement of the issues presented and the applicable standard of appellate review". If the Rule 8006 statement established definitively the issues that the appellate judge(s) can consider, there would be no need for Rule 8010 to require the appellant to provide a statement of the issues presented, for the judge(s) would already have it. But the judge(s) do not have it, because technically the statement is not part of the record. Therefore, there is no reason, whether in FRBkrP or in logic, for the appellate judge(s) to resort to a Rule 8006 statement, which the judge(s) are deemed not to be in possession of, to limit the Rule 8010 statement that is the only one that they are supposed to have access to.

50. FRBkrP do not provide that appellant's statement of issues limits the issues that he can present in his brief or that the appellate judge(s) can consider. All that FRBkrP provide concerning that statement is contained in Rule 8006 and it is this: First, appellant states his issues; then, "Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal". It follows then, that:

> [2]…The purpose of the statement of issues is to enable the appellee to determine whether the designation of the record filed by the appellant will be adequate for the determination of the issues by the district judge or bankruptcy appellate panel. 10-8006 Collier on Bankruptcy - 15th Edition Revised P 8006.08

51. If the appellee determines that additional items are necessary, he can take that opportunity to designate the additional ones that he will need. But designating items is not the same as replacing issues. The appellee cannot take his opportunity to designate additional items, much less wait until his answer, to replace appellant's issues, thereby telling appellant what he should have appealed from. It is the appellant who identifies what he finds objectionable in the proceedings below and under Rule 8006 states his objections as issues on appeal. Also indisputably, the appellee is not

the one who had to pay the fee to file the appeal; the appellant is the one who paid it, and as it is well known, 'he who pays the piper, calls the issues'.

52. Thus, it is ludicrous for Att. Palmer to restate what the appeal is all about, and do so for the first time in his answer, for he is not the one who took the appeal or paid its fee. If he wanted to have his own issues determined on appeal, he had to comply with Rule FRBkrP 8006: He had to file a cross appeal. By so doing, he would have given the cross appellee, Dr. Cordero, the opportunity to designate in turn additional items that he would need to defend against the cross appeal. Att. Palmer failed to do so and deprived Dr. Cordero of his right to designate additional items.

53. What is more, the only vehicle that FRBkrP provide for the appellate judge(s) to take cognizance of the issues before them is appellant's brief. (¶49 above) Therefore, Att. Palmer could only challenge the issues presented in Dr. Cordero's brief if he could show that those issues, presented there as required under Rule FRBkrP 8010(a)(1)(C), varied from the issues in Dr. Cordero's statement made pursuant to Rule 8006 and that because he, Att. Palmer, relied on the Rule 8006 statement he did not designate additional items that he now needs to defend against the issues in the brief or that such variance somehow has harmed his client otherwise. That he failed to do too.

A. Since the issues of the voidness of District Local Rule 5.1.(h) dealing with RICO, and of the unconstitutionality of the BAP provisions of 28 U.S.C. §158(b) could not have been dealt with in bankruptcy court for lack of jurisdiction, there were no items in the record that Appellees could have additionally designated if these issues had been included in Appellant's s R. 8006 statement so no harm has been caused by their inclusion in the Rule 8010 statement

54. Now Att. Palmer is stuck with the issues presented in Dr. Cordero' brief, including these (Br:1¶2):

> c. Whether District Court Local Rule 5.1(h) on asserting a claim under RICO, 18 U.S.C. §1961 et seq., is void as inconsistent with notice pleading and the enabling provisions of FRCivP; (cf. Br:45§2)
>
> d. Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process, provides for forum shopping, and denies equal protection so that it is unconstitutional. (cf. Br:47§3)

55. It should be apparent that a bankruptcy court lacks jurisdiction to determine these issues. For one thing, the first one concerns the procedural functioning of the district court and the second one can only arise incident to an appeal when the appellant may have to decide whether to appeal either to a district court or a bankruptcy appellate panel. Therefore, the District Court was the first judicial entity before which Dr. Cordero could properly present them.

56. Consider how revealingly ignorant of the law it would be if one were to ask the District Court to declare unlawful the local rule of the Court of Appeals for the Second Circuit requiring attorneys in counseled cases to file a copy of their briefs in PDF format. (Pst:1171) Such ignorance is exposed even more starkly in this case because the Bankruptcy Court is under the Bankruptcy Act of 1978, Pub. L. 95-598, 92 Stat. 2549, as amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 333, an adjunct court to the District Court, from which it receives 'by reference cases and proceedings arising under title 11' and by which they can be withdrawn (28 U.S.C. §157(a) & (d)). Thus, the Bankruptcy Court is subordinate to the District Court and as such is in no position to declare that a local rule of its principal, the District Court, is unlawful, or that an appeal from it should go, not to that Court, but rather to a BAP.

57. Since the Bankruptcy Court could not have developed these two issues, their non-presentation there does not prevent the District Court from understanding them. This Court should determine them by holding, as did the court in *Prestige Ltd. Partnership-Concord v. East Bay Car Wash Partners*, 234 F.3d 1108, 1115 n.2 (9th Cir. 2000), that although the issue were not argued below, it can consider them because they involve question purely of law and the record on them is as fully developed as it can jurisdictionally be. *Gertsch v Johnson & Johnson, Fin. Corp. (1999, BAP9) 237 BR 160, 99 CDOS 6649, 99* Daily Journal DAR 8489. (Bankruptcy Appellate Panel would entertain arguments not specifically listed in Rule 8006 statement of issues when complete understanding of the case could be discerned from the briefs and the record.)

VII. The unaccounted-for money establishes fraud & warrants the relief sought

58. The issue of fraud ties together Dr. Cordero's four issues (Br:1¶2). Att. Palmer's failure to discuss it is one of the most telling facts in his brief. Nowhere did he assert that the DeLanos did not conceal assets. Nor did he deny that even the few documents that they produced show that more than $670,000 that they have received (Br:3¶¶9-11) is unaccounted for. It is as if a criminal lawyer had argued to the court in closing, not that the prosecution did not prove its charges of fraud and a bankruptcy fraud scheme, but rather that he thinks it should have preferred other charges and that it did not prove them, while the lawyer abstained from arguing that his criminally accused clients did not commit the crime just as he abstained from putting them on the stand to deny their fraud in their own words. Yet Att. Palmer still had 37½ blank pages where to say so

59. This glaring omission in his brief highlights the one question on which this case hinges: ***WHERE IS THE MONEY?!*** The DeLanos do have money: Though allegedly bankrupt with only $535 in hand and on account (D:27/Sch:B), they have been willing to incur a bill from Atts. Palmer and Werner with Judge Ninfo's approval on August 9, 2005, for $18,005 (Add:872-875, 938, 942) and then Trustee Reiber allowed on December 17, 2005, a claim by Att. Werner for $9,948 (Pst:1175). They would not so spend that kind of money just to prevent Dr. Cordero from obtaining copies of documents such as their statements of bank and card accounts, unless they risked up to 20 years in prison and devastating fines for bankruptcy fraud. Consequently, the Court has sufficient documentary and circumstantial evidence to order those documents produced and refer this case to the Attorney General for investigation under 18 U.S.C. §3057(a).

60. Fat chance! Att. Palmer strung case citations without analyzing or applying them to the facts of this case; made gross mistakes of fact showing that he did not read the brief or the transcript; and failed to proceed prudently by discussing two issues that he considered waived but that a judge may not and instead determine. His 12½ cursory and superficial pages warrant the question

whether on the strength of the 143 cases before Judges Larimer and Ninfo in which he is attorney of record, according to PACER as of February 7, 2006, he knows that no matter with what little "knowledge, information, and belief" (FRBkrP 9011(b)) he makes representations to Judge Larimer (cf. Br:42¶101), the latter will out of self-preservation spare the DeLanos any investigation and production of incriminating documents. (Br:8¶¶21-31; cf. ¶19 above) It is hard to imagine that he would have proceeded with the same levity if this case had been transferred to the U.S. District Court in Albany, NY, before a judge that he did not know. (Br:9§24; Add:1034¶¶10-12)

61. However, Judge Larimer should not proceed with the same levity. As shown above, Att. Palmer's replacement issues are qualitatively different and of subordinate legal status with respect to Dr. Cordero's FRBkrP 8010 issues on appeal. The replacement issues are not even reached until a determination is made of the Rule 8010 issues whether fraud was committed or supported or due process was denied; and if it is determined that any of them was, then the replacement issues are not reached at all since no decision on a motion to recuse or to disallow a claim can survive fraud committed by the bankrupt parties, which deprives them of the right to file for bankruptcy relief in the first place, let alone if it involved a judge supporting a bankruptcy fraud scheme. Nor can a local rule be adopted to protect such a scheme and the schemers; or an appellate system be constitutional which allows its misuse in support of fraud.

62. Therefore, Dr. Cordero respectfully requests that this Court:

    a. dismiss Appellees' brief of January 20, 2006, as unresponsive to his issues on appeal and as dealing with issues untimely raised;

    b. enter the proposed order accompanying his brief of December 21, 2005, and this reply;

    c. grant him such other relief as is proper and just.

Dated: February 8, 2006

Dr. Richard Cordero

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The Proposed Order accompanying Dr. Cordero's appellate brief of December 21, 2005, and appearing at Pst:1307-1315 was reprinted here.

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. on the following parties a copy of my reply brief in *Cordero v. DeLano*, docket no. 05cv6190L, WDNY:

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Table of Post-Addendum Items in the Record

submitted in support of Appellant's Reply
in *Cordero v. DeLano*, docket no. 05cv6190L, WDNY
on February 8, 2006
by
Dr. Richard Cordero

(emphasis is added unless emphasis in the original is stated)

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