

IN THE
SUPREME COURT OF THE UNITED STATES

Dr. Richard Cordero, Petitioner

v.

David and Mary Ann DeLano, Respondents
docket no. 06-4780-bk in
the United States Court of Appeals
for the Second Circuit

and

James Pfuntner

v.

Trustee Kenneth Gordon et al.
sub nom. *In re Premier van*, docket no. 03-5023 in
the United States Court of Appeals
for the Second Circuit

On Petition for a Writ of Certiorari to

The United States Court of Appeals
for the Second Circuit

Petition for a Writ of Certiorari

October 3, 2008

by

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I. QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Second Circuit (CA2) and the District and the Bankruptcy Courts, WD&BNY,

“so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power” (Rule 10.a of the Rules of the Supreme Court of the U.S.; hereinafter SCtR #)

when they denied *every single document* that they needed both to ascertain disputed facts so as to determine which rule of law to properly state and apply, and to safeguard the integrity of judicial process, and that Petitioner, exercising his right to discovery, had requested to defend against a motion to disallow his claim on a debtor, a 39-year veteran banker and bankruptcy officer, whose motion was scheduled sua sponte for an evidentiary hearing by the bankruptcy judge, who therein acted as the debtor’s chief advocate and his lawyer’s former law firm partner, as shown by the transcript that the judge’s district judge colleague tried to prevent Petitioner from filing, and who at the end of the predetermined hearing disallowed the claim and deprived Petitioner of standing in order to stop him from requesting incriminating documents, including those as necessary for any judge to discharge his or her duty to establish the good faith of any bankruptcy petition as the debtor’s bank account statements and which Petitioner requested to prove that the debtor had concealed assets, such as \$673,657 still unaccounted for, by participating in a bankruptcy fraud scheme in which the debtor’s trustee had 3,907 *open* cases and his lawyer 525 before the bankruptcy judge, who had been twice-appointed by CA2, so that when Petitioner sought to show how its reappointee abused process to run the scheme with the artifice of the motion and the sham evidentiary hearing, CA2 denied him *every single document* to aid and abet the scheme and self-protect from incrimination in it, thus indulging a disqualifying self-interest in conflict with its duty to exercise its supervisory power and suppressing even the appearance of both due process and equal protection of law.

2. Whether it constitutes denial of a hearing and thus, of due process and of equal protection of the law, and a breach of contract for appellate review service in exchange for a filing fee, for a court to use a summary order to dispose of a case, as CA2 did in the instant appeal, without making a single reference to either any fact of the case, any brief of a party, or any document in the record, but on the contrary, citing in the order cases that objectively have nothing to do with either the facts of the appeal or any properly stated and applicable law to it, and after having disposed of all substantive motions by simply circling the option “Denied” rather than “Granted” on the Motion Information Sheet, whereby the court engages, as CA2 did here, in conduct from which a reasonable person can infer that it never read any part of the record since it would defeat its policy of expedient docket clearing applied to “approximately 75% of all cases” - 2nd Cir. Handbook, p17- including most pro se litigants and those represented by solo practitioners and small firms, as opposed to noteworthy litigants and their big law firms.
3. Whether WDNY Local Rule of Civil Procedure 5.1(h) (Add:633), which requires for filing a claim under RICO, 18 U.S.C. §1961 et seq., such detailed evidence before discovery has even started as to make such filing impossible in practice, is thereby void as inconsistent with the notice pleading and enabling provisions of the FRCivP, as a deprivation of a right of action granted by an act of Congress, and as a subterfuge crafted by the District Court and protected by CA2 in the self-interest of both of them through their abuse of judicial power to prevent the exposure of their support or toleration of a bankruptcy fraud scheme.
4. 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 of law, provides for forum shopping, and denies equal protection under law so that it is unconstitutional and has been abused to terminate the BAP in the Second Circuit and allow local operation of a bankruptcy fraud scheme.

II. LIST OF PARTIES

1. The parties nominally included in the case at bar, *Dr. Richard Cordero v. David & Mary Ann DeLano*, 06-4780-bk, CA2, and in its procedural history as well as those in the related case to which it traces its origin, i.e. *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, to which Mr. DeLano and Dr. Cordero are parties (SCtR 12.4), or deemed to support or tolerate the bankruptcy fraud scheme and consistently served by Petitioner with every document that he produced, are the following:

- | | |
|--|--|
| a. David and Mary Ann DeLano, Debtors | g. James Pfuntner |
| b. Dr. Richard Cordero, Esq. | h. Chapter 7 Trustee Kenneth W. Gordon |
| c. Chapter 13 Trustee George Reiber | i. M&T Bank |
| d. Assistant U.S. Trustee Kathleen Dunivin Schmitt | j. Mr. David Dworkin |
| e. Bankruptcy Court Reporter Mary Dianetti | k. Jefferson Henrietta Associates |
| f. U.S. Trustees for Region II Deirdre A. Martini and Diana G. Adams | l. Mr. David Palmer |

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VI. CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

- Petitioner knows of no opinions or orders by the courts to have been published in any reporter.

VII. BASIS FOR JURISDICTION

- On February 7, 2008, the CA2 entered the order dismissing the case. (CA: 2180)

5. On May 9, 2008, CA2 entered the order denying Petitioner Dr. Cordero’s timely motion for panel rehearing and hearing banc. (CA: 2209)
6. On July 30, Justice Ginsburg extended the time in which to file a petition for a writ of certiorari to and including October 6, 2008. (US:2310)
7. The appeal from the Bankruptcy Court to the District Court was filed under 28 U.S.C.§158. The appeal to CA2 was founded on 28 U.S.C. §§158(d) and 1291, both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain*, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).
8. The constitutionality of 28 U.S.C. §158 is drawn into question. Consequently, 28 U.S.C. §2403(a) may apply.
9. CA2’s pursuit of expediency would have led it not to certify, pursuant to 28 U.S.C. §2403(a), to the Attorney General the fact that the constitutionality of 28 U.S.C. §158 was drawn into question; and Petitioner has no knowledge of any such certification.

**VIII. CONSTITUTIONAL PROVISIONS, STATUTES,
AND RULES INVOLVED IN THE CASE**

A. Fifth Amendment to the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

in the Appendix infra

B. 28 U.S.C. §158. Appeals.....Add:630

C. WDNY Local Rule of Civil Procedure 5.1(h) RICO claimsAdd:633

IX. STATEMENT OF FACTS

A. The DeLanos, inherently suspicious debtors in bankruptcy, and other scheming insiders of the bankruptcy system

10. The DeLanos are exceptional bankrupts, for Mr. DeLano was at the time of filing the bankruptcy petition on January 27, 2004, a 39-year career financial and banking officer (Transcript, page 15 Line 17 to pg 16 L15=Tr:15/17-16/15) and Mrs. DeLano was a Xerox technician, a person experienced in thinking methodically along a series of technical steps. Both knew exactly what moves to make to prepare for a debt-free asset-loaded golden retirement by filing a voluntary petition although their assets of \$263,456 far exceeded their liabilities of \$185,462. (D:29) Indeed, when they filed their petition, Mr. DeLano was and continued to be employed as an officer in precisely the bankruptcy department of a major bank, M&T Bank, with \$65 billion in assets at the end of 2007. Hence, they filed their petition in the U.S. Bankruptcy Court, WBNY, under 11 U.S.C. Chapter 13 "Adjustment of debts of an individual with regular income", thus avoiding liquidation under Chapter 7. Together with the petition they filed a plan for debt repayment to their creditors for the minimum of 3 years, at the end of which Mr. DeLano, 62, would be 65 and could collect a 100% of his social security pension. Timing matters.
11. An insider of the bankruptcy system, Mr. DeLano had learned during his 39-year long career how to keep people afloat with financial advice and how to sink them with stories of their wrongdoing with one of the two most insidious corruptors: *Money!* Mr. DeLano's petition came as a farewell wish list before Bankruptcy Judge John C. Ninfo, II, WBNY (D:317, 325, 327).
12. Judge Ninfo too was exceptional: "At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester [where] from 1970 until 1992 he engaged in private law practice". (http://www.nywb.uscourts.gov/about_judge_ninfo_46.php, Add:636) That firm represents M&T Bank and Banker DeLano in *Pfuntner* (Add:531), which is pending before the Judge. Mr.

DeLano mishandled the bankruptcy concerned in that case, thus harming Dr. Cordero, a defendant in *Pfuntner*, who impleaded him as a third party defendant (Add:785); so arose the claim there that later became at stake in *DeLano*. Judge Ninfo handled the other most insidious corruptor: *Power!* Judicial power over people's property, liberty, and even life that is in practice unaccountable becomes absolute power...and corrupts absolutely.

13. The DeLanos listed Dr. Cordero among their unsecured creditors in their voluntary bankruptcy petition. (D:40) They submitted it and their debt repayment plan for evaluation to the chapter 13 trustee, who is supposed to represent unsecured creditors. (Revision Notes and Legislative Report on 11 U.S.C. §704, 1978 Acts, 2nd para.; D:882§II) That Trustee was George Reiber, Esq.
14. Trustee Reiber too is especial: According to PACER, he had 3,907 *open* cases before Judge Ninfo out of his 3,909 *open* cases. After his evaluations, he depends on Judge Ninfo to have his recommendations for bankrupts' plans approved so that he may keep his 10% fee of every payment made through him under the plan to the creditors. (28 U.S.C. §586(e)(1)(B)(ii)(I)) His frequent appearances before the Judge and his financial interest in the Judge's goodwill toward him have developed a modus operandi between them that has led the Trustee's loyalties to run to the Judge, not to one-time creditors, much less to non-local ones who live hundreds of miles away from Rochester, NY, such as Dr. Cordero, a resident of NY City. When the Trustee and the Judge rubberstamp petitions smoothly, so flows the enormous amount of money that they control ...in just this one case the whereabouts of \$673,657 of the DeLanos' are still unknown. (CA:1654)
15. It was Assistant U.S. Trustee Kathleen Dunivin Schmitt, Trustee Reiber's supervisor, who allowed him to amass such an unmanageable number of cases. So much so that since he could not be at the same time in all places where he was needed, she let him conduct the meeting of creditors (11 U.S.C. §341: D:23) of the DeLanos on March 8, 2004, not only in a room connected to her office, but also unlawfully by his attorney, James Weidman, Esq. For a trustee not to conduct a

meeting of creditors personally is such a serious violation of his duty that it is listed in 28 CFR §58.6(10) among the causes for removal. (SApp:1689) On that occasion, Trustee Reiber was taking care of business, of all places, downstairs in Judge Ninfo's courtroom. In a well coordinated scheme everybody has to pitch in. Trustee Schmitt's friendly next door neighbor is the local office of the U.S. Department of Justice in the cozily small federal building in Rochester.

16. Accompanying the DeLanos to the meeting were their one of a kind attorneys (D:79¶3): Christopher Werner, Esq., had brought 525 cases before Judge Ninfo, according to PACER, and at the time had spent 28 years in the business. (D:217) Michael J. Beyma, Esq., is also a partner in Underberg & Kessler, the same law firm in which Judge Ninfo was a partner at the time of his appointment by CA2 under 28 U.S.C. §152 to his first 14-year term as bankruptcy judge. He represents both Mr. DeLano and his employer, M&T Bank. (Add:531, 532, 778, 784, 811). Mr. Beyma "was a founding partner of Boylan, Brown LLP in 1974", the law firm in which Mr. Werner is a partner. (<http://www.underberg-kessler.com/Attorneys/Detail/?ID=30>) It is better when everything remains in the family. (law firm addresses at US:2481 infra)

B. The meeting of creditors of the DeLanos confirms that the insiders knew that they had committed bankruptcy fraud

17. Att. Weidman knew perfectly well what was going on with the DeLanos and the other co-schemers. At that meeting of creditors, he examined the DeLanos under oath while being officially recorded on an audio-tape. After examining the DeLanos, Mr. Weidman asked whether any of their creditors were in the audience. Dr. Cordero was the only one present. He identified himself and stated his desire to examine them. Mr. Weidman asked him to fill out an appearance form (D:68) and to state what he objected to. Dr. Cordero submitted to him and Mr. Werner copies of his Objection to Confirmation of the DeLanos' Plan of Debt Repayment (D:63). No

sooner had he asked Mr. DeLano to state his occupation –he answered ‘a bank loan officer’- and then how long he had worked in that capacity -he said 15 years, but see Tr:15/17-16/15- than Mr. Weidman unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos’ having committed fraud. When Dr. Cordero would not reveal what he knew, Att. Weidman put an end to the meeting even though Dr. Cordero had asked only two questions! (D:79§I-III; Add:889§II)

18. Later that afternoon at the confirmation hearing before Judge Ninfo in the presence of Trustee Reiber and Att. Weidman and without being contradicted, Dr. Cordero brought to the Judge’s attention how that Attorney had prevented him from examining the Debtors. Rather than uphold the law and Dr. Cordero’s right thereunder, Judge Ninfo faulted Dr. Cordero for applying the Bankruptcy Code too strictly and thereby missing “the local practice”. He stated that Dr. Cordero should have phoned to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. (D:99§C) Thereby the Judge protected the co-scheming “locals” from the law of the land of Congress, which provides for not one, but rather a series of meetings where creditors can engage in a very wide-scope examination of the debtors. (11 U.S.C. §341; FRBkrP 2004(b); D:283¶¶a-b, 98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)
19. For months thereafter, the DeLanos continued to treat Dr. Cordero as a creditor, pretending to be obtaining the documents that he had requested through Trustee Reiber. (D:63, 151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203) They also pretended to be available for an adjourned meeting of creditors where those documents would be used to examine them under oath. (CA:1731¶25) But the documents only trickled in. Worse yet, the documents that they produced during the dragged-on period were incomplete, even missing pages! (D:194§II) Would Mr. DeLano have lasted 39 years in banking if his performance in

producing his own documents had been a reflection of his competency to obtain the documents necessary for his employer, M&T Bank, to decide on its clients' financial applications?

20. The DeLanos' production of documents was so objectionable that Trustee Reiber himself moved to dismiss the petition "for unreasonable delay which is prejudicial to creditors, or to convert to a Chapter 7 proceeding", that is, liquidation. (D:164) This was only for show, or for other purpose, given that the Trustee never asked the DeLanos, despite Dr. Cordero's requests, to produce documents as obviously pertinent to determine the good faith of any petition (11 U.S.C. §1325(a)(3)) as their bank account statements, which they have not produced to date. Neither Trustee Schmitt nor her superior, U.S. Trustee for Region 2, Deirdre A. Martini, required Trustee Reiber or the DeLanos to produce those documents. Yet, it was the trustees' duty to obtain that type of documents of each bankrupt to determine their compliance with the Bankruptcy Code and to meet the request of a party in interest. (11 U.S.C. §§1302(b)(1), 704(a)(4) and (7)) Those trustees had especial reasons to do so in the case of the DeLanos: Their petition contained a statement of financial affairs so intrinsically incongruous and implausible as to give rise to probable cause to suspect that it was a vehicle of concealment of assets and evasion of debts.

C. The DeLanos' intrinsically incongruous and implausible statement of financial affairs

21. The DeLanos stated in Schedules A-J, the Statement of Financial Affairs, the Plan for Debt Repayment, and various Declarations accompanying the petition (all referred to herein as the petition):
- a. that their total assets were \$263,456 while their total liabilities were only \$185,462, yet they proposed to repay only 22¢ on the dollar (D:29, 23);
 - b. that they had in cash and on account only \$535 (D:31), although they declared that their

excess income after subtracting from their monthly income their monthly living expenses was \$1,940 (D:45), and that in just the three fiscal years preceding their bankruptcy filing they had earned \$291,470 (D:47; 2001-03 1040 IRS forms at D:186-188);

c. that they owed \$98,092 on 18 credit cards (D:38), while they valued their household goods at only \$2,810 (D:31), less than their \$3,880 excess income in only two months and less than even 1% of the \$291,470 that they had earned in the previous three years! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their worklives of more than 30 years;

d. that their only real property was their home, appraised two months before their filing at \$98,500, as to which their mortgage was still \$77,084 and their equity only \$21,416 (D:30)...after making mortgage payments for 30 years! and having received during that period at least \$382,187 through a string of eight known mortgages! (D:341-354) *Mind-boggling!* For each of those mortgages they had to pay closing costs. For example, just for the last known mortgage they had to pay \$3,444. (D:351, 354 lines 1400 and 1602) None of the trustees or any of the judges that had the duty to review the facts could have either competently or honestly believed that Career Banker DeLano would waste on closing costs for eight mortgages more money than the equity he ended up with in his home. They had to ask: “What did you do with all that money received from eight mortgages?”

22. None did despite their power to do so (11 U.S.C. §521(a)(4)) and Dr. Cordero’s request that they do it. (D:77, 492) Far from it, Trustee Reiber was ready to recommend after that meeting of creditors the confirmation by Judge Ninfo of the DeLanos’ debt repayment plan without either of them having checked the underlying bankruptcy petition against any supporting documents. Only Dr. Cordero’s Objection (D:63) stopped their rubberstamping the plan; otherwise, they would have given the DeLanos a retirement gift at the expense of the creditors and gotten insurance for

themselves by avoiding that the denial of the petition as fraudulent and the indictment of the DeLanos could have led Mr. DeLano to plea bargain by trading up his stories about the officers' role in the fraud scheme against leniency for the couple.

D. To stop Dr. Cordero from proving a bankruptcy fraud scheme, the DeLanos used the artifice of a motion to disallow his claim as creditor and Judge Ninfo staged a sham evidentiary hearing, for which both denied him *every single document* that he requested and at which the Judge disregarded Mr. DeLano's testimony and disallowed Dr. Cordero's claim for failure to introduce documents

23. Dr. Cordero continued analyzing the petition intrinsically and extrinsically for its consistency with the few documents produced. (D:63, 165-188) In a written statement submitted to Judge Ninfo (D:193), he showed that the DeLanos had concealed assets, a violation of 18 U.S.C. §152(1), and thereby committed bankruptcy fraud. That crime is punishable by up to 20 years in prison and a fine of up to \$500,000 under 18 U.S.C. §§152-157, 1519, and 3571 (D:46).
24. Only thereafter, in July 2004, after the DeLanos had treated Dr. Cordero as creditor for six months, did they come up with the idea of a motion to disallow his claim. (D:218) They did not cite any authority at all for challenging the presumption of validity of a creditor's claim. (D:256§VII) Moreover, their challenge had become barred by waiver and laches. (D:255§VI) Indeed, they themselves had listed in Schedule F (D:40) Dr. Cordero's claim against them in *Pfuntner* precisely because Mr. DeLano had been aware for more than a year and a half that in November 2002, he had been brought into *Pfuntner* as a third party defendant by Dr. Cordero (Add:785). In addition, months before his motion, in May 2004, he had been reminded thereof by Dr. Cordero filing his proof of claim (D:142) with relevant excerpts of his third party complaint in *Pfuntner* (D:250§I). What is more, in April 2004 the DeLanos had raised the objection,

already untimely after treating Dr. Cordero as their creditor for months, that he “is not a proper creditor in this matter”. (D:118) Less than 10 days later, Dr. Cordero countered their objection. (D:128) Then they dropped the issue...for months. Their conduct shows that their motion to disallow was a desperate attempt to get rid of Dr. Cordero and his overt charge of their commission of bankruptcy fraud as part of the bankruptcy fraud scheme. (D:253§V)

25. Judge Ninfo came through to assist Co-schemer DeLano with his disallowance motion artifice. Sua sponte, he called in his order of August 30, 2004, for an evidentiary hearing to determine the motion. (D:272) He required that thereat Dr. Cordero introduce evidence to establish his claim against Mr. DeLano in *Pfuntner*, that is, in isolation from all the other parties, their claims and defenses, and issues. Dr. Cordero realized that he was being set up to try piecemeal in *DeLano* one claim severed from *Pfuntner*. So he moved in CA2 to quash the Judge’s order. (D:441) CA2 merely “Denied” with no explanation the motion to disallow. (D:312) Thereby it covered up for his use of a process-abusive motion and encouraged him to engage in even more abuse.
26. Judge Ninfo got the message and resorted to even more egregious abuse, knowing that he would soon be rewarded with his reappointment to a second 14-year term bankruptcy judgeship, as he was in 2006, and that for Dr. Cordero to complain about him to CA2 would prove useless, as it already had before (D:425; SApp:1655, 1657; CA:1721, 1859 fn.5). So he required that discovery for the evidentiary hearing be completed by December 15, 2004, when he would set its date. (D:278¶3) On the strength of that order, Dr. Cordero requested documents from the DeLanos, including those to which he was entitled not only as a creditor, but also as a mere party in interest and as a party to *Pfuntner*. (D:287) But the DeLanos and Mr. Werner, the attorney who had brought 525 cases before Judge Ninfo, denied him *every single document*, self-servingly characterizing all as irrelevant. (D:313, 314) Dr. Cordero moved Judge Ninfo to order the DeLanos to comply with the discovery provisions of his order and respect his right to

discovery under FRBkrP 7026-7037 and FRCivP 26-37. (D:320§II) Disregarding his own order and showing contempt for the rules, Judge Ninfo aided and abetted the DeLanos' blatant violation of the right to discovery (D:325) and denied him *every single document!* (D:327) In December, he scheduled the evidentiary hearing for March 1, 2005. (D:332)

27. Having no documents to introduce, Dr. Cordero examined Mr. DeLano at the evidentiary hearing. Judge Ninfo acted as Mr. DeLano's Chief Advocate, as if he still were a partner in the law firm of his other attorney, Mr. Beyma, who was there and had entered his appearance. (Tr:2) The Judge objected on behalf of Mr. DeLano to Dr. Cordero's questions, warned him about how to answer them, and engaged Dr. Cordero in an adversarial discussion. (Pst:1266§E)
28. Although Judge Ninfo reduced Atts. Beyma and Werner to deferential second chairs, they were not inactive at all. Far from it. So confident did they feel in the presence of Mr. Beyma's old buddy John and Mr. Werner's frequent trier of 525 cases that they signaled answers to Mr. DeLano while he was on the stand being examined under oath by Dr. Cordero. When the latter protested in each of several occasions, Judge Ninfo ludicrously pretended that he had not seen them do so even though the attorneys were only a few feet in front of him and near Dr. Cordero's table in the well. (Beyma Tr.28/13-29/4, 75/8-76/3; Werner: 141/20-143/16; Pst:1289§f). No doubt, their experience with the Judge had assured them that they could suborn perjury right in front of his eyes with no adverse consequences for themselves or Career Banker-Insider DeLano.
29. Indeed, Mr. Werner felt so confident that the Judge would grant his motion to disallow Dr. Cordero's claim against Mr. DeLano that neither of them had read the complaint containing it (Add:785) or the proof of claim (D:142) or even brought a copy of either to the hearing. So in the middle of it, Mr. Werner asked Dr. Cordero to lend them his copy! (Tr.49/13-50/25; Pst:1288§e)
30. What prompted Atts. Werner and Beyma's effort to suborn perjury was that the testimony that Mr. DeLano was giving confirmed Dr. Cordero's claim against him in *Pfuntner*. (Pst:1285¶70)

So Judge Ninfo explicitly disregarded Mr. DeLano's testimony against self-interest as "confused", although it concerned his own handling of the bankruptcy at stake in *Pfuntner*, and found that Dr. Cordero had not introduced any documents to prove his claim, the very same ones that they had taken care to deny him during discovery. Then he entered the predetermined disallowance of Dr. Cordero's claim and deprived him of standing to participate in *DeLano* anymore. (Pst:1281.d) Judge Ninfo can be "heard" as the partisan, leading voice of the schemers in the transcript. (Pst:1255§E). Dr. Cordero had in fact been set up.

31. Does the use of a disallowance motion as an artifice to conceal incriminating documents and of a sham evidentiary hearing to eliminate a troublesome party that could blow the cover of a bankruptcy fraud scheme seem to you to have anything to do with due process, the rule of law, fairness, or equity? Or are they means of coordinated wrongdoing used by bankruptcy system insiders to escape detection? Will you too condone their fraud scheme without qualms because it involves peers and friends or condemn it with outrage because it offends justice and the conscience?

E. District Judge Larimer in coordination with court clerks tried to keep Dr. Cordero from obtaining incriminating transcripts and denied him *every single document* that he requested

32. On appeal from the disallowance of the claim against the DeLanos, District Judge David G. Larimer, WDNY, covered up for Judge Ninfo, his peer downstairs, by denying *every single document* that Dr. Cordero requested (Add:951, 1021; Pst:1307), including the transcripts of the initial and the adjourned meetings of creditors (D:333; Pst:1262¶¶13-21). He even maneuvered together with Bankruptcy clerks, trustees, and Court Reporter Mary Dianetti to prevent the incriminating transcript of the evidentiary hearing from being incorporated into the record on appeal by being sent the record from the Bankruptcy clerk before it was complete, in violation of

FRBkrP 8006 and 8007 (Add:679), and repeatedly scheduling Dr. Cordero's brief before the Reporter had even had time to respond to his letter requesting the transcript (Add: 692, 695, 831, 836, 839). It cost Dr. Cordero seven month's worth of effort and money (Add:870, 911, 991, 993, 1019; Pst:1264 ¶22-26) to thwart their maneuver and have that transcript produced so that he could use it to write and support his appellate briefs to the District Court and eventually to CA2 and this Court. (Add:1027, 1031; CA1735§1)

33. Despite the transcript, Judge Larimer affirmed the disallowance in a conclusory order (SApp:1501) that did not make even one reference to it or to Dr. Cordero's brief. What is more, he did not use once the term 'fraud' even though it and 'a bankruptcy fraud scheme' were the express key notions of the four questions presented on appeal (Pst:1257§C; CA:1749§2) and permeated the brief. Actually, Judge Larimer did not address even one of those questions. On the contrary, he committed the gross mistake of stating that the "preserved, appellate issues" had been "set forth" by the DeLanos' attorneys'. (SApp:1502 2nd para.) However, those attorneys never filed a cross appeal and thereby could not present any issues on appeal at all. (CA:1746§1) The issues that Judge Larimer went on to name were those "set forth" by those attorneys in their response to Dr. Cordero's brief. (Pst:1365) Yet, he did not engage in any legal analysis of even those issues. (CA:1756§4) In fact, to write his order Judge Larimer need not have read Dr. Cordero's brief at all; he only needed to skim over the DeLanos'. (Pst:1361, 1398§§II-III, 1409§V)

34. Judge Larimer showed blatant partiality. (CA:1752§3) He refused to take notice of the controversy that was put to him by Appellant Dr. Cordero, thus denying him opportunity to be heard while confirming Judge Ninfo's taking of his property right for the benefit of the schemers. Consequently, Judge Larimer denied Dr. Cordero due process of law and did so intentionally as part of coordinated wrongdoing aimed at covering up and running a bankruptcy fraud scheme.

F. CA2 denied *every single document* that Dr. Cordero requested as an exercise of his right to discovery and that CA2 itself needed to discharge its duty both to know the facts so as to determine which properly stated rule of law to apply and to exercise its supervisory power to safeguard the integrity of judicial process in the circuit from its corruption by judges participating in a bankruptcy fraud scheme

35. CA2 docketed the appeal in *DeLano* (06-4780-bk) on October 25, 2006 (Sapp:1571), and the following day entered Dr. Cordero's Statement of Issues (SApp:1508).
36. On 12 occasions, (Table at US:2484 *infra*) during the appeal, Dr. Cordero requested that CA2 order the production of the documents listed in his proposed order of production. But CA2 denied him *every single document*, doing so summarily, with no explanation, only an expedient circling around the option "Denied", as opposed to "Granted", on the Motion Information Sheet.
37. When even that proved to be too demanding, CA2 resorted to another expedient way to get rid of motions. On July 18, 2007, Dr. Cordero raised a "Motion suggesting en banc consideration of the 3 denials of the motions for document production; and if denied, for the Court to disqualify itself due to conflict of interests and refer the case to the Attorney General under 18 U.S.C. §3057(a)" (CA:1945) In its disposition on August 9, CA2 "ordered that this motion and all further motions filed by Dr. Cordero are referred to the panel assigned to hear this appeal". (CA:2079) By referring en bulk all of Dr. Cordero's future motions to the panel, CA2 signaled that it would not even bother to take notice of the nature of his motions, which could very well deal with a matter other than a request for documents. In effect, CA2 denied Dr. Cordero any further access to it and did so discriminatorily, for the order expressly concerned only Dr. Cordero's motions. So when on August 29, Dr. Cordero moved "for oral argument on the motion of July 18 suggesting en banc consideration of the three denials of the motions for document production to be held before argument is heard on the case in chief" (CA:2081), CA2 simply "ordered that the motion is referred to the panel that will hear the merits" (CA:2087).
38. The proof of CA2's discriminatory attitude came when Trustee Reiber filed a motion to dismiss

the appeal on October 30. (CA:2101). The Trustee knew that CA2 could not order production of the documents requested by Dr. Cordero and thereby risk exposing the district and bankruptcy judges' involvement in the bankruptcy fraud scheme and as a result, being incriminated therein for having supported or tolerated it. Hence, the Trustee had not bothered for over a year even to file an appearance in the appeal. In fact, he had filed none in the District Court either. Yet, in Dr. Cordero's briefs in both courts he had been implicated in the scheme and his removal had been requested. (Pst:1306¶123.d; CA:1773¶f) Trustee Reiber did not bother to file any paper in opposition even though if such relief had been granted, he would have lost his livelihood.

39. Even before that, while still in Bankruptcy Court, Dr. Cordero had requested Judge Ninfo on July 9, 2004, to remove Trustee Reiber from the *DeLano* case. (D:201¶32) But the Trustee did not bother to respond. The Trustee went about his business and in July 2005 he submitted to Judge Ninfo an undated "Trustee's Findings of Fact and Summary of 341 Hearing" –never mind that there is no such proceeding as a '341 Hearing'–, and an untitled form in Pidgin English that began "I/We filed Chapter 13 for one or more of the following reasons", which was unsigned and undated too! (D:937-939) Although Dr. Cordero analyzed in detail such shockingly unprofessional and perfunctory scraps of papers (Add:953§I) -on which Judge Ninfo nevertheless relied to confirm the DeLanos' plan of debt repayment (Add:941)- and requested District Judge Larimer to remove Trustee Reiber (Add:974¶4), he did not bother to file even a yellow stick-it in opposition. The Trustee's conduct shows that he knew that the judges would not let any harm come to him. Would the Trustee have proceeded with the same arrogant indifference if the case had been before a judge that he did not know and a jury free to find him an accomplice in the fraud scheme?
40. CA2 was not that judge. The Trustee knew that it would suffice to cobble together a motion to dismiss and CA2 would take it from there. Dr. Cordero provided a detailed analysis of the motion's arrogant perfunctoriness (CA:2111, 2135; cf. US:2459§B *infra*). It was so accurate and

fair that even CA2 would subsequently admit that “Appellant’s argument that the Trustee’s motion is deficient may be correct”. (CA:2180) But instead of rejecting the motion as too deficient for its requested relief even to be considered, as Dr. Cordero urged the court to do, or even referring it to the panel just as CA2 had ordered regarding “all further motions filed by Dr. Cordero”, the court placed the Trustee’s motion on the substantive motion calendar for January 3, 2008 (CA:2143).

41. Dr. Cordero protested such placement as “arbitrary and discriminatory treatment that constitutes a denial of equal protection under law and a subterfuge for the Court to rid itself of this appeal and thus evade the conflict of interests with which it confronts the Court”. (CA:2152) To no avail.

42. As for the Trustee, he did not bother to file any statement in defense of such placement, much less to appear to defend his motion before the panel. He knew that it was a done deal. As did the DeLanos, who throughout all these legal events remained undisturbed sipping piña colada in their golden retirement. The Trustee had already authorized them to pay \$27,953 to their attorneys solely for the purpose of avoiding the production of the incriminating documents requested by Dr. Cordero (CA:1956¶20), which they knew that the DeLanos could pay since in their bankruptcy petition that the Trustee and the attorneys had approved, the DeLanos had declared they had only \$535 in hand and on account (D:31)...plus what they had not declared. Now it was somebody else’s turn. No doubt, in a bankruptcy fraud scheme everybody has to do his share of the dirty work.

43. The panel too knew that. So at the hearing, they allowed Dr. Cordero merely 5 minutes. A pro-forma hearing! But those five minutes were enough for the judges to reveal through their questions that they ignored even the basic facts of the case. They did not ask questions whether the dismissal motion being heard should be granted, as Dr. Cordero reasonably expected them to do. (CA:2178) Instead, they asked questions to educate themselves on whatever evidence Dr. Cordero had to support his charge of fraud. After all, why would the panel have invested time in

doing their homework when they knew that they could just wing it through those five minutes and that the Trustee's motion and the hearing were but a pretext to dismiss the appeal that could incriminate CA2 in a bankruptcy fraud scheme? The hearing was a farce.

44. No reference was made to it when CA2 dismissed the appeal on February 7, 2008, (CA:2180), just as none was made to any brief, any motion, or any document in the record. Nor did it even use the term fraud, let alone bankruptcy fraud, much less bankruptcy fraud scheme. It did not even mention any of the four issues presented. (CA:1719§V) It simply grabbed a summary order form and in a three-liner slapped together a doctrine of equitable mootness and two citations and without discussing any dismissed the case. (CA:2180)
45. Dr. Cordero timely filed a "Motion for panel rehearing and hearing en banc to determine the question of exceptional importance: To what extent is the Court's integrity compromised by supporting or tolerating a bankruptcy fraud scheme?" (CA:2191) CA2 did not address it if only to show that it cared about its appearance of integrity. Rather, it used the other form, the one for denying rehearing petitions, and attached to it the dismissal summary order reissued as the mandate on May 9, 2008. (CA:2209)
46. Dr. Cordero file a motion of May 23 to recall and stay the mandate (CA:2211) and another of May 24 to remove and stay *Pfuntner* (CA:2222). On June 12, CA2 denied both motions, with no statement of reasons whatsoever, of course. (CA:2232, 2233) To these two motions, the Trustee filed another perfunctory and untimely "Response in opposition to motion", dated June 11, 2008.(CA:2234; cf. FRAP 27(a)(3)(A) and 26(a)(1-3))

X. CA2'S ORDER OF DISMISSAL RESTS ON THE WRONG LAW AND THE DISREGARD OF THE FACTS OF *DELANO*

- A. CA2's dismissal order fetched without discussing a doctrine and strung together two cases objectively inapplicable to *DeLano* both on the facts and the law, for it was a mere pretext to get rid of an appeal that could**

expose its support and toleration of a bankruptcy fraud scheme

47. CA2 pretended that it was dismissing *DeLano* on “equitable mootness” grounds and cited two cases, *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005), and *In re Chateaugay*, 988 F.2d 322, 326 (2d Cir. 1993), in support of its order (CA:2180). However, neither of those cases even insinuated that the doctrine of equitable mootness is available to cure bankruptcy fraud, much less a bankruptcy fraud scheme. In fact, neither deals with fraud at all.
48. Nor do they deal, as *DeLano* does, with bankruptcies under 11 U.S.C. Ch. 13 and its simple “adjustment of debts of an individual with regular income” to creditors under a repayment plan providing merely for the claims of the same class to be treated equally (§1322(a)(3) and (b)(1)), e.g. by paying the same number of cents on the dollar and, if the discharge is revoked due to fraud (§1330(a)), for the continued payment of what the debtor still owes the creditors (§1330(b)).
49. Rather, *Metromedia* and *Chateaugay* dealt with Chapter 11 bankruptcies and the complex reorganization of bankrupt companies. Actually, they are even more complex, for they involved arrangements, not only between the bankrupt companies and their creditor companies, but also third companies and individuals that were not even parties to the bankruptcy cases. Indeed, those cases dealt with the release of debt owed by non-party companies to the reorganizing debtor company in exchange for a substantial contribution to its reorganization plan and a challenge after the completion of the arrangement by a creditor, to whom giving relief would have required “unraveling the Plan”. *Metromedia* §III. To avoid the dire consequences of such “unraveling”, the doctrine of equitable mootness was applied, which provides as follows:

Equitable mootness is a prudential doctrine that is invoked to avoid disturbing a reorganization plan once implemented. [E]quitable mootness is a pragmatic principle, grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable. The doctrine [is] merely an application of the age-old principle that in formulating

equitable relief a court must consider the effects of the relief on innocent third parties. *Metromedia*, §III, internal quotations omitted.

50. Ordering production of the requested documents, identifying thanks to them the concealed assets of the DeLano Debtors, and finding that they committed bankruptcy fraud would not disturb their completed debt repayment plan in any way whatsoever. Once they were shown to have filed a fraudulent petition to begin with and gotten it approved through the fraud of the trustees, Judge Ninfo, and other co-scheming insiders, there would be nothing “impractical, imprudent, and therefore inequitable” in asking them to continue paying to their creditors what they owe them. This would only mean that, instead of getting away with evading their debts by paying even fewer than the initially proposed 22¢ on the dollar (D:59: Pst:1174; CA:1933), the DeLanos would have to reduce their fraudulently-gotten enjoyment of their golden retirement and use their concealed assets to pay in full the principal of their debts and the interest on it. Ordering them to do so would absolutely not entail any “recoupment of these funds ‘already paid from non-parties, and the continued payment to creditors would neither be impracticable nor’ “impose an unfair hardship on faultless beneficiaries who are not parties to this appeal”, *Chateaugay*, §II. There would only be completion of repayment to the only innocent parties here: those who in good faith became the DeLanos’ creditors and to whom it would be inequitable to deprive of what is owed them in order to let the DeLanos benefit from the scheme or protect other schemers.

51. Additionally, the companies in *Metromedia* and *Chateaugay* that challenged those complex debt-release arrangements failed to do so until after their completion. In this respect, the court in *In re Chateaugay Corp.*, 94 F.3d 772, 776 (2d Cir.1996), “presume[d] that it will [not] be inequitable or impractical to grant relief after substantial consummation, [if], among other things, the entity seeking relief has diligently pursued a stay of execution of the plan throughout the proceedings”. This is precisely what Dr. Cordero did: He “diligently pursued a stay of execution of the [DeLanos’] plan” of debt repayment and was

denied his motions by Judge Ninfo (D:21) and Judge Larimer (Add:881, 974¶7, 1021; Pst:1182 entry 10; CA:2199¶¶13, 20). He even pursued the revocation of the confirmation order in Bankruptcy Court (Add:1038, 1066, 1094, 1095, 1125) and in District Court (Add:1064, 1070, 1121¶61, 1126, 1155; Pst:1306¶123, 1313¶21).

52. The pretense of “equitable mootness” as the grounds for dismissing *DeLano* is objectively inapplicable to *Pfuntner*, which is pending before Judge Ninfo and was revived by the dismissal of *DeLano*. In *Pfuntner*, discovery has not even begun! Hence, it cannot be applied to prevent the disturbance of debt-release arrangements where there are no arrangements to disturb to begin with. Moreover, there are parties to *Pfuntner* that were not parties to *DeLano* and whose rights and liabilities as a matter of law cannot have been disposed of through CA2’s dismissal of *DeLano* or the Bankruptcy Court’s disallowance of Dr. Cordero’s claim. As a matter of fact, neither those parties nor their rights were even hinted at in the CA2’s three-liner summary order.
53. This shows that CA2 proceeded to dismiss the appeal without any justification in law and with disregard for the facts of *DeLano*. It simply fetched the term “equitable mootness”, strung together two citations, and slapped them on a summary order form without ascertaining whether either the doctrine or the cases logically or analogically related to the appeal. It never considered whether equity favored such dismissal, let alone required it. In so doing, CA2 committed an inequity by depriving Dr. Cordero, an innocent party, of his claim against the DeLanos, the fraudsters. It also denied him due process by dispensing with the rule of law in order to protect Reappointee Ninfo, Peer Larimer, and itself.

B. CA2's characterization of Trustee Reiber's arrogantly perfunctory motion to dismiss as containing only "minor deficiencies" reveals its disingenuous disregard for the law and the facts

54. CA2 confirmed its disregard for the facts and the law by the way it handled Trustee Reiber's motion of October 30, 2007, to dismiss the appeal as moot (CA:2102) and his amendment to correct a gross mistake (CA:2130, 2124¶¶39-42). In his opposition, Dr. Cordero pointed out (CA: 2111, 2135) that the Trustee, who in his motions' first sentence insisted he was a lawyer, had:
- a. failed to cite any authority for the proposition that failure to object timely to a trustee's final report...or perhaps it was to the judge's order approving it –the Trustee could not make up his mind (CA:2103¶¶15-16)- the appeal had been rendered moot and dismissible;
 - b. failed to identify what class of people of whom Dr. Cordero was supposedly representative had an obligation to object to whatever it was that he was supposed to object;
 - c. failed to note that Dr. Cordero's objections to **i)** the DeLanos' fraudulent bankruptcy petition (D:63), **ii)** Judge Ninfo's confirmation of their debt repayment plan (Add:1038, 1066, 1095, 1097), **iii)** the Trustee's failure to perform his duty, and **iv)** Judge Larimer's affirmance in the appeal filed over 2½ years earlier (D:1; SApp:1507) constituted clear evidence that Dr. Cordero objected to every other act flowing therefrom because if his objections were sustained on appeal, the Trustee's report and Judge Ninfo's approval of it would have become null and void as deriving from fraud-tainted acts and thus, nullities;
 - d. failed to notice that Judge Ninfo had deprived Dr. Cordero of standing in *DeLano* (D:22), leaving him only the right to appeal, so that the Judge neither would serve, let alone do so timely, his report-approving order on Dr. Cordero nor could expect the latter to object to it;
 - e.; failed to assert that the alleged service on Dr. Cordero of "a summary of the account" (CA: 2103¶14) -whatever relation that bore to the Trustee's report or the Judge's order- was timely;
 - f. failed to explain how service of such "summary" would impose any duty on the recipient to object to something else not served.
55. The inadmissible substandard quality of Trustee Reiber's motions should have prompted CA2 to

determine whether the Trustee had been allowed to amass 3,907 *open* cases before Judge Ninfo because of his competence as a lawyer/trustee or his willingness to participate in the bankruptcy fraud scheme. Instead, CA2 characterized these as “minor deficiencies”. (CA2180) For it to do so was not only disingenuous; it was also dishonest. It was also evidence that due to its self-interest in not exposing the scheme and thereby risking that the exposed schemers in turn incriminated CA2 for having supported or tolerated it, CA2 disregarded the facts and the law so as to dismiss the appeal to Dr. Cordero’s detriment and protect itself and the schemers. Will this Court condone such evidence suppression and abuse of process inimical to judicial integrity?

**XI. WDNY LOCAL RULE 5.1(H) EXCEEDS THE LOCAL RULE-
MAKING POWER AND WAS ABUSED TO PROTECT
THE FRAUD SCHEMERS FROM RICO COUNTS**

56. WDNY Local Rule 5.1(h) requires exceedingly detailed facts to file a RICO claim, thus violating notice pleading under FRCivP, impeding in practice its filing, and protecting bankruptcy fraud schemers, the secrecy of which is protected by Local Rule 83.5 banning cameras and recording devices from the Court and its ‘environs’.
57. 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 28 U.S.C. §2075””. As stated in the Advisory Committee Notes on the 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 aim at preventing that a local rule with “the sheer volume of directives may impose an unreasonable barrier”. (Advisory Committee Notes on

the 1995 Amendments to Rule 83) In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (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”.

58. 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.
59. 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.
60. 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 ‘numbered and lettered’ “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”.

61. 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”.
62. Given the bankruptcy fraud scheme supported by people doing business in the same cozily 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 rulemaking 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.
63. The pre-emptiveness of Local Rule 5.1(h) is strengthened by its companion Rule 83.5, which bans all cameras and recording devices from the court and its “environs”. (SApp:1695) This defeats

the public policy expressed by the Judicial Conference “to promote public access to information”, which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF (28 U.S.C. §1914). Defying logic, such devices may be allowed “for non-judicial hearings or gatherings”, that is, for inconsequential activities in terms of the business of the Court as well as for the “informal procedures” of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits “a transcript or recording to be made” as a matter of course. However, a litigant is forbidden to bring a recording device to make a transcript of a ‘formal proceeding’, where matters that could support a RICO claim would be formally discussed.

64. In the context of the totality of circumstances surrounding the bankruptcy fraud scheme, Local Rule 83.5 reveals its insidious purpose of as a means to ensure secrecy and concealment of evidence of the scheme and the identify the schemers. Indeed, it is tailor-made to prevent the recording of prohibited ex-parte communications (D:433§D, 434¶¶22-24); conduct, such as lawyers signaling answers to their client on the stand before a complicit judge (Pst:1289§f); and items, such as documents, including the exposure of the inaccuracy, incompleteness, and tampered-with condition of a transcript by comparing it with the recording of an evidentiary hearing (Add:911, 991, 993, 1019).

XII. SECTION 158 OF 28 U.S.C. PROVIDES FOR BANKRUPTCY APPELLATE REVIEW BY JUDGES OF UNEQUAL DEGREE OF IMPARTIALITY IN VIOLATION OF THE EQUAL PROTECTION CLAUSE AND IS UNCONSTITUTIONAL; AND HAS BEEN ABUSED TO RUN THE BANKRUPTCY FRAUD SCHEME

65. 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.

66. 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.

67. 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 mutandis, as follows:

Advisory Committee Notes to FRBkrP 5002. Restrictions on Appointments

...The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district....

FRBkrP 5004(b) Disqualification of judge from allowing compensation.

A bankruptcy judge shall be disqualified from allowing compensation to a **person** who is a relative of the bankruptcy judge or **with whom the judge is so connected** as to render it improper for the judge to authorize such compensation. (emphasis added) (cf. 5004(a) requiring disqualification as provided under 28 U.S.C. §455 of a bankruptcy judge where a relative is involved)

68. This presumption of favoritism 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?
69. 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 my 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.
70. The importance of providing a level field where locals and non-locals argue and decide appeals on legal considerations rather than personal relationships (D:431§C) 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 (cf. Advisory Committee Notes on the 1996 Amendments to FRBkrP 5005, Filing and Transmittal of Papers).

71. Hence, §158(b) provides for an appellate system with two-stages of inequality: First, judges choose to handle among insiders the review of their own judicial process dealing with one of the most insidious corruptors, money, tens of \$billions in bankruptcy!, which can be made by not having to pay it to creditors; then the parties with the stronger connection with them choose for each appeal how to deal ad hoc with the weaker, ‘out-of-the-loop citizen’ involved. (Add:603¶¶32-33) That is the antithesis of a uniform nationwide system that provides independent appellate review of bankruptcy decisions on terms settled in advance and apt to ensure equal protection under law.
72. CA2 has through the elimination of its BAP facilitated the operation of a bankruptcy fraud scheme. It even reappointed Judge Ninfo to a second term as bankruptcy judge despite the evidence of his bias and involvement in the scheme (CA:1978). It denied Dr. Cordero’s motions (Table, US:2484 infra) for it to order the DeLano Debtors to produce documents required in every bankruptcy case, such as bank account statements, after Appointee Ninfo and Peer Larimer had denied them in violation of his right to discovery. Those documents would lead to the Debtors’ concealed assets worth at least \$673,657 (SApp:1654) and on to the incrimination of those judges for covering up the Debtors’ fraud. So CA2 protected its appointee to protect itself, thus succumbing to a §158-generated conflict of interest that denies equal protection. (¶37 supra; CA:1945)

XIII. REASONS RELIED ON FOR ALLOWING THE WRIT

- A. CA2 failed to address a single issue presented on appeal, let alone the unifying issue of bankruptcy fraud, but instead provided evidence of not even having read the briefs or motions, thereby denying Dr. Cordero a hearing while allowing the deprivation of his property by the judges below to stand, thus denying him due process of law**

73. CA2, just as all other courts, is not an independent entity above the people with its own source of

power. Rather, it is only part of the government set up by “We, the People” for public servants to render them certain services, i.e., judicial services necessary for the orderly and consistent resolution of the controversies that inevitably arise in society due to the multiplicity of views and competing interests of its members. When one of “the People” files an appeal with CA2, or any other court for that matter, that appellant asks it to resolve a controversy by providing a dispositive answer to the “Issues presented for review”. (FRAP 28(a)(5)) That is the service that the appellant asks of the public servants that make up CA2. In turn, the latter requires that appellant pay the “fees to be charged for services provided by the courts of appeals”. (FRAP CA2 Local Rule §0.17) When the appeal is from a district court or a bankruptcy appellate panel, that fee stands now at \$455. (id. §0.17.1 and cf. §0.17.13) Upon payment of that fee, a contract for services arises between the appellant and CA2 for the specific performance by the latter of the service of appellate review of the issues presented.

74. Appellant Dr. Cordero paid the \$455 fee for such services upon filing his notice of appeal, which was filed on October 16, 2006. (SApp:1507) He gave notice to CA2 of the issues that he would present (SApp:1507) and that he presented for it to dispose of (CA:1719§V). CA2 took the fee with notice of why Appellant had paid it and what he reasonably expected to receive in exchange.
75. CA2 did not even once make a reference either in general to the issues presented or in particular to any of the four of them. What is more, or rather less, it did not even use the term explicitly describing “The unifying issue before this Court...the bankruptcy fraud scheme involving its WDNY peers and others” (CA:1719¶7; cf. Pst:1257¶2.b, 1266§E.1); not even “bankruptcy fraud”; and not only did it not use at least the term “fraud”, it did not deal with the concept of fraud at all. As a matter of fact, in its summary order it dismissed the appeal by citing two cases that objectively have nothing to do whatsoever with fraud, let alone bankruptcy fraud. (CA:2180; US:2456§X supra)

76. CA2's disposition of appeals through summary order is the norm. It admits that "Approximately 75% of all cases are decided by summary order [, which] have no precedential authority." (<http://www.ca2.uscourts.gov/clerk.htm> >2nd Circuit Handbook, pg.17) Its use of such orders implements its case handling policy aimed at caseload clearing through expediency:

FRAP CA2 Local Rule 32.1. Dispositions by Summary Order

(a) Use of Summary Orders. The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

(b) Precedential Effect of Summary Orders. Rulings by summary order do not have precedential effect. (<http://www.ca2.uscourts.gov/Rules.htm>)

77. An order's lack of precedential effect means that it does not bind any judge in the circuit, including the judges on the panel that issued it. It is a one-off act that has no consequences for anybody that matters, only for the litigants in the appeal in question, who paid the filing fee and the cost of seeking or getting on their own legal advice, writing, printing, and servicing their briefs and motions. Thus, such order can be issued with as cursory handling of any papers filed as the expedient clearing of the caseload demands. The cursoriness of the handling is protected and thereby encouraged if not guaranteed by the fact that in the 12 regional courts the overwhelming majority of all "Opinion[s] or Order[s] Filed In Cases Terminated on the Merits After Oral Hearing or Submission on Briefs" is unpublished or to be exact 83.5%. (<http://www.uscourts.gov/judicialfactsfigures/2007.html> >Table 2.5) This means that for all practical purposes it is unknowable and unavailable and meant to become secret since it is neither to be sought nor worth seeking.

78. Indeed, what would the purpose be of wasting time, effort, and money trying to find a summary order that due to its lack of precedential effect also lacks a statement of facts and a reasoned statement of the law and its careful application to those facts? The lack of any reasons is both the

cause and the effect of setting no precedent: CA2 has no incentive to provide reasons that will not be relied upon in another appeal and has every incentive not to provide any reasons precisely to prevent that they may come back to haunt it, even in the same appeal given that a reasoned statement would provide concrete grounds on which to challenge and review the order. Likewise, the absence of reasons allows for arbitrary, unprincipled, and capricious decision-making; and a decision of such nature would avoid giving reasons in order to escape detection. "[A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary"; *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex*, 442 U.S. 1, 40 (1979) (Marshall, J., dissenting)

79. Given its objective of expediency, a summary order is in principle an order of affirmance of the judgment below or dismissal. Both types of dispositions maintain the status quo and call for no action. By contrast, a reversal would require CA2 to identify the reversible error, not just to establish its legal grounds, but also to provide practical guidance on what procedural or substantive error to avoid on remand, what issues to retry, what evidence to include or exclude, etc....time-consuming details that defeat the whole objective of expedient caseload clearing.
80. Therefore, if a statement of facts or of reasons is not only unnecessary, but also to be avoided so as to ensure the summary order's unreviewability and the judges' unaccountability, why would CA2 ever read the parties' briefs, motions, appealed decisions, exhibits, etc.? To fill out a summary order form with "Affirmed" or "Dismissed" judges need not read anything.
81. In this context, it is quite revealing that even when judges invest time and effort reading the papers filed in an appeal and then writing an opinion, that is, a disposition with precedential effect, they may not deem it of sufficient quality to mark it for publication. This occurs in a significant 8.5% of cases since 83.5% of all dispositions are unpublished while only 75% are decided by summary order. This fact begs the question whether the quality of appellate review that ends with not even an unpublishable opinion, but merely a summary order is so low that it cannot be

said that the appeal was decided, but rather that it was contemptuously thrown out of court.

82. To avoid wasting time with what will end up as refuse filings, CA2 just has to sort or have the clerk sort appeals into two groups: one for judicial adjudication and one for the junk pile. The sorting criteria are quite obvious: CA2 can assume that pro se litigants are a law-ignorant bunch and poor to boot since they cannot afford lawyers. As a result, they are more likely than not to have committed mistakes below, appealed without knowing what a reversible error is or even being aware of the difference between issues of fact and law, and raised frivolous claims. So, "if an appellant is appearing pro se, the docket number will indicate "Pro Se" following the case type designation". (<http://www.ca2.uscourts.gov/clerk.htm> >2nd Circuit Handbook, pg.7) CA2 does not single pro se appellants out because of the high probability that the opposing parties, even their own lawyers below, not to mention the judge appealed from, may have taken advantage of their ignorance of the law and lack of resources. This would call for CA2 to cut them some slack and provide them with judicial assistance, if only for the sake of the circuit judges to conscientiously fulfill their duty flowing from their oath "to "administer justice without respect to persons, and do equal right to the poor and to the rich...so help me God". (28 U.S.C. §453) Far from it, CA2 imposes on them harsher requirements:

FRAP CA2 Local Rule 27(j)

Motions by Pro Se Appellant in Civil Appeals (including Habeas Corpus). In any civil appeal...a motion filed by a pro se appellant...shall identify each issue that the appellant intends to raise on appeal and shall state, with respect to each issue, facts and a brief statement of reasons showing that the issue has likely merit. When a motion filed by a pro se appellant does not comply with this rule, the clerk shall promptly send the appellant a letter enclosing a copy of this rule and informing the appellant that (1) the required identification of issues and supporting facts and reasons must be filed with the court within 21 days, and (2) if the appellant fails to file the required statement, or if the court determines, on considering the appellant's statement that the appeal is frivolous, the court may dismiss the appeal. The motion will be submitted without oral argument. The court will ordinarily limit its consideration of the motion to the issues identified therein.

83. CA2 can dismiss pro se appellants' appeals because their statements in *motions* make them appear "frivolous"! This reveals its predisposition to fling pro se appeals to the junk pile right from the beginning. CA2 does not require Wall Street lawyers to comply with its LR 27(j). This sort of dismissal is all the graver because it starts off with the clerk, who first determines that the pro se appellant has failed to identify the issues and state the reasons showing their likely merit. The great significance of terminations by the staff can be appreciated using the figures available: In the 12 regional courts in the year ending on September 30, 2007, out of 62,846 terminations 16,343 -26%- were procedural terminations by the staff as opposed to 12,412 -20%- by the judges. (<http://www.uscourts.gov/judicialfactsfigures/2007.html> >Table 2.2)
84. However, pro se appeals constitute only 43.1% of all appeals in the 12 regional courts of appeals. (<http://www.uscourts.gov/judicialfactsfigures/2007.html> >Table 2.4 U.S. Courts of Appeals. Pro se Cases Filed) So the same logic may be extended to other appeals to reach the 75% mark of those decided by summary order. That extension covers appellants represented by solo practitioners and small firms. They too get junk pile treatment. After all, they are all but certain to go unnoticed by the media and the public. Would CA2 have decided Martha Stewart's appeal with a contemptible "Affirmed" had she not resigned herself to serving her sentence? *Are you kidding!* CA2 would thereby have missed the opportunity to write an opinion that would be commented upon in all the newscasts and law journals, and could even make it to a casebook or be cited by ABA in support of its recommendation of the author for an opening on this Court. A perfunctory "Affirmed" or "Dismissed" is the treatment reserved for a squabble between the owners of the mom-and-pop grocery on the corner and the laundry across the street or a plea for help from Mary the Waitress in her losing battle against Mr. Ikrush Utoo.
85. Never mind that CA2 collected from them the same \$455 filing fee that entitled them to the same service that Martha Stewart would have expected and received. Justice is equal only high up

there on the pediment of the Supreme Court building. Everybody down here gets sorted. Those who are cast to the junk pile skip off court over a summary order, which is a judicial non-act...except for the cashing in of the filing fee. CA2 took in the money under the false pretext that it would provide an appellate review service –a meaningful one as the good faith implied in every contract made it reasonable to expect- although it intended all along to get rid of 75% of all appeals with a meaningless summary order form and 83.5% with unpublished and by their author's own assessment unpublishable decisions. By so doing, CA2, the only court to which Second Circuit appellants can appeal, forced them into a contract of adhesion which it then breached. That breach was far more serious than in any other contract, for it meant that CA2 denied appellants what it owed them contractually as well as institutionally: due process and equal protection of law.

86. Nevertheless and in spite of how naïve or cynical it may sound, for this Court "Equal Justice Under Law" must mean something more than just a decorative bas-relief on its place of work. It should be the constant and loud expression of the standard by which "We, the People"'s institution with the noblest of goals measures whether the lower courts have 'departed from the acceptable norm of judicial action so as to demand that this Court enforce its moral authority through the exercise of its supervisory power'. The ever increasing caseload of the courts can never be a justification for them to provide no justice or only pro forma justice that denies the substance of justice.
87. For CA2 to dismiss an appeal, as it did Dr. Cordero's (CA:2180), with a summary order containing a three-liner that has no bearing on either its facts or the applicable law is the result of the arrogant attitude that says, 'We can get rid of any of your requests however we feel like it because you do not have the means of holding us up to any standard of responsible or professional conduct'. Such fiat and attitude negate what was recognized a long time ago as constituting an essential and indispensable component of justice. "Justice should not only be done, but

should manifestly and undoubtedly be seen to be done"; *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923)

B. This Court's exercise of its supervisory power is exceedingly justified by the overwhelming number of appellants that receive pro forma decisions that deny the essence of justice and by the all but complete unappealability of bankruptcy decisions that make bankruptcy and district courts safe havens for bankruptcy fraud schemes

88. Petitioner Dr. Cordero is entitled to the protection of this Court. So are the circa 5,276 (75%) and 5,874 (83.5%) of the 7,035 appellants that filed appeals in CA2 in the year ending on September 30, 2005, whose appeals were decided by summary orders and unpublished/unpublishable decisions, respectively. (<http://www.ca2.uscourts.gov/Reports/05/2005%20Annual%20Report%20-%20FINAL.htm> >Statistics> pg.108) There is reason to conclude that the motive of expedient caseload clearing that leads CA2 to use these two types of decisions and the dynamics of cursory case handling that it engenders obtain also in all the 12 regional circuits. Hence, the corresponding figures of appellants to whom the circuits denied due process and equal protection of law in the year to September 30, 2007, are 43,807 and 48,772 out of the 58,410 appeals filed. (<http://www.uscourts.gov/judicialfactsfigures/2007.html> >Table 2.1) The scope of the denial of constitutional rights is so broad that it calls for the Court's exercise of its supervisory power.

89. When the composition of the workload is examined, the significance of these figures pales by comparison to that of the figures for bankruptcy cases that are appealed. In CA2, only 100 of the 7,035 appeals in the year ending on September 30, 2005, or only 1.4%, were classified as "Bankruptcy". (<http://www.ca2.uscourts.gov/Reports/05/2005%20Annual%20Report%20-%20FINAL.htm> >Statistics> pg.112) For the 12 regional courts in the year to September 30, 2007, the comparable figures are 845 bankruptcy appeals out of a total of 58,410 appeals. And here comes the shocker: "In the 12-month period ending June 30, 2008, there were 967,831 bankruptcy cases

filed, according to statistics released today by the Administrative Office of the U.S. Courts.” (http://www.uscourts.gov/Press_Releases/2008/BankruptcyFilingsAug2008.cfm) The negligible number of bankruptcy appeals is explained to a great extent by the fact that bankrupt people and entities hardly have the money to spend on the very costly appellate path from bankruptcy court to district court to circuit court, particularly when they must use any available funds to survive or pay the creditors. What is most alarming about these figures is that they reveal bankruptcy and district courts as safe havens for judicially supported bankruptcy fraud schemes of the kind revealed by *DeLano*. Whatever the bankruptcy and the district judges say goes and is all but certain to stand. No wonder Bankruptcy Judge Ninfo and District Judge Larimer can dare be so blatant in supporting a fraud scheme as they have been in *DeLano* and *Pfuntner*. (US:2350¶62)

90. This fact highlights the importance for this Court to grant certiorari to review these cases, for 967,831 bankruptcy cases where judges and other insiders of the bankruptcy system get to decide who gets their tens of billions of dollars at stake generate irresistible pressure for an astonishing and intolerable degree of corruption. The scope of the problem clamors for the exercise of this Court’s supervisory power so as protect the integrity of the courts and of due process of law.

C. The lack of the requested documents will prejudice the Court in deciding the petition for a writ of certiorari and, if granted, the case in chief as well as in safeguarding the integrity of judicial process by identifying and eliminating the bankruptcy fraud scheme that has corrupted it as part of coordinated wrongdoing in the courts below

91. After the DeLanos named Dr. Cordero among their unsecured creditors (D:40), he requested that they produce documents proving the good faith of their bankruptcy petition. Instead, the documents would have proved the DeLanos’ concealment of assets and false financial statements. To eliminate him from the case so that he could not keep requesting those documents, the DeLanos

and Judge Ninfo conjured up the motion to disallow and the evidentiary hearing. To defend against that motion and show that it was an artifice and the hearing a sham implemented to protect from exposure the involvement of the DeLanos, Trustee Reiber, Judge Ninfo, and other insiders of the bankruptcy system in a bankruptcy fraud scheme, Dr. Cordero kept requesting documents as obviously pertinent to ascertaining the bankrupts' good faith as their bank account statements. *Every single document* that Dr. Cordero requested was denied by not just the DeLanos, but also Judge Ninfo, Judge Larimer, and CA2 although all those judges needed to order them produced to uphold Dr. Cordero's right to discovery and to safeguard the integrity of judicial process by exposing all the participants in the bankruptcy fraud scheme.

92. This Court too needs those documents, identified in the accompanying document production order, for their lack will prejudice it because they are "necessary [and] appropriate in aid of...its jurisdiction", as provided under the All Writs Act:

28 U.S.C.A. §1651

- (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
- (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

93. Those documents will allow the Court both to administer justice in accordance with due process of law to Petitioner Dr. Cordero and to other litigants before it and to exercise its own "supervisory power" (SCtR 10.a) over the integrity of judicial process conducted by the courts subject to its review. If it does not order those documents produced so that it can carry out these two key institutional functions, it will be lending its support both to the cover-up mounted by the courts below to avoid incrimination in, and to the continued running of, the bankruptcy fraud scheme.

94. In deciding whether to issue the proposed production order the Court should consider that the

appellate courts below, that is, CA2 and District Judge Larimer, neither denied nor protested Dr. Cordero's assertion of the existence of the bankruptcy fraud scheme nor disputed the evidence that he introduced pointing to such existence. On the contrary, they even abstained from using the terms fraud or scheme, as if by not even mentioning those issues in their decisions (SApp:1501; CA:2180) they would not be contributing to establishing even the conceptual existence of the scheme and would avoid drawing this Court's attention to Dr. Cordero's presentation of his side of the story and the evidence that he had introduced to support it.

95. Instead of discharging its duty toward both Dr. Cordero as appellant and the public at large as beneficiary of judicial integrity, CA2 chose to serve the members of its own small society, that is, the class of judges. Peer Larimer and Reappointee Ninfo are not only members thereof, but may also be representatives of all those in the Second Circuit and elsewhere involved in coordinated wrongdoing, such as a bankruptcy fraud scheme. Worse yet, CA2 chose to serve itself. If it had ordered production of documents incriminating Judges Larimer and Ninfo in running the scheme, they could in turn have incriminated CA2 by trading up in a plea bargain where they would agree to testify that CA2 has known about the scheme (cf. CA:1978), but instead of exposing and eliminating it, has covered it up and supported it. (CA:1965¶¶39-40) Faced with a conflict of interests between, on the one hand, its duty to apply the law to the facts to decide the issues of an appeal impartially and, on the other hand, its own interest in preserving its good name and protecting its very survival (CA:1963§III), CA2 compromised its integrity. It chose to look after its interests. As advocate and judge in its own cause and that of its own class, it disqualified itself as an impartial adjudicator and perverted justice. CA2 acted as a Worker of Injustice.
96. This Court must not join CA2 in corrupting justice. It must neither condone CA2's denial of due process to a litigant nor condone its abandonment of the duty of impartiality and its issuing of an

unresponsive and irresponsible summary order in defense of its own unlawful individual and judicial class interests. Thus, it is reasonable to expect that after granting certiorari, the Court will set aside CA2's order dismissing Petitioner Dr. Cordero's appeal in *DeLano* and ordering that *DeLano* and the case from which it arose, *Pfuntner*, be tried in an impartial court to a jury.

97. The Court should also grant certiorari and issue the proposed document production order so as to consider the issues, conspicuously disregarded below, of the abuse of local rule-making power for the purpose of issuing WDNY LR 5.1(h) as a means to prevent RICO counts against bankruptcy fraud schemers, in particular, and all those involved in coordinated wrongdoing, in general (US:2461§XI supra); and the constitutional infirmities of 28 U.S.C. §158, in general, and its bankruptcy appellate panel provisions, in particular, (US:2464§XII supra). In so doing, the Court will be aided by the requested documents showing the existence of the bankruptcy fraud scheme, which will allow it to establish that the judges below turned LR 5.1(h) and §158 into instruments to run the scheme and protect themselves and the participating bankruptcy system insiders from exposure. This shows once more how 'necessary those documents are in aid of this Court's jurisdiction'. Will the Court too choose to protect its peers and itself or uphold due process and equal protection of law?

XIV. RELIEF REQUESTED

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

- a. 1) grant this petition for a writ of certiorari or,
- 2) in the alternative,
 - (a) hold null and void all decisions and orders in *DeLano* and *Pfuntner* and remand those cases to the U.S. District Court, NDNY, in Albany, NY, for trials by jury, and
 - (b) proceed under the All Writs provision of 28 U.S.C. §1651(a) or cause the issue of

a certificate of necessity under 28 U.S.C. §294(d),¹ and designate and assign a judge, who may be on the roster of senior judges, but who in any event is retired, was from a circuit other than the Second Circuit, and is unrelated to the judges and parties in these cases and capable of exercising his or her judicial duties in these cases fairly, independently, and impartially, to preside over such trials;

- b. issue the document production order proposed below;
- c. allow the filing of supplemental briefs 60 days after completion of such production;
- d. stay CA2's order dismissing *DeLano* (CA:2180);
- e. stay all proceedings in *Pfuntner* in Bankruptcy and District Courts revived by the dismissal of *DeLano*;
- f. cause CA2 to refund Dr. Cordero the \$455 filing fee for the reasons above stated;
- g. in consideration of the enormous cost for litigating *DeLano* and *Pfuntner* that Dr. Cordero had already incurred:
 - 1) waive the \$300 filing fee in this Court, which Dr. Cordero has already paid, and refund it;
 - 2) grant leave for this petition and, if certiorari is granted, for the merits brief, to be printed on 8½ x 11" paper and CDs in 10 copies in light of:
 - i) the acceptance of 8½ x 11" paper for printing other papers, such as briefs, applications, and motions under SCtR 19.1, 21.2.c, 26.4(b), 37.5, 39.3 & 5, 40.1 & 2;
 - ii) the goal expressed in FRBkrP 1001 and FRCivP 1 that procedural rules "should be construed and administered to secure the...inexpensive determination of every action and

¹ The All Writs provision does not exclude from its scope the appointment of such a judge by the chief justice. For its part, §294 does not exclude his or her appointment except under it, but merely creates the duty for the chief justice to appoint such judge if a chief judge or the respective circuit justice presents a certificate of necessity.

proceeding” having been heralded by this Court as one of “the touchstones of federal procedure”, *Brown Show Co. v. U.S.*, 370 U.S. 294, 306, 82 S.Ct. 1502, 1513, 8 L.Ed. 2d 510 (1962);

- iii) those “simple” Rules serving as reminders that form should not be exalted over substance, *Hall v. Sullivan*, 229 F.R.D. 501, 504 (D.Md. 2005);
 - iv) the privacy concerns protecting the information required for filing a motion to file in forma pauperis;
 - v) the record in DeLano running to more than 2,400 pages;
- h. given the facts surrounding, and the arguments supporting, this petition, grant Dr. Cordero any other relief that is proper and just.

Dated: October 3, 2008
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero, Esq.

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

CERTIFICATE OF SERVICE

Dr. Richard Cordero v. David and Mary Ann DeLano, 06-4780-bk, CA2
Pfuntner v. Trustee Kenneth Gordon et al., 02-2230, WBNY

I, Dr. Richard Cordero, Esq., certify that I mailed or e-mailed to the parties listed below a copy of my petition to U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning the above captioned cases,

for Debtors David and Mary Ann DeLano
Devin Lawton Palmer, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001.

Kathleen Dunivin Schmitt, Esq.
Assistant United States Trustee
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100 State Street, Room 609
Rochester, NY 14614
tel. (585)263-5812, fax (585) 263-5862

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

Kenneth W. Gordon, Esq.
Chapter 7 Trustee, in *Pfuntner v. Gordon et al.*
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1099 Monroe Ave., Ste 2
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tel. (585)244-1070

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

Trustee George M. Reiber
Chapter 13 Trustee, in *DeLano*
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Rochester, NY 14623
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for Mr. David DeLano and M&T Bank
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Mr. David Palmer
1829 Middle Road
Rush, NY 14543

Dated: October 3, 2008
59 Crescent Street
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Dr. Richard Cordero, Esq.

Dr. Richard Cordero, Esq.
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XV. APPENDIX

A. Items in this volume

1. Statutes and Local Rule

- a. **18 U.S.C. §3057(a)** on the duty to report to the U.S. Attorney grounds for believing that **bankruptcy fraud** has been committed or that an **investigation** in connection therewith is needed.....Add:630
- b. **28 U.S.C. §158 Appeals** (As amended April 20, 2005, P.L. 109-8, Title XII, § 1233(a), 119 Stat. 202) which provides for the judges in a circuit to choose whether appeals from bankruptcy judges go before one district judge of the same district or a panel of three judges from a different district, whereby the nature and objectivity of the review varies so considerably throughout the country as to deny equal protection under lawAdd:630
- c. U.S. District Court, WDNY, **Local Rules of Civil Procedure Rule 5.1(h)** on **pleading** a **RICO** count, which requires so many factual details before any discovery has been conducted as to render such pleading impossible in practice.....Add:633

2. Orders entered in conjunction with the judgment sought to be reviewed

- a. District Judge David G. Larimer's decision of **October 21, 2006**, disposing of the appeal in *Cordero v. DeLano*, 05cv6190, WDNY, by affirming in all respects the decision of Bankruptcy Judge John C. Ninfo, II, of April 4, 2005, in *In re DeLano*, 04-20280, WBNY, that granted the DeLanos' motion of July 22, 2004, to disallow the claim of Dr. Cordero on Mr. DeLano and deprived him of standing to participate further in *DeLano*..... SApp:1501
- b. CA2's **denial** on January 24, 2007, of Dr. Cordero's 19dec6 motion for **production of documents** necessary for CA2 to determine this case and afford due process of law..... SApp:1623
- c. CA2's implied denial of February 1, 2007, of Dr. **Cordero's January 18**

motion for a document production order and grant of the request for extending by two weeks the brief-filing deadline	SApp:1634
d. Table of the DeLanos' income of \$291,470 + mortgage receipts of \$382,187 = \$673,657 and credit card borrowing of \$98,092 unaccounted for due to the judges' and the trustees' refusal to require the DeLanos to produce supporting documents, such as their bank account statements.....	SApp:1654
e. CA2's denial of March 5, 2007, of Dr. Cordero's 15feb7 motion to reconsider its 24jan7 denial of his 19dec6 motion for a document production order	SApp:1678
f. CA2's summary order of February 7, 2008, dismissing DeLano	CA:2180
g. CA2's denial of February 8, 2008, of Dr. Cordero's 29aug7 motion of oral argument on his July 18 motion, suggesting en banc consideration of CA2's denials of his three motions for document production , to be held before argument is heard on the case in chief	CA:2181
h. CA2's denial of February 8, 2008, of Dr. Cordero's 18jul7 motion suggesting en banc consideration of the three denials of the motions for document production ; and if denied, for CA2 to disqualify itself due to conflict of interests and refer the case to the Attorney General under 18 U.S.C. §3057(a).....	CA:2182
i. CA2's DENIAL of May 9, 2008 , of Dr. Cordero's March 14 petition for panel REHEARING and hearing en banc	CA:2209
j. CA2' denial of June 12, 2008, of Dr. Cordero's May 23 motion to recall the mandate in <i>DeLano</i> and stay or amend it or to stay the pending proceedings in <i>Pfuntner and DeLano</i> in WB&DNY during the pendency of the petition to the U.S. Supreme Court for a writ of certiorari	CA:2232
k. CA2' denial of June 12, 2008, of Dr. Cordero's motion of May 24 to prevent further denial of due process and avoid waste of litigants' and the court's resources by removing and staying the pending proceedings in <i>Pfuntner</i> in WB&DNY or transferring it to the U.S. District Court in Albany, NY	CA:2233

3. Other relevant orders entered in the case

- a. Circuit Justice Ginsburg’s grant of July 30, 2008, of Dr. Cordero’s application for extension of time until next October 6 to file the petition for a writ of certiorari US:2310

4. Table

Document requests by Dr. Cordero and denials by CA2				
	Requests		Denials	
	page #	date	page #	date
1.	CA:1606	December 19, 06	SApp:1623	January 24, 07
2.	CA:1618	January 18, 07	SApp:1634	February 1, 07
3.	CA:1637	February 15, 07	SApp:1678	March 5, 07
4.	CA:1777	March 17, 07	CA:2180	February 7, 08
5.	CA:1932	June 14, 07	CA:2180	February 7, 08
6.	CA:1975¶59a	July 18, 07	CA:2182	February 7, 08
7.	CA:2081¶c.1	August 29, 07	CA:2181	February 7, 08
8.	CA:2126¶e	November 8, 07	CA:2180	February 7, 08
9.	CA:2140¶e	November 27, 07	CA:2180	February 7, 08
10.	CA:2165¶33e	December 26, 07	CA:2180	February 7, 08
11.	CA:2179	January 3, 08	CA:2180	February 7, 08
12.	CA:2205¶25c	March 14, 08	CA:2209	May 9, 08

B. Table of Contents of items in the records of all courts..... US:2365

- 1. All the items: on the accompanying CD; and
- 2. Select items: in the separate volume filed with Dr. Cordero’s in-chambers application of August 4, 2008, to the Justices for injunctive relief and a stay, referred by Chief Justice Roberts to the Court on September 10 for the Conference on September 29, 2008

C. Other relevant material

Proposed document production order..... infra at the back, bound and in a loose copy

18 U.S.C. §3057(a)

Any judge, receiver, or trustee having reasonable grounds for believing that a violation under chapter 9 of this title [18 U.S.C. §§152-157 on bankruptcy crimes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans [e.g. 18 U.S.C. §1519 on destruction of bankruptcy records; §3284 on concealment of bankrupt's assets] has been committed, or that an investigation should be had in connection therewith, **shall** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed....[emphasis added]

28 USCS §158 (2005)

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[--]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b) (1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that--

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2) (A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title [28 USCS § 152].

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c) (1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless--

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal, to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules [USCS Court Rules, Bankruptcy Rules, Rule 8002].

(d) (1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2) (A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that--

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel--

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

HISTORY:

(July 10, 1984, P.L. 98-353, Title I, § 104(a), 98 Stat. 341; Dec. 1, 1990, P.L. 101-650, Title III, § 305, 104 Stat. 5105; Oct. 22, 1994, P. L. 103-394, Title I, §§ 102, 104(c), (d), 108 Stat. 4108-4110.)

(As amended April 20, 2005, P.L. 109-8, Title XII, § 1233(a), 119 Stat. 202.)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

...

(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., shall file and serve a "RICO Case Statement" under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party's RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party's failure to file a statement may result in dismissal of the party's RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

- (1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).
- (2) List each defendant and state the alleged misconduct and basis of liability of each defendant.
- (3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
- (4) List the alleged victims and state how each victim was allegedly injured.
- (5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:
 - (A) List the alleged predicate acts and the specific statutes which were allegedly violated;
 - (B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;
 - (C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a “pattern of racketeering activity”; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable “person” and the “enterprise” under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD CORDERO,

Appellant,

DECISION AND ORDER

05-CV-6190L

v.

DAVID DeLANO and
MARY ANN DeLANO,

Appellees.

This is an appeal, *pro se*, by Richard Cordero (“Cordero”) from a Decision and Order of Chief Bankruptcy Judge John C. Ninfo, II, entered on April 4, 2005. Cordero had filed a claim in the Chapter 13 Bankruptcy case relating to David and Mary Ann DeLano (“DeLano case”).

Chief Judge Ninfo determined, after trial and other proceedings, that Cordero had no valid claim to assert against David DeLano and he, therefore, dismissed the claim and ruled that Cordero had no right to participate further in the DeLano case. Cordero appeals from that order.

On appeal from a bankruptcy court, the district court will not set aside the bankruptcy court's findings of fact unless they are clearly erroneous. Fed. R. Bankr. 8013. Conclusions of law are subject to *de novo* review. *In re AroChem Corp.*, 176 F.3d

I have reviewed the relevant documents in this substantial file, generated for the most part by Cordero's submissions, and find no basis to modify or reverse Chief Judge Ninfo's detailed, thorough decision. I, therefore, affirm that decision in all respects.

The preserved, appellate issues, are rather straightforward, although Cordero has expended considerable energy to make it otherwise. The DeLanos, appellees here and debtors in bankruptcy, by their attorneys, set forth whether Chief Judge Ninfo should have recused himself and whether Cordero had a valid claim.

I note, as do appellees, that many of the matters contained in Cordero's brief and prolix record, have no bearing on the issues before Chief Judge Ninfo or this Court. In fact, even a cursory review of the file demonstrates Cordero's penchant for focusing on irrelevant, extraneous matters that have required both appellees, their counsel, and Chief Judge Ninfo to spend much more time dealing with this case than the merits warranted.

Cordero spends considerable time in his brief rambling on about perceived injustices visited on him by Chief Judge Ninfo. In a similar vein, Cordero filed a motion with Chief Judge Ninfo before the trial, seeking Chief Judge Ninfo's recusal. Chief Judge Ninfo denied the motion orally at the start of the trial and indicated his intent to supplement that decision in writing. He has done so in the April 4, 2005 Decision and Order that is the subject of this appeal.

Section 455(a) of Title 28 provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Adverse rulings by a judge do not in themselves show bias or warrant disqualification. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion" under Section 455(a)). *See also*

Faulkner v. National Geographic Enterprises Inc., 409 F.3d 26, 42-43 (2d Cir. 2005) (trial judge's denial of class certification in copyright infringement action, did not, without more, evidence bias or hostility warranting disqualification).

There was no basis for Chief Judge Ninfo to recuse himself from the trial and, therefore, there is no basis for this Court to reverse his decision. In this case, there is no evidence of any extra-judicial matters that might require consideration of recusal. At heart, Cordero seeks recusal because Chief Judge Ninfo has ruled against him in earlier court proceedings in this case. Simply because the assigned judge makes rulings, which are not to the litigant's liking, is not a basis for recusal. The system would unworkable if that were the case. Cordero can cite to nothing other than the fact he has not faired well in terms of pretrial orders. That fact, does not warrant recusal and, in fact, when that is the only reason advanced, a court would be remiss in its duties if it granted recusal.

On the merits of this appeal, that is whether Cordero had a valid claim against David DeLano, I can add nothing to what Chief Judge Ninfo has set forth in his detailed decision and order. That decision and the attachments to it, and the rest of the file, indicate clearly that Cordero was given every opportunity to conduct discovery and to present his case, such as it was, at a trial. Chief Judge Ninfo noted in his decision that Cordero completely failed to establish any entitlement to his so-called claim during the day-long trial of the case. In essence, Chief Judge Ninfo found a complete lack of proof that Cordero had any type of claim warranting prosecution in the DeLano bankruptcy matter. On appeal, in the voluminous papers filed and in Cordero's lengthy brief, as appellees note, Cordero has done virtually nothing to point out in what manner Chief Judge Ninfo erred finding no valid claim. Therefore, for the reasons stated in Chief Judge Ninfo's Decision and Order, which I adopt, there is no basis whatsoever to overturn Chief Judge Ninfo's decisions as to

whether there is a valid claim and whether he should have recused himself. In addition, although it was difficult to determine the precise nature of the arguments advanced, I have considered them all and find that none warrant relief and none require vacating or reversing Chief Judge Ninfo's Decision and Order of April 4, 2005.

CONCLUSION

The Decision and Order of United States Chief Bankruptcy Judge John C. Ninfo, II, entered April 4, 2005, is in all respects affirmed.

IT IS SO ORDERED.



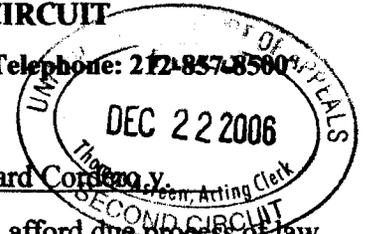
DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
August 21, 2006.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT



Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero, et al.

Motion for: production of documents necessary for the Court to determine this case and afford due process of law

- 1) A key issue presented below and in this appeal is a) whether Bankrupt David DeLano, a 39-year veteran of the banking industry... b) whether they resorted to the artifice of a motion to disallow Creditor-Appellant's claim... c) whether their motion was granted... 2) This Court needs those documents so as to assess the merits of the appeal... 3) Therefore, Appellant respectfully requests that this Court order that a) Bankrupt-Appellees produce within 30 days: i) the statements of all their individual & joint bank, credit, debit, and investment accounts... ii) complete documents relating to all real property... iii) the scheduling order be suspended and reissued after production of all documents.

MOVING PARTY: Dr. Richard Cordero, Creditor-Appellant, 59 Crescent Street, Brooklyn, NY 11208-1515, tel. (718) 827-9521; corderoric@yahoo.com

OPPOSING PARTY: David and Mary Ann DeLano, OPPOSING ATTORNEY: Devin L. Palmer, Esq., Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585)232-5300; fax (585)232-3528

MOVING ATTORNEY: Pro se

Court/Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel: A. been sought? No B. been obtained? Has request for relief been made below? Is oral argument requested? Yes (requests for oral argument will not necessarily be granted) Has argument date of appeal been set? No

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL: Has this relief been previously sought in this Court? Requested return date and explanation of emergency:

Signature of Moving Attorney:

Dr. Richard Cordero

Date: December 19, 2006

Has service been effected? Yes

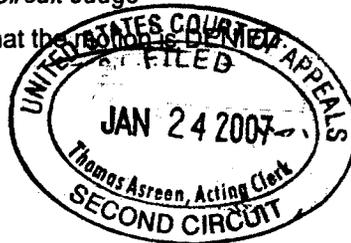
ORDER

Before: Hon. Peter W. Hall, Circuit Judge

IT IS HEREBY ORDERED that the

JAN 24 2007

Date



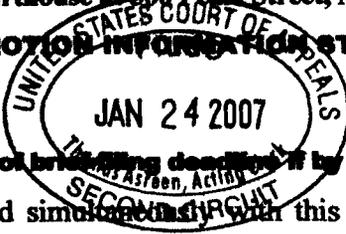
FOR THE COURT: THOMAS W. ASREEN, Acting Clerk by Arthur M. Heller, Motions Staff Attorney

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 599 Pearl Street, New York, NY 10007; telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 06-4780-bk



In Re: Dr. Richard Cordero v.

Motion for suspension or extension of brief filing deadline if by 1/31/7 pending motions have not been decided

- 1. Appellant Dr. Cordero has filed simultaneously with this motion a motion for the two pending motions to be decided, namely:
a. for Appellees' opposition to Appellant's Statement of issues and Designation of items to be disregarded; dated, and filed on, December 6 and 7, 2006, respectively; and
b. for production of documents necessary for the Court to determine this case and afford due process of law; dated, and entered on, December 19 and 22, 2006, respectively.
2. The decision on these motions will affect profoundly the content and filing deadline of Appellant's opening brief, which the current scheduling order requires to be filed by next January 31.
3. Dr. Cordero wants to ensure that he is not found in default for missing the brief-filing deadline and that he has at least 30 days to write his brief in light of the Court's decision on those motions.

Therefore, Appellant Dr. Cordero respectfully requests this Court:

- a) if by January 31 no decision on either of those three motions has suspended the scheduling order,
i) to suspend such order until those motions have been decided, provided such suspension can be decided by the date certain of January 31;
ii) otherwise and only to avoid being found in default, to extend on the date certain of January, 31, such filing deadline from January 31 to March 2, 2007.

MOVING PARTY: Dr. Richard Cordero
Creditor-Appellant
59 Crescent Street, Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

OPPOSING PARTY: David and Mary Ann DeLano
OPPOSING ATTORNEY: Devin L. Palmer, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square, Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

MOVING ATTORNEY: Pro se

Court-Judge-Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel:

A. been sought? No B. been obtained? _____

Has request for relief been made below? No

Is oral argument requested? Yes

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? No

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL: N/A

Has this relief been previously sought in this Court?

Requested return date and explanation of emergency:

Signature of Moving Attorney:

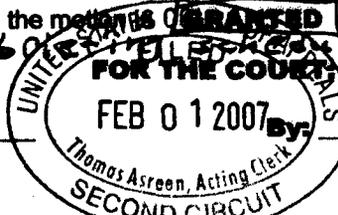
Dr. Richard Cordero

Date: January 18, 2007

Has service been effected? Yes [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED



REMOVED only to this extent: the dates in the 601-1-07-07 are all extended two weeks. THOMAS ASREEN, Acting Clerk of Court

Date: 2-1-07

Form T-1000 (Revised 11/01/06).

G.D. Minerva Sup. Staff Atty

Dr. Cordero's 1/18/7 motion for suspension or extension of brief-filing deadline; In Re Dr. R. Cordero v.06-4780 1

**The DeLanos' income of \$291,470,
+ mortgage receipts of \$382,187 = \$673,657
and credit card borrowing of \$98,092**

unaccounted for due to the judges' and the trustees' refusal to require the DeLanos to produce documents supporting their declaration in Schedule B (D:31) of their bankruptcy petition that at the time of its filing on January 27, 2004, they had in hand and on account only \$535!¹

Exhibit page #	Mortgages referred to in the incomplete documents produced by the DeLanos to Chapter 13 Trustee George Reiber ^a (cf.Add:966§B)	Mortgages or loans	
		year	amount
D ^b :342	1) from Columbia Banking, S&L Association	16jul75	\$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers & Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-54	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed?	Subtotal	\$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition of January 27, 2004 (D:23)			
2001	1040 IRS form (D:186)	\$91,229	\$91,229
2002	1040 IRS form (D:187) Statement of Financial Affairs (D:47)	\$91,859	91,655
2003	1040 IRS form (D:188) Statement of Financial Affairs (D:47)	+97,648	+108,586
to this must be added the receipts contained in the \$98,092 owed on 18 credit cards, as declared in Schedule F (D:38) ^c		\$280,736 ^d	\$291,470 ^d
		TOTAL	\$673,657

^a The DeLanos claimed in their bankruptcy petition that their only real property is their home, valued on November 23, 2003, at \$98,500, as to which their mortgage is still \$77,084 and their equity is only \$21,416 (D:30/Sch.A)...after making mortgage payments for 30 years! and having received during that same period at least \$382,187 through the known elements of a string of mortgages! *Mind-boggling!*

^b D=Designated items in the record of *Cordero v. DeLano*, 05-6190L, WDNY, of April 18, 2005.

^c The DeLanos declared that their credit card debt on 18 cards totals \$98,092 (D:38/Sch.F), while they set the value of their household goods at only \$2,810! (D:31/Sch.B) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years.

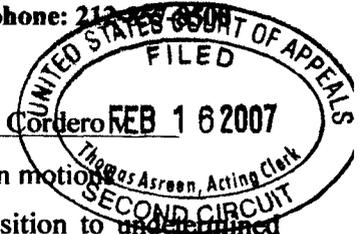
^d Why do these numbers not match?

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007 Telephone: 212-424-6500

ORIGINAL

MOTION INFORMATION STATEMENT



Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero

Motion for: reconsideration and grant of the disregard opposition and document production motion

- 1) On December 6, 2006, Appellant-Creditor filed a motion for Appellee-Debtors' opposition to undetermined "issues or documents" to be disregarded. Instead of deciding it, the Court sent it to the panel, thereby depriving Creditor of the knowledge of what, not only the Court, the also Debtors themselves deem to be the "issues or documents" to be considered on this appeal and on which Creditor should write his brief.
- 2) On December 19, 2006, Creditor filed a motion for production of documents necessary for the Court to determine this case and afford due process of law. That motion was denied. Yet those documents can show that the Debtors have concealed assets in the known amount of a least \$673,657, that they practiced fraud on the court and the Creditor, and had it covered up by the courts below denying him every single document that he requested and conducting sham proceedings.
 - a) There is new evidence unwittingly provided by the Debtors that contrary to their declaration that they had only \$535 in cash and on account when they filed their petition, they actually had money to pay their attorneys' fees, not only those last known in the amount of \$27,953, but also to "continue" paying them their fees.
- 3) Appellant respectfully requests that this Court grant the relief requested in the attached motion; including this:
 - a) grant the motion to disregard Debtors' opposition or state what undetermined "issues or documents" it guessed the Debtors were referring to and how and why it took it upon itself to engage in guesswork;
 - b) order Debtors to produce within 30 days: **I**) the statements of all their individual & joint bank, credit, debit, and investment accounts and 1040 IRS filings since 1/1/96 to date; **II**) complete documents relating to all real property anywhere in which they have any interest in their names or in third parties', and to all their mortgages and loans, including those relating to their home bought in 1975;
 - c) suspend the order requiring Creditor's brief by March 5 and reissue its decision on the rest of this motion.

<p>MOVING PARTY: Dr. Richard Cordero Creditor-Appellant 59 Crescent Street, Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com MOVING ATTORNEY: Pro se</p>	<p>OPPOSING PARTY: David and Mary Ann DeLano OPPOSING ATTORNEY: Devin L. Palmer, Esq. Boylan, Brown, Code, Vigdor & Wilson, LLP 2400 Chase Square, Rochester, NY 14604 tel. (585)232-5300; fax (585)232-3528</p>
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Court-Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel:
 A. been sought? No B. been obtained? _____
 Has request for relief been made below?
 Is oral argument requested? Yes
 (requests for oral argument will not necessarily be granted)
 Has argument date of appeal been set? No

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this relief been previously sought in this Court?
 Requested return date and explanation of emergency:
 Appellant-Creditor moved for relief on December 6 & 19. The Court took action on them on February 1.

Signature of Moving Attorney:
Dr. Richard Cordero

The Court's decisions of these motions will affect decisively what the Creditor is supposed to write his brief on. Creditor requests that the Court immediately suspend the scheduling order, give him actual notice thereof; & reissue it after deciding this motion and documents have been produced

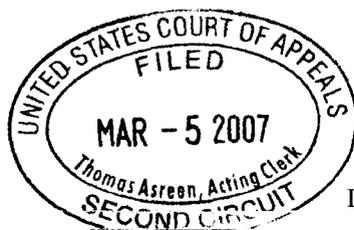
ORDER

Before: Hon. Peter W. Hall, *Circuit Judge*

IT IS HEREBY ORDERED that the motion by pro se appellant to reconsider Order (filed 1/24/07) denying motion for production of documents is DENIED.

FOR THE COURT:
 THOMAS ASREEN, Acting Clerk
 by

Arthur M. Heller
 Arthur M. Heller
 Motions Staff Attorney



Date _____
 SApp:1678

Denial of Dr Cordero's 15feb mtn to reconsider doc prod order denial

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007; telephone: (212)857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero v.

Motion: for oral argument on the motion of July 18 suggesting en banc consideration of the three denials of the motions for document production to be held before argument is heard on the case in chief

a) The motion of July 18 suggesting en banc consideration was referred on July 31 to the panel assigned to hear this appeal and set for oral argument on September 25. It was removed from the calendar on August 2 and referred to the motions judge, who referred it back to the panel on August 9. However, no oral argument has been set for that motion or the case in chief.

b) The en banc motion requests an order of production because every single document that Dr. Cordero requested was denied by the bankruptcy court, the district court, and three times by this Court last January 24, February 1, and March 5. Hence, for the Court to proceed under these circumstances is:

- 1) to intentionally validate the lower courts' and its own violation of Dr. Cordero's right to discovery;
2) to force Dr. Cordero to argue in his briefs and at oral argument on the basis of information known to the Court to be incomplete because the Debtor, the trustees, and the judges withheld from him information to which he, like any other litigant and creditor similarly situated, was entitled; and
3) to intentionally deprive itself of information that will reveal a bankruptcy fraud scheme with the support or toleration of judges, trustees, and other officers, which works a cover up in the interest of self-preservation and constitutes a failure to perform the Court's supervisory duty to safeguard the integrity of judicial process and to afford Dr. Cordero due process of law.

i) Documents requested can explain, inter alia, how Exh.1 the Debtors bought their home in 1975 after taking a \$26,000 mortgage; Exh.2 two months before filing for bankruptcy in 2004, listed it as their sole real property and had it appraised at \$98,500, of which \$77,084 was their outstanding mortgage and only \$21,416 their equity after making mortgage payments for 30 years and receiving \$382,187 in a string of eight mortgages! (D:341-354)...yet only 2 1/2 months after Exh.3 being discharged on February 7, 2007, Exh.4 they sold it on April 23, 2007, for \$135,000, a 37% increase in value in a down real estate market. Pretty savvy, after all, Debtor DeLano was a 39-year veteran banker when he filed, continued working in the bankruptcy department of M&T Bank, and was aided by the trustees and judges to evade accounting for \$673,657 (SApp:1654).

c) Therefore, Dr. Cordero respectfully requests the Court:

- 1) to issue his proposed document production order since Debtors consented to it by not opposing the en banc motion requesting it;
2) in the alternative, to set the en banc motion for oral argument before hearing argument on the case in chief so that the Court may decide whether to order production of documents and allow rebriefing to take into account the documents produced; and
3) to provide him with all other relief that is just and proper, including the relief requested in his principal and reply briefs.

MOVING PARTY: Dr. Richard Cordero, Creditor-Appellant
59 Crescent Street, Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com
MOVING ATTORNEY: Pro se

OPPOSING PARTY: David and Mary Ann DeLano
OPPOSING ATTORNEY: Devin L. Palmer, Esq.;
Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Sq.,
Rochester, NY 14604; tel. (585)232-5300; fax (585)232-3528

Court/Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel:
A. been sought? No B. been obtained? _____

Is oral argument requested? Yes Is its date set? No
Requested return date for this motion: October 2, 2007

Signature of Moving Attorney:
Dr. Richard Cordero

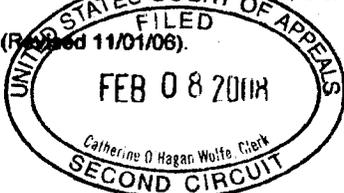
Has service been effected? Yes
Proof of service is attached hereto.
Date: August 29, 2007

ORDER: It is hereby ordered that the motion is GRANTED DENIED. Denied as moot in light of order dated 2/7/08.

For the Court: Catherine O'Hagan Wolfe, Clerk of Court
Form T-1080 (Revised 11/01/06)

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

CA:2081



By: Judy Pisanont
Judy Pisanont, Motions Staff Attorney

FEB 8 2008

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007; telephone: (212)857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero v.

Motion: suggesting en banc consideration of the 3 denials of the motions for document production; and if denied, for the Court to disqualify itself due to conflict of interests and refer the case to Att. Gen. under 18 U.S.C. §3057(a)

Relief sought: That the Court:

- a) order the production to the Court and the parties of all documents necessary to determine all the facts in DeLano and Pfuntner... b) after production of all necessary documents, allow the parties time to file supplemental briefs; c) if production of documents is denied: 1) declare null and void as tainted by partiality... 2) refer both cases under 18 U.S.C. §3057(a) to U.S. AG Alberto Gonzales... 3) disqualify itself from both cases. d) In the alternative, far from remanding this case and Dr. Cordero to the wrongdoing courts below... e) Provide Dr. Cordero with all other relief that is just and proper...



MOVING PARTY: Dr. Richard Cordero Creditor-Appellant 59 Crescent Street, Brooklyn, NY 11208-1515 tel. (718) 827-9521; CorderoRic@yahoo.com MOVING ATTORNEY: Pro se

OPPOSING PARTY: David and Mary Ann DeLano OPPOSING ATTORNEY: Devin L. Palmer, Esq. Boylan, Brown, Code, Vigdor & Wilson, LLP 2400 Chase Square, Rochester, NY 14604 tel. (585)232-5300; fax (585)232-3528

Court/Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel: A. been sought? No B. been obtained? _____

Is oral argument requested? Yes Is its date set? No Requested return date for this motion: August 13, 2007

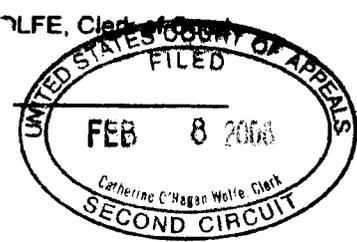
Signature of Moving Attorney: Dr. Richard Cordero

Has service been effected? Yes Proof of service is attached hereto. Date: July 18, 2007

IT IS HEREBY ORDERED THAT the motion is ORDER GRANTED DENIED. Denied as moot in light of order dated 2/7/08

Date: FEB 8 2008 Form T-1080 (Revised 11/01/06)

FOR THE COURT: Catherine O'Hagan Wolfe, Clerk of Court By: Judy Pisnanont, Motions Staff Attorney

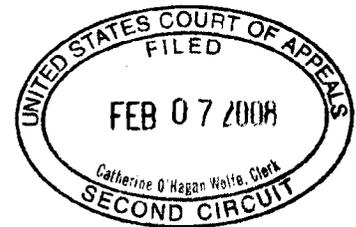


United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of February, two thousand eight.

Present:

Hon. Sonia Sotomayor,
Hon. Debra Ann Livingston,
Circuit Judges,
Hon. Gregory W. Carman,*
Judge, U.S. Court of International Trade.



Dr. Richard Cordero,

Creditor-Appellant,

v.

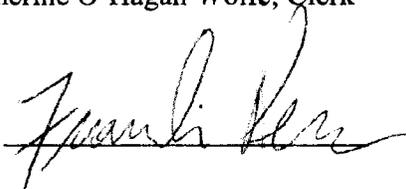
06-4780-bk

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

George M. Reiber, as Bankruptcy Trustee, moves to dismiss the appeal as moot. Although Appellant's argument that the Trustee's motion is deficient may be correct, any such deficiencies are minor and, in any event, the appeal is subject to dismissal under this Court's *sua sponte* authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005); *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: 

*The Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

SAO-LB

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Catherine O'Hagan Wolfe
CLERK OF COURT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9th day of May two thousand and eight,

Dr. Richard Cordero,

Creditor-Appellant,

v.

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

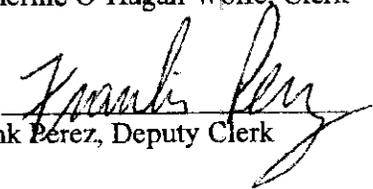


06-4780-bk

Appellant Dr. Richard Cordero, having filed a petition for panel rehearing, and for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: 
Frank Perez, Deputy Clerk

MANDATE

W.D.N.Y.
05-cv-6190
Larimer, J.

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 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of February, two thousand eight.

Present:

Hon. Sonia Sotomayor,
Hon. Debra Ann Livingston,
Circuit Judges,
Hon. Gregory W. Carman,
Judge, U.S. Court of International Trade.



Dr. Richard Cordero,

Creditor-Appellant,

v.

06-4780-bk

David DeLano, Mary Ann DeLano,

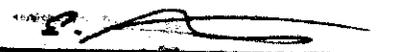
Debtors-Appellees.

George M. Reiber, as Bankruptcy Trustee, moves to dismiss the appeal as moot. Although Appellant's argument that the Trustee's motion is deficient may be correct, any such deficiencies are minor and, in any event, the appeal is subject to dismissal under this Court's *sua sponte* authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005); *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

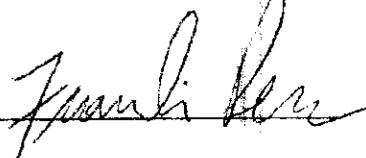
FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk

by


DEPUTY CLERK

By:



The Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

SAO:LB

ISSUED AS MANDATE: 5/16/08

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007; telephone: 212-857-8500
MOTION INFORMATION STATEMENT

Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero v.

Motion: to recall and stay the mandate in *DeLano* and stay pending proceedings in *DeLano* and *Pfuntner*

Relief sought: Appellant Dr. Cordero respectfully requests that the Court:

- a. recall and stay the mandate in *DeLano* pending the final disposition of that case by the Supreme Court on petition for a writ of certiorari;
- b. transfer all pending proceedings in *DeLano* and *Pfuntner* from the bankruptcy and district courts in the Western District to the U.S. District Court in Albany, NY, and stay them;
- c. otherwise, stay all proceedings in *DeLano* and *Pfuntner* in the bankruptcy and district courts in the Western District;
- c. declare null and void as tainted by bias, arbitrariness, and disregard for the law and the facts resulting in denial of due process all the decisions of:
 - 1) Judge Larimer in
 - (a) *Cordero v. Trustee Gordon*, 03cv6021L,
 - (d) *Cordero v. Palmer*, 03mbk6001L; and
 - 2) Judge Ninfo in
 - (a) *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY;
- d. otherwise, return to Dr. Cordero the filing fee of \$455;
- e. provide him such further compensation as is fair and just.

RECEIVED
2008 MAY 28 PM 3:23
CLERK OF COURSE
U.S. COURT OF APPEALS

MOVING PARTY: Dr. Richard Cordero
Creditor-Appellant
59 Crescent Street, Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com
MOVING ATTORNEY: Pro se

OPPOSING PARTY: David and Mary Ann DeLano
OPPOSING ATTORNEY: Devin L. Palmer, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square, Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

Court-Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel:
A. been sought? No B. been obtained? _____
Is oral argument requested? Yes
Has argument date of appeal been set? No
If yes, enter date: _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has this relief been previously sought in this Court? _____
Requested return date and explanation of emergency:

Signature of Moving Attorney:

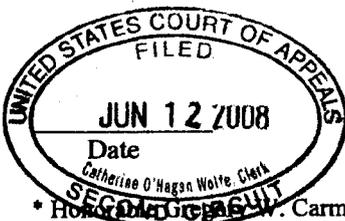
Dr. Richard Cordero

Date: May 23, 2008 **Has service been effected?** Yes
Proof of service is attached hereto.

ORDER

Before: Hon. Sonia Sotomayor, Hon. Debra Ann Livingston, *Circuit Judges*, and Hon. Gregory W. Carman, *Judge**

IT IS HEREBY ORDERED that Appellant Cordero's motion to recall and stay the mandate and other relief is DENIED.



FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

by

Joy Fallik
Joy Fallik, Administrative Attorney

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007; telephone: 212-857-8500
MOTION INFORMATION STATEMENT

Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero v.

Motion : to remove and stay *Pfuntner* or transfer it from WB&DNY to USDC, Albany, NY

Relief sought: Appellant Dr. Cordero respectfully requests that the Court:

- a. Remove the case that is related to the instant case in terms of judges, trustees, parties, issues, and facts, namely, *Pfuntner v. Trustee Gordon, et al*, 02-2230, WBNY, and that forms part of the same operative nucleus of a bankruptcy fraud scheme from the Bankruptcy Court, WBNY, and the District Court, WDNY, and stay it; or
- b. transfer *Pfuntner* to an impartial court, as is presumably the U.S. District Court in Albany, NY; and
 - 1) stay the proceedings; or
 - 2) cause the issue under 28 U.S.C. §294(d) of a certificate of necessity for the designation and assignment from the roster of senior judges of a retired judge from a circuit other than the Second Circuit (cf. 28 U.S.C. §152(b)) to begin discovery in *Pfuntner* in the court in Albany and try it to a jury there; and
 - 3) declare null and void the previous decisions in *Pfuntner*.

RECEIVED
2008 MAY 28 PM 3:24
CLERK OF COURT
U.S. COURT OF APPEALS

MOVING PARTY: Dr. Richard Cordero
Creditor-Appellant
59 Crescent Street, Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

OPPOSING PARTY: David and Mary Ann DeLano
OPPOSING ATTORNEY: Devin L. Palmer, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square, Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

MOVING ATTORNEY: Pro se

Court-Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel:
A. been sought? No B. been obtained? _____
Is oral argument requested? Yes
Has argument date of appeal been set? No
If yes, enter date: _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has this relief been previously sought in this Court? _____
Requested return date and explanation of emergency:

Signature of Moving Attorney:

Dr. Richard Cordero

Date: May 24, 2008

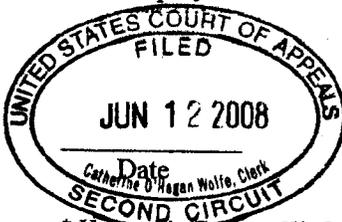
Has service been effected? Yes

Proof of service is attached hereto.

ORDER

Before: Hon. Sonia Sotomayor, Hon. Debra Ann Livingston, *Circuit Judges*, and Hon. Gregory W. Carman, *Judge**

IT IS HEREBY ORDERED that Appellant Cordero's motion to stay *Pfuntner v. Trustee Gordon* in the Bankruptcy Court for WDNY and other relief is DENIED.



FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

by

Joy Fallek
Joy Fallek, Administrative Attorney

* Honorable Gregory W. Carman, of the United States Court of International Trade, sitting by designation.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

July 30, 2008

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Richard Cordero
v. David DeLano, et ux.
Application No. 08A88

Dear Mr. Cordero:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Ginsburg, who on July 30, 2008 extended the time to and including October 6, 2008.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by 

Melissa Blalock
Case Analyst

(as of April 17, 2007)

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- c. **Dr. Cordero’s** **letter** of August 26, 2002, to **Att. MacKnight**Add:780
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 - b. Bill for storage and insurance from Jefferson Henrietta Associates of March 7, 2002, to Dr. Cordero.....Add:806
 - c. Manager Dworkin's letter of April 25, 2002, to Dr. CorderoAdd:807
 - d. Trustee Gordon's letter of April 16, 2002, to Manager DworkinAdd:808
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147. Trustee **Schmitt's** letter of **October 8, 2002, to Dr. Cordero**Add:816
148. Judge **Larimer's** order of **May 3, 2005, rescheduling** Dr. Cordero's **appellant's brief** for June 13 **without** making any **reference to**, much less discussing, any of Dr. Cordero's legal and practical arguments for not scheduling the brief until after the filing of the **transcript**, whose preparation was **not yet even in sight**Add:831
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152. Dr. **Cordero’s motion of May 16, 2005, for the District Court to comply with FRBkrP 8007 in the scheduling of his appellate brief and “rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court”**Add:836
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157. Dr. **Cordero’s notice of June 20, 2005, to the District Court of his efforts to obtain the transcript**.....Add:845
158. Dr. **Cordero’s motion of June 20, 2005 for a stay in Pfuntner and a joinder of its parties to the DeLano appeal together:**Add:851
 - a. Dr. **Cordero’s statement of June 18, 2005, to the Pfuntner parties on Judge Ninfo’s linkage of Pfuntner and DeLano** in the Judge’s April 4 decision on appeal, where the Judge traced the origin of *DeLano* through **documents filed in Pfuntner**, which he **attached to his decision** and which the DeLanos’ attorney not only **included** in their Designation of Additional Items on the Record but even added other *Pfuntner* documents to them, whereby they all demonstrated that they viewed the **two cases inextricably linked** (Cf. ¶142 above).....Add:853

159. Dr. **Cordero's** letter of **June 25, 2005, to Reporter Dianetti** requesting that she state whether she merely **copied the numbers of packs and folds** that she gave him at the end of the March 1 evidentiary hearing **or counted** those that she will actually transcribe, which she necessarily had to do to calculate her cost estimate, **and** that she agree to **certify** that her **transcript will be complete, accurate, and free of tampering influence**Add:867
160. Court Reporter **Dianetti's** letter of **July 1, 2005, to Dr. Cordero** requiring that he **prepay \$650** for the transcript and stating that "The balance of your letter of June 25, 2005 is rejected"Add:869
161. Application of **July 7, 2005, by Christopher Werner, Esq., attorney for the DeLanos, for \$16,654 in legal fees** for services rendered to the DeLanos Add:871*
- a. Att. **Werner's** itemized **invoice of June 23, 2005, for legal services** rendered to the DeLanos, incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" and ending with that on June 23, 2005 "(Estimated) Cordero appeal" Add:872*
162. Dr. **Cordero's motion of July 13, 2005, to stay** in Bankruptcy Court the hearing for **confirmation** of the DeLanos' debt repayment plan and the confirmation order, **withdraw** the case pending appeal, **remove** Trustee Reiber, and the District Court to take **notice of Dr. Cordero's addition of issues to the appeal**Add:881
- a. Dr. Cordero's affidavit of July 11, 2005, in support of his motion to stay confirmation hearing and order, withdraw case pending appeal, remove trustee, and give notice of addition to appealAdd:886
- b. Dr. Cordero's proposed order submitted to Judge Larimer with his motion of July 13, 2005, to stay, remove trustee, etc.Add:907
163. Dr. **Cordero's motion of July 18, 2005, to have Bankruptcy Court Reporter Mary Dianetti referred to the Judicial Conference** for investigation of her refusal to certify the reliability of her transcript.....Add:911
- a. Dr. **Cordero's proposed order submitted to Judge Larimer** with his motion of July 18, 2005, to **refer Reporter Dianetti to the Judicial Conference**.....Add:932
164. Att. **Werner's ingratiating letter of July 19, 2005, to Judge Larimer** accompanying:Add:935
- a. Att. **Werner's "Statement in opposition to Cordero motion [sic] to stay confirmation and other relief", because "Richard Cordero sets forth no substantive basis for any of the relief requested in his**

current Motion, nor does he have any interest in the DeLano matter whatsoever, as determined by Judge Ninfo” (a conclusory assertion unsupported by any legal discussion, and revealing Att. Werner’s failure to recognize Dr. Cordero’s status as a party in interest, not to mention as appellant)Add:936

- 165. Trustee **Reiber’s undated “Findings of Fact and Summary of 341 Hearing”** Add:937*
 - a. **Undated and unsigned** sheet titled **“I/We filed Chapter 13** for one or more of the following reasons” Add:939*
- 166. Judge **Ninfo’s order of August 8, 2005, instructing M&T Bank to deduct \$293.08 biweekly from his employee, Debtor David DeLano, and pay it to Trustee Reiber** Add:940*
- 167. Judge **Ninfo’s order of August 9, 2005, confirming** the DeLanos’ Chapter 13 debt repayment **plan** after considering their testimony and “the Trustee’s Report” of Trustee Reiber (cf. ¶165 above) and **allowing** payment of legal fees in the amount of **\$18,005 to Att. Werner** by the DeLanos (who stated in Schedule B of their January 2004 bankruptcy petition that they had \$535 in cash and account)..... Add:941*
- 168. Trustee **Reiber’s Acknowledgment of August 19, 2005, of Claim and Notice of the Manner of the Proposed Treatment of Dr. Cordero’s Claim,** stating that its amount is zero and its classification is **“ignore”,** and remarking that the claim is **disallowed** Add:944*
- 169. Dr. **Cordero’s notice of motion and motion of August 23, 2005, to compel the production of documents and take other actions** necessary for the exercise of the Court's supervision over the Bankruptcy Court and of Appellant's right of appeal, and for the proper determination of this appeal, returnable on September 12..... Add:951*
 - a. Table of contents Add:953*
 - b. Propose **document** production order Add:977*
- 170. Letter of David D. **MacKnight, Esq.,** attorney for James Pfuntnr, of **September 2, 2005, to Judge Larimer** entering a **limited response** to Dr. **Cordero’s** motion of August 23 to compel production of documents, and asking that such **motion be denied** insofar as it concerns Mr. Pfuntnr and that the **name Pfuntnr be stricken** from any order issued in connection with that motionAdd:985
- 171. Att. **Werner’s** response of **September 7, 2005,** on behalf of the DeLanos, addressed to Judge **Larimer to oppose Dr. Cordero’s motion** by stating that “it does not appear that Cordero has fully perfected the appeal to date; Judge Ninfo has already determined that Cordero has no claim in this proceeding and is not a

creditor...[so] there is no basis for the current Motion herein by Cordero; [and] all other aspects of the Cordero Motion...have no merit nor any procedural basis herein"Add:988

172. Judge **Larimer's** decision and **order of September 13, 2005**, stating that Dr. Cordero's motion "to refer a bankruptcy court reporter to the Judicial Conference for an "investigation" is denied in all respects" because "The prolix submissions might lead one to believe that this is a significant problem. It is not. It is a tempest in a teapot" and with nothing more, let alone a legal argument, ordering that "The matter must be resolved as follows", where he **required** Dr. **Cordero** to **request** in writing Reporter Dianetti to prepare the **transcript**, which he "has no right to "condition" his request in any manner", **and prepay** her fee of \$650Add:991
173. Dr. **Cordero's** motion of **September 20, 2005**, for **reconsideration** of Judge Larimer's decision and order **concerning Reporter** Mary Dianetti and the **transcript** necessary to the appealAdd:993
174. Judge **Larimer's** decision and **order of October 14, 2005**, stating that "The motion for reconsideration is in all respects denied", with not a single argument indicating that the Judge had even read it or noticed that it was returnable on November 18, and then **directing** Dr. Cordero to **request** the **transcript within 14 days** and pay the \$650 fee lest he be found to have failed to perfect his appeal and have it dismissedAdd:1019
175. Judge **Larimer's** decision and **order of October 17, 2005**, "den[y]ing in their entirety" Dr. **Cordero's** three pending **motions** [¶¶158, 162, 169, 173, above] but referring to not even one of his legal arguments, just to show that the Judge had bothered to read the motions before expediently getting them out of the way with the **conclusory fiats** that "there is no basis in law to support such relief", "these motions are wholly without merit", and "it completely lacks merit" Add:1021*
176. **Letter** of Bankruptcy Clerk Paul R. Warren of **October 20, 2005**, to Judge **Larimer** to **inform** him of Dr. **Cordero's letter** to Contracting Officer Frieday and qualifying it as "an effort to both avoid your Order and to intimidate the Bankruptcy Court's clerical staff"Add:1024
 - a. Dr. **Cordero's letter** of **October 18, 2005**, to **Contracting Officer** Melissa Frieday, stating in the first sentence that he had been **referred** to Officer Frieday **by** the **Chair** of the **Executive Committee** of the **Judicial Conference**, Chief Judge Carolyn Dineen King, CA5; and **requesting** that she **replace Reporter** Dianetti in preparing the transcript, investigate her refusal to certify its reliability, and refer the matter to U.S. Attorney General Alberto Gonzales.....Add:1025
177. Dr. **Cordero's** letter of **October 24, 2005**, to Reporter **Dianetti** requesting that she prepare the **transcript** of the March 1 evidentiary hearing in

Bankruptcy Court, enclosing with it a certified **check** for **\$650**, and stating that the request was being made **under the compulsion** of Judge Larimer’s order and with **reservation** of all **his rights**Add:1027

178. Dr. **Cordero’s notice** of **October 25**, 2005, to Judge **Larimer** that he complied with his order by **requesting** Reporter Dianetti to produce the **transcript** and providing payment, **but** did so **under compulsion** of his October 14 order and under reservation of his right to challenge the order and the request on appeal.....Add:1031

179. Dr. **Cordero’s cover letter** of **October 25**, 2005, to the **Bankruptcy Court** **accompanying** his **notice** of the same date to the District Court of having **complied** with the order of Judge Larimer that directed him to request the transcript **and stating** that such notice was **his response** to Bankruptcy Clerk of Court **Warren’s** letter to Judge Larimer of October 20Add:1037

180. Dr. **Cordero’s notice** of **motion** and motion of **November 5**, 2005, under 11 U.S.C. §330(a) for Judge Ninfo to **revoke** his **order** of August 9, 2005, **confirming** the DeLanos’ debt repayment **plan**, because it was procured by fraudAdd:1038

181. Dr. **Cordero’s notice** of **November 9**, 2005, to the District Court of his **motion** filed in **Bankruptcy** Court for Judge Ninfo to **revoke** for fraud the **confirmation** of Debtor DeLanos’ plan; **and** of his **intent** that the attached **copy** be **filed** in the District Court’s **appeal docket** of *Cordero v. DeLano*Add:1064

182. Judge **Ninfo’s letter** of **November 10**, 2005, to Dr. **Cordero denying**, without stating any reason whatsoever, his request to **appear by phone** at the **hearing** of his motion returnable on November 16, **to revoke** the confirmation of the DeLanos’ plan due to its procurement by fraud, and **requesting** that he **renotice** his motion to **state** the missing **time of day** when the motion would be heardAdd:1065

183. Dr. **Cordero’s request** of **November 11**, 2005, for a **statement of reasons** for Judge **Ninfo** to **deny** his request to **appear by phone** at the hearing in Rochester set for November 16, despite the fact that Dr. Cordero, who lives in New York City, has so appeared before Judge Ninfo in 12 previous occasions, that such hearings on average last 15 minutes, which does not justify the trip’s substantial cost in time and money, and that other parties are still allowed to appear by phone, so that the denial appears **arbitrary and discriminatory**Add:1066

184. Dr. **Cordero’s letter** of **November 11**, 2005, to the **parties advising** them that the time of the **hearing** on November 16 is 11:00a.m. and that they should **contact** the **Court** or consult its electronic calendar in **PACER**

- (CM/ECF) before attending the hearing **given** Judge Ninfo's **denial** of Dr. Cordero's request to **appear by phone**.....Add:1068
185. Att. **Werner's response** of **November 11, 2005**, "**to Cordero motion** [sic] to revoke confirmation", that "Dr. Cordero was previously **found** to have **no standing** for **lack** of any proper interest or **claim against the Debtors**" and "his **motion** is wholly **without merit** and...is without merit and should be denied" (without Att. Werner discussing any of Dr. Cordero's legal arguments or element of his statement of facts)Add:1069
186. Dr. **Cordero's notice** of **November 12, 2005**, to the **District Court** of his filing a **request in Bankruptcy Court** for a statement of **reasons** for Judge **Ninfo** having **denied** his request to **appear by phone** at the hearing on November 16 of his **motion to revoke** for fraud the **confirmation of Debtors' debt repayment plan**Add:1070
187. Dr. **Cordero's motion** of **November 15, 2005**, for the **District Court** to **comply** with the FRBkrP for **docketing** the transcript, **entering** the appeal, and **scheduling** the appellate briefAdd:1081
- a. Dr. **Cordero's proposed order** submitted to Judge Larimer in connection with his motion of November 15, 2005, for the **District Court** to **docket** the transcript, **enter** the appeal, and **schedule** the appellate briefAdd:1090
188. Judge **Larimer's order** of **November 21, 2005**, as if "Appellant **requests** an **extension** of time to file his brief", [**rather than** requests the **District Court** to **comply with** the FRBkrP on docketing, entering, and sche-duling], and extending such time; confirming that "briefs are deemed filed the day of mailing", and stating that "the remainder of the motion is denied" because "the appeal was docketed in April 2005 and all partied were notified...[and] it **now** appears that the **record** on appeal is **complete**"Add:1092
189. Judge **Ninfo's order** of **November 22, 2005** **denying** Dr. **Cordero's motion** to **revoke** due to fraud the confirmation of the **DeLanos' debt repayment plan** because Dr. Cordero has **no standing** in the case, is not a party in interest, and thereby cannot file the adversary proceeding necessary to seek revocationAdd:1094
190. Dr. **Cordero's notice** of motion and **motion** of **December 6, 2005**, in **Bankruptcy Court** to **quash** the order **denying** the motion to **revoke** due to fraud the order of confirmation of the DeLanos' plan, **revoke** the **confirmation**, and **remand** the case.....Add:1095
191. Dr. **Cordero's motion** of **December 7, 2005**, in **District Court** to **withdraw cases** [*DeLano* and *Pfuntner*] from Bankruptcy Court and **declare** both the **order denying** his motion to **revoke** due to fraud the order of confirmation of the DeLanos' plan; **and** the order **confirming** such plan **null** and void pending appealAdd:1097

192. Judge **Ninfo’s order of December 9, 2005**, peremptorily dispatching with an **“in all respects denied” one-liner** Dr. Cordero’s December 6 motion, issued on the day of the **motion’s** arrival and skipping any discussion of its detailed factual considerations and legal analysis of the Judge’s **November 22 order sought to be quashed** for denying confirmation revocationAdd:1125
193. Dr. **Cordero’s notice of December 16, 2005**, to the **District** Court of his filing in **Bankruptcy** Court of his **December 6 motion to quash** the order denying revocation of plan confirmation, to **revoke** such **confirmation**, and to **remand** the case, and pointing out how Judge Ninfo peremptorily dispatched the 25-page motion on the day of its arrival with his **“in all respects denied” one-liner** without any discussion of its detailed contentsAdd:1126
- a. Dr. **Cordero’s motion of December 6, 2005**, in **Bankruptcy** Court to **quash** Judge Ninfo’s November 22 order **denying revocation** due to fraud of the DeLano Debtors’ debt repayment plan confirmation, to **revoke** such confirmation; **and to remand** DeLano to the District Court pending its appealAdd:1127
194. Judge **Larimer’s order of December 19, 2005**, stating that “Appellant’s motion is denied in all respects” concerning Dr. Cordero’s December 7 motion to withdraw *DeLano* and *Pfuntner* from Bankruptcy Court and nullify Judge Ninfo’s decisionsAdd:1155

4. POST-ADDENDUM WITH REPLY IN DISTRICT COURT Pst:1171-1500

195. **Local Rules 25 and 32(a)(1)** of October 24, 2005, of the **Court of Appeals** for the Second Circuit **requiring** the submission in counseled cases of a **copy** of a brief in digital format as a **PDF file**..... Pst:1171
196. Trustee **Reiber’s list of December 7, 2005**, of **allowed claims**, indicating a **debt forgiven** percentage of **87.39%** (as opposed to 78% provided for in the Plan (D:59) and the Notice of meeting of creditors (D:23)) and allowing Att. Werner a claim of \$9,948 (cf. Att. Werner’s fees of \$18,005 approved by Judge Ninfo in August 9, 2005; Add:872, 938, 942; although the DeLanos claimed in their petition to have in hand and on account only \$535 (D:27/Sch:B)) Pst:1174*
197. Dr. **Cordero’s notice of December 16, 2005**, 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..... Pst:1176
198. Docket of *Cordero v. DeLano*, no. 05cv6190L, WDNY Pst:1181

- 199. Letter from John **Folwell**, clerk at the District Court, of **January 3, 2006, to Dr. Cordero, returning his CD** with the Appellant’s Brief, the Designation of Items, and the Addendum in PDF files because “local court rules prohibit the Clerk’s office from accepting electronic filings...from pro se parties” Pst:1213
- 200. Judge **Larimer’s order of January 6, 2006, denying Dr. Cordero’s request** –made by phone to Clerks John Folwell and Jean Marie McCarthy– “that the Addendum in Support of Appellant’s Brief (Dkt. #31) be **filed electronically...**” because it “exceeds 1,300 pages. Scanning this lengthy document into the system would be very time consuming and unnecessary”, but without mentioning that the Appellant’s **Brief, the Designation of Items, and the Addendum** were provided by Dr. Cordero **on a CD in PDF files** so that there was no need to do any scanning Pst:1214
- 201. Dr. Cordero’s brief of December 21, 2005, in the appeal to the U.S. District Court, WDNY, from Judge Ninfo’s decision in *DeLano*..... Pst:1229*
 - a. Table of Contents Pst:1231 *
 - b. Table of Headings of the Argument..... Pst:1255*
 - c. Issues presented for review Pst:1257*
 - d. Statement of facts Pst:1259*
 - e. Proposed order for document production Pst:1307*
- 202. The DeLanos’ **answer of January 20, 2006, by Devin Lawton Palmer, Esq.**..... Pst:1361
- 203. Dr. **Cordero’s motion of January 23, 2006, for an extension of time** for him to mail and file his **reply** to February 10, 2006, **endorsed by Judge Larimer’s grant of it** Pst:1379
- 204. Dr. **Cordero’s reply of February 8, 2006, to the DeLanos’ answer** by Attorney Palmer..... Pst:1381
 - a. Dr. **Cordero’s letter of February 10, 2006, to District Judge Larimer** stating that all the **record is complete**, all the briefs have been filed, and the case is ready for submission..... Pst:1382
 - b. Table of Contents Pst:1383
 - c. Table of Authorities Pst:1384
 - d. Table of Headings in the Body of the Reply Pst:1393
 - e. Body of the Reply..... Pst:1395
 - f. Table of Mortgages referred to in the incomplete documents produced by the DeLanos to Trustee Reiber Pst:1397
 - g. Table of Post-Addendum Items in the Record Pst:1422

[1424-1500 reserved]

5. SPECIAL APPENDIX WITH THE PRINCIPAL BRIEF IN CA2 SApp:1501-1699d

- 205. **Decision** of the District Court, Judge David G. **Larimer** presiding, of **October 21**, 2006, disposing of the appeal in *Cordero v. DeLano*, 05cv6190, WDNY, affirming in all respects the decision of the Bankruptcy Court, Judge John C. Ninfo, II, presiding, in *In re DeLano*, 04-20280, WBNY, of April 4, 2005..... SApp:1501*
- 206. Appellant Dr. Richard **Cordero's** motion of **September 11**, 2006, to the District Court requesting an **extension of time** to file the notice of appeal to the Court of Appeal for the Second Circuit (CA2)..... SApp:1505
- 207. District **Court's** endorsement of **September 12, 2006**, the motion **granting** the **extension** of time to file the notice of appeal by October 20, 2006 SApp:1506
- 208. Dr. **Cordero's notice of appeal** of October 13, **filed on October 16**, 2006, from Judge Larimer's decision in *Cordero v. DeLano*, 05cv6190 SApp:1507
- 209. Dr. **Cordero's** statement of **issues** to be presented on appeal **and designation** of the record to be certified and sent to the circuit clerk pursuant to FRAP Rule 6(b)(2)(B)(i), of **October 21, 2006**SApp:1508
 - a. Table of Designated Items in the Record, pages D:1-D:508g in volume I..... SApp:1513
 - b. Table of the Items in the Addendum to the Designated Items, pages Add:509-1155 in volume II..... SApp:21525
 - c. Table of the Items in the Post-Addendum to the Designated Items, pages Pst:1171-1380 in volume III..... SApp:1538
- 210. Sample of Dr. **Cordero's** letters of **October 21**, 2006, **to the parties** accompanying the statement of issues and redesignation of items and requesting their consent to electronic service by e-mail of documents in the PDF format..... SApp:1540
- 211. District Court's **Index** of the record on appeal in *Cordero v. DeLano*, 05-6190, as of **October 23**, 2006 SApp:1541
- 212. **District Clerk** Rodney C. Early's certification of **October 23**, 2006, by Deputy Clerk Margaret Ghysel, of document(s)/record sent to CA2 in *Dr. Richard Cordero v. David and Mary Ann DeLano*, 05-cv-6190 SApp:1545
 - a. Docket #23, Transcript of 3/1/05 before Judge Ninfo
 - b. Docket #31, Addendum
 - c. Docket #1, Attachment to NoA from Bankruptcy Court
- 213. CA2 Clerk Roseann B. **MacKechnie's** notice of **October 25**, 2006, to counsel of having **docketed a notice of appeal** filed by Dr. Richard

Cordero in *In Re: Dr. Richard Cordero v.*, 05-cv-6190, stating the name of Deputy Clerk Lynette Rodriguez, tel. (212)857-8526, with enclosures:.....SApp:1571

a. USCA Docket Sheet, including Caption Page.....SApp:1572

b. Instructions

c. Acknowledgment Form

214. CA2 Clerk Roseann B. **MacKechnie**'s notice of **October 26**, 2006, to counsel by Deputy Clerk Lynette Rodriguez, that the district court **record** in DC Docket Number 05-cv-6190 was **electronically filed** on that date in CA2 and is available for viewing via Pacer while the original documents remain in the District Court.....SApp:1573

215. CA2 miscellaneous form for **notice of appearance** and request for oral argument time; filled out by **Dr. Cordero** on **November 2**, 2006, with handwritten note **requesting correction of the docket** by removing the mistaken reference therein to case number 93-7084 as a related caseSApp:1574

216. **CA2 docket** no. 06-4780 in *In Re: Dr. Richard Cordero v.* as of October 27, 2006; with **Dr. Cordero's note** requesting correction of the **erroneous inclusion** of case number 93-7084 as a related case.....SApp:1575

217. CA2 form for **electronic notification agreement**, filled out in agreement by Dr. CorderoSApp:1576

218. Dr. **Cordero's** motion of **November 20**, 2006, for the scheduling of the **filing** of the opening brief by the time certain of January 31, 2007; granted on December 13, 2006.....SApp:1578

219. Dr. **Cordero's** motion of **November 20**, 2006, for **leave** to submit the opening brief, appendix, and special appendix in **five paper copies and five CDs** containing them on Adobe PDFs; granted on December 13, 2006.....SApp:1579

220. Dr. **Cordero's** motion of **November 20**, 2006, for correction of the docket by **removal of a case wrongly listed** as related to the case in this appeal; granted on December 13, 2006.....SApp:1580

221. Copy for CA2 of Dr. **Cordero's** sample letter of **November 20**, 2006, to the parties regarding his three motions and **requesting their consent to electronic service** by e-mail of documents in the PDF format.....SApp:1581

222. Letter of Devin Lawton **Palmer**, Esq., of **November 29**, 2006, amending the attorney of record for purposes of this appeal by replacing Christopher K. Werner, Esq.; opposing the introduction of any issues or documents by Dr. Cordero not previously before the District Court (without identifying which issues or documents Mr. Palmer is referring to); and stating in connection with Dr. Cordero's three motions that Mr. Palmer requires paper copies and regular serviceSApp:1583

a. Att. Palmer’s Acknowledgment Letter of October 25, 2006	SApp:1585
223. Dr. Cordero’s motion of December 6 , 2006, for Appellees’ opposition to Appellant’s Statement of issues and Designation of items to be disregarded	SApp: 1586
224. Dr. Cordero’s motion of December 6 , 2006, for docketing papers already and therewith filed and correction of two errors in the docket.....	SApp:1596
225. Dr. Cordero’s motion of December 6 , 2006, for Appellant to be served by e-mail during the December 18-January 8 Christmas Holidays.....	SApp:1598
226. Dr. Cordero’s letter of December 6 , 2006, to the parties with copy to CA2 requesting that the parties serve him by e-mail during the Christmas Holidays.....	SApp:1599
227. CA2 Scheduling Order #1 of December 14 , 2006, by Deputy Clerk Lynette Rodriguez, requiring Appellant Dr. Cordero to file his brief by January 15 , 2007, and to do so in 10 copies of the brief and the appendix; and indicating that all telephone inquiries are to be made to (212)857-8526	SApp:1601
228. CA2 Scheduling Order #2 of December 18 , 2006, by Deputy Clerk Lynette Rodriguez, requiring Appellant Dr. Cordero to file his brief by January 31 , 2007.....	SApp:1603
229. Dr. Cordero’s motion of December 19 , 2006, for production of documents by Appellees necessary for the Court to determine this case and afford due process of law, such as the statements of their bank and credit and debit card accounts and the documents concerning their real property and mortgages and loans; and for the suspension of the scheduling order and its reissue after all documents have been produced....	SApp:1606
a. Table of the DeLanos’ income of \$291,470, mortgage receipts of \$382,187, plus credit card borrowing of \$98,092, unaccounted for due to the judges’ refusal to require production of documents supporting their declaration in Schedule B (D:31) that at the time of filing their bankruptcy petition they only had in hand and on account \$535!.....	SApp:1608
b. Table of officers that have disregarded their statutory duty to investigate the DeLano Debtors	SApp:1609*
c. The DeLanos’ notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines (first page of their bankruptcy petition of January 27, 2004; the entire petition with Schedules is at D:22-59)	SApp:1610
d. Schedule A. Real Property	SApp:1611
e. Schedule B. Personal Property	SApp:1612

f. Statement of Financial Affairs	SApp:1613
g. The DeLanos 1040 IRS forms for 2001-03	SApp:1614
h. Mortgage documents produced by the DeLanos on February 16, 2005, at Trustee Reiber's request.....	SApp:1617
230. Dr. Cordero's motion of January 18, 2007, for the two pending motions to be decided before the brief-filing deadline and for a new scheduling order	SApp: 1618
231. Dr. Cordero's motion of January 18, 2007, for suspension or extension of brief-filing deadline if by January 31 pending motions have not been decided	SApp:1620
232. Denial on January 24, 2007, of Dr. Cordero's motion of December 19, 2006, for production of documents by Appellees necessary for the Court to determine this case and afford due process of law	SApp:1623*
233. Letter of Legal Assistant Sandra J. Ciaccia of January 25, 2007, accompanying Att. Palmer's affirmation	SApp:1624
a. Certificate of service	SApp:1625
b. Att. Palmer's affirmation of January 25, 2007, against the extension requested by Dr. Cordero for the suspension or extension of the deadline for filing and serving his appellate brief	SApp:1627
234. Remittance to the panel of Dr. Cordero's motion of December 6, 2006, for Appellees' opposition to Appellant's Statement of issues and Designation of items to be disregarded	SApp:1632
235. Mooting of Dr. Cordero's motion of December 6, 2006, for Appellant to be served by e-mail during the December 18-January 8 Christmas Holidays.....	SApp:1633
236. CA2' 1feb7 denial by implication of Dr. Cordero's January 18 motion for a document production order and grant of the request for extending by two weeks the brief-filing deadline	SApp:1634
237. CA2 Scheduling Order #3 of February 2, 2007, by Deputy Clerk Lynette Rodriguez, requiring Appellant Dr. Cordero to file his brief by March 5, 2007	SApp:1635
238. Dr. Cordero's motion of February 15, 2007, for reconsideration and grant of the disregard opposition and document production motions	SApp:1637*
a. Table of contents	SApp:1639*
b. Table of the DeLanos' income of \$291,470 + mortgage receipts of \$382,187 = \$673,657 and credit card borrowing of \$98,092, all of whose whereabouts remain unknown because Trustee Reiber did	

not require that the Debtor account for that money, the Debtors denied all discovery for the evidentiary hearing, and the bankruptcy, district, and circuit judges denied Dr. Cordero's motions for an order of production of documents, thereby covering up for the DeLanos' concealment of assets and evasion of debts through false financial statements..... SApp:1654*

- 239. Dr. **Cordero's letter of February 2, 2004, to Chief Judge John M. Walker, Jr.,** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the **complaint** against Judge **Ninfo**, no. 03-8547, and **updating its supporting evidence**..... SApp:1655
 - a. CA2 Deputy Clerk Patricia Chin Allen's acknowledgment of September 2, 2003, of filing Dr. Cordero's complaint under 28 U.S.C. §351 against Judge NinfoSApp:1657
 - b. CA2 order of November 13, 2003, granting Dr. Cordero's motion of November 3, 2003, for leave to introduce in the record of his appeal *In re Premier Van et al.*, no. 03-5023, CA2, an updating supplement on the issue of Judge Ninfo's bias [**Comment:** This order was attached to show that CA2 had established the precedent for the updatability of evidence concerning Judge Ninfo's bias.].....SApp:1658
- 240. **Statement of facts of March 19, 2004,** setting forth a **complaint** [no. 04-8510] under 28 U.S.C. §351 about CA2 Chief Judge **John M. Walker, Jr., addressed** under Rule 18(e) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers **to the Circuit Judge eligible to become the next chief judge** of the circuit, namely, now CA2 Chief Judge Dennis **Jacobs**SApp:1659
- 241. Docket excerpts from *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, that belie Judge Ninfo by showing that he knows that Dr. Cordero traveled from NYC to Rochester to Avon, NY, on May 19, 2003, to inspect his property, which Mr. Palmer had abandoned at Mr. Pfuntner's warehouse, and reported at the hearing on May 21 that it had been damaged or lost, whereupon Judge Ninfo denied Mr. Pfuntner's motion to be discharged from any liability and asked Dr. Cordero to resubmit his application for default judgment against Mr. PalmerSApp:1664
- 242. E-mail from **Case Manager Lian Yeh**, Agency Team, CA2, of February 20, 2007, **to Dr. Cordero** requesting the completion of the T-1080 motion **cover sheet**.....SApp:1666
- 243. Dr. **Cordero's letter of March 1, 2007, to CA2 Case Manager Yeh** concerning CA2's acceptance of the original cover sheet of Dr. Cordero's motion of February 15, and requesting information about the **status of that motion**, which was filed on an emergency basis and requested the

suspension of the scheduling order requiring the filing of the principal brief by March 5, and asking for confirmation that the brief need not be filed until after the motion has been decided, and for a new scheduling order to that effect	SApp:1667
244. Dr. Cordero's letter of March 1 , 2007, to Catherine Minuse , Esq., Supervisor Staff Attorney, CA2, requesting legal certainty concerning the deadline for filing the principal brief given that the motion of February 15 has not yet been decided	SApp:1669
245. Dr. Cordero's letter of March 3 , 2007, to Arthur Heller , Esq., Senior Motion Attorney, CA2, confirming his statement that the motion of February 15, was denied and that the principal brief may be timely filed by March 19 ; and requesting that the transfer of the case from the Pro Se Unit to the Agency Team not be misused to retaliate against him because of the contentions of his appeal by applying brie and appendix formatting requirements to cause him unnecessary expense and aggravation.....	SApp:1671
246. Dr. Cordero's letter of March 3 , 2007, to Att. Minuse giving her notice of Att. Heller's statements to him and requesting to be timely informed if his reliance on them is misplaced; and expressing his concerns about the transfer of the case to the Agency Team	SApp:1672
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247. Dr. Cordero's letter of March 3 , 2007, to CA2 Case Manager Yeh giving him notice of Att. Heller's statements to him and requesting to be timely informed if his reliance on them is misplaced; and expressing his concerns about the transfer of the case to the Agency Team	SApp:1674
a. Copy of Dr. Cordero's letter of March 3 to Att. Heller.....	SApp:1675
248. Dr. Cordero's letter of March 3 , 2007, to Donna Morgan-Steele , Supervisor, Agency Team, CA2, giving her notice of Att. Heller's statements to him and requesting to be timely informed if his reliance on them is misplaced; and expressing his concerns about the transfer of the case to the Agency Team	SApp:1676
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249. CA2's denial of March 5 , 2007, of Dr. Cordero's February 15 motion for reconsideration of the January 24 denial of the December 19 motion for production of documents	SApp:1678
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251. Text of Selected Statutes and Rules Cited.....	SApp:1680

252. Docket of <i>Dr. Richard Cordero v. David and Mary Ann DeLano</i> , 06-4780-bk, CA2, as of March 17, 2007	SApp:1690
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6. PRINCIPAL BRIEF AND SUBSEQUENT DOCUMENTS IN CA2CA:1700-2233

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f. Statement of facts	CA:1725*
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254. CA2 Clerk’s notification of March 26, 2007, to Dr. Cordero that his principal brief and special appendix do not comply with FRAP or the Local Rules in two instances and that “motion needed to file documents as is”	CA:1787
255. Dr. Cordero’s motion of March 29, 2007, in CA2 to file his principal brief together with the Special Appendix and the items in the record as is	CA:1788
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256. Dr. Cordero’s letter of March 29, 2007, to Devin Lawton Palmer, Esq. , attorney for the DeLano Debtors indicating that it came to his attention that Mr. Palmer filed a letter in CA2 to default him for failure to file his brief timely, and that while Dr. Cordero did file it on time, he did not receive a copy of that letter and requesting that Mr. Palmer send him a copy	CA:1794
257. Dr Cordero’s letter of March 30, 2007, to CA2 Senior Motion Attorney Heller inquiring about the whereabouts of his timely filed but not yet docketed brief and appendixes.....	CA:1796

258. Dr Cordero' letter of March 30, 2007, to Supervisor Staff Attorney Minuse inquiring about the whereabouts of his timely filed but not yet docketed brief and appendixes.....	CA:1798
259. Att. Palmer's letter of March 6, 2007, to CA2 Clerk Rodriguez to "address the basis in part for this drop dead date [sic] with which [sic] Mr. Cordero had to file his brief" and to request the dismissal of the appeal, which letter Att. Palmer failed to serve on Dr. Cordero, who purchased a copy from the Clerk's office	CA:1800
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c. A Case Showing How Federal Judges Disregard Not Only Conduct Guidelines, But Also Duties Imposed on Them By Law and Their Own Implementing Local Rules	CA:1840
http://Judicial-Discipline-Reform.org/docs/Judges_disregard_duty_10jan7.pdf	
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h. The Official Statistics of the Administrative Office of the U.S. Courts Show the Systematic Dismissal of Judicial Conduct Complaints by Federal Judges, Including the Justices of the Supreme Court	CA:1857
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IN THE
SUPREME COURT OF THE UNITED STATES

Having considered the petition for a writ of certiorari to the Court of Appeals for the Second Circuit in *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, made by Petitioner Dr. Richard Cordero, Esq., and 28 U.S.C. §§1651 and 2101 and Rule 23 of the Rules of the Supreme Court of the United States, the Court orders as follows:

A. Persons and entities concerned by this Order

1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), formerly resident at 1262 Shoecraft Road, Webster, NY 14580, and debtors in *In re David and Mary Ann DeLano*, 04-20280, WBNY; *Cordero v. DeLano*, 05-cv-6190L, WDNY; and *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, (hereinafter *DeLano*);
2. Devin L. Palmer, Esq., dpalmer@BoylanBrown.com, and Christopher K. Werner, Esq., cwerner@BoylanBrown.com, attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585)232-5300, fax (585)232-3528; and any and all members of their law firm; <http://www.boylanbrown.com/index.php>
3. Michael J. Beyma, Esq., attorney for Mr. DeLano and M&T Bank, 300 Bausch & Lomb Place, Rochester, NY 14604, tel (585)258-2800, fax (585)258-2821; and any and all members of their law firm, including, but not limited to, Paralegal Brenda G. Reed, breed@underbergkessler.com; Paralegal Sandy Mattle, and Administrative Assistance Rene Reale, tel. (585)258-2843, RReale@underbergkessler.com; <http://www.underberg-kessler.com>;
4. James Pfuntner, at the address of his attorney, David MacKnight, Esq., dmacknight@lacykatzen.com, or successor, at Lacy, Katzen, Ryen & Mittlemann, LLP, 130

East Main St., Rochester, NY 14604; tel. (585)454-5650, fax (585)269-3077, plaintiff in *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY (hereinafter *Pfuntner*); <http://www.lacykatzen.com/>;

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, fax (585) 263-5862, and any and all members of her staff, including, but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker; <http://www.usdoj.gov/ust/r02/rochester.htm>;
6. Ms. Diana G. Adams, U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, tel. (212)510-0500, fax (212) 668-2255; and any and all members of their staff; <http://www.usdoj.gov/ust/r02/>;
7. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585)427-7225, fax (585)427-7804, and any and all members of his staff, including, but not limited to, James Weidman, Esq., attorney for Trustee Reiber; trustee13@roch13.com;
8. Trustee Kenneth W. Gordon, Gordon & Schall, LLP, 1099 Monroe Ave., Ste. 2, Rochester, NY 14620-1730; tel. (585)244-1070, and any and all members of his staff;
9. M&T Bank, 255 East Avenue, Rochester, NY, tel. (800)724-8472, 585-546-0501, fax: 585-546-0550, (585)546-7584; <http://www.mandtbank.com/>;
10. David Palmer, 1829 Middle Road, Rush, NY 14543, and his company, Premier Van Lines, debtor in *In re Premier Van Lines*, 01-20692, WBNY (hereinafter Mr. Palmer/Premier and *Premier*);
11. David M. Dworkin & Jefferson Henrietta Associates, at the address of their attorney, Karl S. Essler, Esq., Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450, tel. (585) 641-8000; fax (585)641-8080; kessler@fixspin.com;

12. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392;
13. Ms. Melissa L. Frieday, Contracting Officer for court reporters, US. Bankruptcy Court, WDNY, Olympic Towers, 300 Pearl Street, Suite 250, Buffalo, NY 14242, tel. (716) 362-3200, fax (716)551-5103;
14. Bankruptcy Judge John C. Ninfo, II, WBNY, and Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585)613-4200, and any and all members of their staff, including, but not limited to, Andrea Siderakis, Assistant to Judge Ninfo, courtroom tel. (585)613-4281, fax (585)613-4299; Deputy Clerk in Charge Todd M. Stickle, tel. (585)613-4223, fax (585)613-4242; Case Administrators Karen S. Tacy and Paula Finucane; <http://www.nywb.uscourts.gov/>;
15. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, U.S. District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585) 613-4035, and any and all members of their staff; <http://www.nywd.uscourts.gov/mambo/> ; and
16. Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents or items requested hereinafter.

B. Procedural provisions

17. The following procedural provisions are applicable to all persons and entities concerned by this Order, who shall:
18. 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;
19. 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;

20. 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, under pain of being named the subject of a contempt proceeding under 28 U.S.C. §332(d);
21. Understand ‘document’ broadly to mean ‘an object that holds information or data in any form’, whether the form be print, digital, electronic, or otherwise; and the object be any of the following or similar objects:
 - a) paper, including any type of graphic or photographic paper, film, and equivalent;
 - b) a removable storage device, such as a floppy, CD, DVD, external hard disk; flash, stick, or card memory; electronic memory strip, such as found on plastic cards; and audio or video tape;
 - c) fixed storage device, such as an internal hard disk of a computer, server, or mainframe;
 - d) an audio or video cassette, such as used in a tape recorder or camcorder;
 - e) a wireless handheld digital device, such as an iPod, Blackberry, or smartphone;
22. Understand any reference below to a specific type of document to include any other type of document in which the information referred to or derived therefrom, such as through addition, deletion, modification, correction, transformation from one form to another, or rearrangement for inclusion in a database, is available;
23. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
 - a. the time and amount of each such transaction;
 - b. the rates, including but not limited to normal and delinquent rates, applied to the transaction;
 - c. the opening and closing dates of the transactions reported in the document, such as a statement of account;

- d. the description of the goods or service concerned by the transaction;
 - e. the source or recipient of funds or who made any charge or claim for funds;
 - f. the opening date of, the payment due date of the amount owing on, and the good or delinquent standing of, the account, agreement, or contract concerned by the document;
 - g. the beneficiary of any payment;
 - h. the surety, codebtor, or collateral; and
 - i. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;
24. 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 it has not been the subject of any addition, deletion, correction, or modification 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 the whole document to the certificate;
25. Produce any document within the scope of this Order by producing a true and correct copy of it and hold the original available for inspection as provided for under ¶28 below;
26. In application of the principle “If in doubt, disclose”, 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 any individual or

entity concerned by this Order has committed an offense, including, but not limited to, bribery, bankruptcy fraud, or supported or tolerated a bankruptcy fraud scheme involving any such, and/or any other, individual or entity.

27. The production of documents within the scope of this Order shall be made pursuant to the following timeframes:
- a. within two weeks of the date of this Order, such documents dated January 1, 2000, or since, to date;
 - b. within 30 days of the date of this Order, such documents dated since January 1, 1975, to December 31, 1999, including the first and last dates of such period.
28. The holder of the original of any document 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 upon order of this Court, request of Dr. Cordero or the successor trustee.

C. Substantive provisions

29. 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 certain or likely whereabouts of, and state such whereabouts and the name and address of the known or likely holder of, such document:
- a. The Judge Ninfo's annual financial disclosure reports since 1992, required to be filed under the Ethics in Government Act of 1978, 5 U.S.C. Appendix;
 - b. The minutes, transcript, stenographic packs and folds, audio tape, and any other recording

of the status conference and pretrial hearing in *Pfuntner* requested by Trustee Schmitt on December 10, 2002, and held before Judge Ninfo on January 10, 2003;

c. The transcript and stenographic packs and folds of the hearing in *Pfuntner* held before Judge Ninfo on:

- | | | |
|----------------------|-------------------|---------------------|
| 1) December 18, 2002 | 4) April 23, 2003 | 7) July 2, 2003 |
| 2) February 12, 2003 | 5) May 21, 2003 | 8) October 16, 2003 |
| 3) March 26, 2003 | 6) June 25, 2003 | |

d. Trustee Schmitt and Trustee Reiber or their respective successors shall within 10 days of this Order arrange for, and produce:

- 1) 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;
- 2) its transcription on paper and as a PDF file on a floppy disc or CD; and
- 3) the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it.

e. 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 as a PDF file on a floppy disc or CD;

f. 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 upon request to the complaint authorities, Dr. Cordero, and the successor trustee;

g. The transcript and stenographic packs and folds of the hearing in *DeLano* held before

Judge Ninfo on:

- | | | |
|--------------------|----------------------|----------------------|
| 1) March 8, 2008 | 4) August 25, 2004 | 7) November 16, 2005 |
| 2) July 19, 2004 | 5) December 15, 2004 | |
| 3) August 23, 2004 | 6) July 25, 2005 | |

- h. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Pfuntner*, regardless of the source, up to the date of compliance with this Order, whether such documents relate generally to the DeLanos' or Mr. Palmer/Premier's bankruptcy petition or particularly to the investigation of whether either or both of them 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;
- i. The statement reported in *DeLano*, WBNY docket 04-20280, entry 134, to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, 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 and the stenographic packs and folds used by the reporter to record it;
- j. The financial documents in either or both of the names of the DeLanos, or those of Mr. Palmer/Premier, or otherwise concerning a financial matter under the total or partial control of either or both of them, respectively, regardless of whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's, in the case of the DeLanos since January 1, 1975, to date, and in the case of Mr. Palmer since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier Van Lines 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, whether banking, financial, investment, commercial, or otherwise, in the world;
- (b) the unbroken series of documents relating to the 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, by the DeLanos and Mr. Palmer/Premier, respectively, 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 14580;
 - (ii) Premier Van Lines, any similar moving or storage company, or other business, whether incorporated or not incorporated;
 - (iii) moving and storage equipment, including, but not limited, to vehicles, forklifts, crates, padding and packaging material; and
 - (iv) personal property, including any vehicle, mobile home, or water vessel;
- (c) mortgage documents;
- (d) loan documents;
- (e) title documents and other documents reviewing title, such as abstracts of title;
- (f) prize documents, such as lottery and gambling documents;
- (g) service documents, wherever in the world such service was, is being, or may be received or given; and
- (h) documents concerning the college expenses of each of the DeLanos' children, Jennifer and Michael, including but not limited to tuition, books, transportation, room and board, and any loan extended or grant made by a

government or a private entity or a parent or relative for the purpose of such education, regardless of whose name appears on the documents as the loan borrower or grant recipient;

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, 2000, to date;

(b) within 30 days from the date of this Order, such documents dated since January 1, 1975, to December 31, 1999.

30. The Clerk of the Bankruptcy Court shall certify copies of all the orders in *DeLano* and *Pfuntner*, including the following of:

a. in *DeLano*:

1) July 26, 2004, for production of some documents by the DeLanos;

2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;

3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;

4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;

5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;

6) August 8, 2005, ordering M&T Bank to pay the Trustee;

7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated

- “Findings of Fact and Summary of 341 Hearing” and his undated and unsigned sheet titled “I/We filed Chapter 13 for one or more of the following reasons”;
- 8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos’ debt repayment plan;
 - 9) November 22, 2005, denying Dr. Cordero’s motion to revoke the confirmation of the plan;
 - 10) Notice of January 24, 2007, releasing Mr. DeLano’s employer, M&T Bank, from making further payments to Trustee Reiber.
 - 11) February 7, 2007, discharging the DeLanos after completion of their plan;
 - 12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinder of creditors, the closing of the DeLanos’ estate, and the release of their employer from the order to pay the Trustee;

b. in *Pfuntner*:

- 1) December 30, 2002, to dismiss Dr. Cordero’s cross-claims for defamation as well as negligent and reckless performance as trustee against Trustee Gordon;
- 2) February 4, 2003, to transmit the record in a non-core proceeding to the District Court, WDNY, combined with findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero’s request for entry of default judgment;
- 3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court that the default judgment not be entered by the District Court;
- 4) February 18, 2003, denying Dr. Cordero’s motion to extend time to file notice of appeal;
- 5) July 15, 2003, ordering that a “discrete hearing” be held in Rochester on October 23,

- 2003, followed by further monthly hearings;
- 6) October 16, 2003, Disposing of Causes of Action;
 - 7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
 - 8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
 - 9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
 - 10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

31. The Bankruptcy Clerk shall produce copies of the following documents referred to in the docket of *Premier* or connected to that case:

a. Documents entered in the docket:

- 1) the monthly reports of operation for March through June 2001, entered as entries no. 34, 35, 36, and 47;
- 2) the reports for the following months until the completion of the liquidation of Premier;
- 3) the court order closing that case, which is the last but one docket entry, but bears no number;
- 4) the court order authorizing the payment of a fee to Trustee Gordon and indicating the amount thereof, which is the last docket entry, but bears no number.

b. Documents that are only mentioned in other documents in that case but not entered themselves anywhere:

- 1) the court order authorizing payment of fees to Trustee Gordon's attorney, William

- Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;
- 2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
 - 3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
 - 4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
 - 5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
 - 6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.
32. Notwithstanding the above and without detriment to the duty of each party to comply with this Order and lend all its assistance to its complete enforcement and fulfillment, *DeLano* and *Pfuntner* are reported under 18 U.S.C. §3057(a) to the U.S. Attorney General, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the U.S. 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 former or current staff of the offices of the Department of Justice or the FBI in either Rochester or Buffalo, NY, participate in any way whatsoever in conducting such

investigation, except that such staff be required to provide all information requested of them and to volunteer all information in their possession or whose certain or likely whereabouts they know and that they consider, or similar staff unrelated to either case or the parties to them would consider, potentially or actually relevant to the investigation.

for THE SUPREME COURT OF THE UNITED STATES:

Date

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

March 30, 2009

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Richard Cordero
v. David DeLano, et ux.
No. 08-8382

Dear Mr. Cordero:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk

Blank