UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion for: Declaratory judgment that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16

Statement of relief sought: That this Court:

a) declare the correctness of the legal arguments presented here which demonstrate under what circumstances federal law, FRAP, the local rules, and this Circuit's rules governing the application of 28 U.S.C. Chapter 16 allow the submission of letters, motions, and evidentiary documents to the Court, and, consequently, act on them; and

b) grant any other relief that to the Court may appear just and fair.

MOVING PARTY: Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521 corderoric@yahoo.com	**OPPOSSING PARTY:** N/A

Court-Judge/Agency appealed from: N/A

Has consent of opposing counsel been sought? N/A

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Movant Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: May 15, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:

ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

Blank

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re: Premier Van Lines **Case no.: 03-5023**

MOTION FOR DECLARATORY JUDGMENT
that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16

I, Dr. Richard Cordero, affirm under penalty of perjury the following:

1. Dr. Cordero took the above captioned appeal from orders issued by the U.S. district and bankruptcy courts in Rochester, NY. He submitted his legal grounds for the appeal in his opening and reply briefs as well as in two motions, namely:

    a) Motion for leave to file **updating supplement** of evidence of **bias** in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury; and

    b) Motion for leave to brief the issue of jurisdiction **raised at oral argument by the Court.** (emphasis added)

2. Both motions were granted by this Court (17 and 18, infra). The judge referred to in the former is the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge. He took decisions that Dr. Cordero appealed on the legal and equitable grounds discussed in those appeal briefs and subsequent motions.

3. In addition, Judge Ninfo "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". Thus, Dr. Cordero filed about him a judicial misconduct complaint on August 11, 2003, under 28 U.S.C.

Chapter 16 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (hereinafter referred to as the Complaint Rules). That complaint bears docket no. 03-8547. As required, it was transmitted to the Chief Judge, the Hon. John M. Walker, Jr.

4. The predicate offense of such a complaint is that the complained-about judge has "engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts", (emphasis added). Consequently, both Chapter 16, which encompass §§351 through 364, and the Complaint Rules impose upon the chief judge the legal obligation to handle such a complaint "expeditiously" and "promptly". The underlying principle of this obligation is the legal axiom that justice delayed is justice denied, which in the context of a judicial misconduct complaint takes on added urgency precisely because it is a judge who is causing the delay, and thereby abusing his power to dispense or deny justice. Likewise, since the business of the courts is to administer justice, courts whose administration denies justice can be nothing but ineffective.

5. Yet, disregarding his legal obligation to act "expeditiously" and "promptly", seven months after the submission of Dr. Cordero's complaint Chief Judge Walker had neither dismissed nor referred it to a special committee for investigation. Hence, Dr. Cordero filed on March 19, 2004, a misconduct complaint about Chief Judge Walker for having himself "engaged in conduct prejudicial to the **effective** and

expeditious administration of the business of the courts", (emphasis added). That complaint carries docket no. 04-8510. It was addressed to the next eligible chief judge pursuant to Complaint Rule 18(e).

6. Just as in connection with his appeal Dr. Cordero filed motions for leave to update his opening and reply briefs and to argue pertinent issues later raised by the Court itself, which leave the Court granted, he also tried to do so in several papers in connection with the misconduct complaints. However, the Court never had the opportunity to grant or deny them, let alone pass judgment on their merits, because the clerks refused even to file them. The papers in questions are these:

    a) Dr. Cordero's letter of February 2, 2004, to Chief Judge Walker (19, cf. 21, infra);

    b) Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this Court to launch an investigation (22, infra); and

    c) Dr. Cordero's request of April 18, 2004, to Roseann MacKechnie, Clerk of Court, to review her decisions concerning Dr. Richard Cordero's motion and Statement of Facts under 28 U.S.C. §351, which presents other arguments, not contained in the instant motion, to demonstrate that federal law, FRAP, the local rules and the Complaint Rules of the Second Circuit allow motions in the context of misconduct complaints (44, infra).

7. The instant motion argues that the legal grounds that allow opening and reply briefs to be updated and specific issues to be expanded upon after filing those briefs also apply to misconduct complaints; hence, subsequent to their filing,

papers can be submitted in connection with the complaints. The determination of that legal question has a direct bearing on this appeal, which is still pending before this Court on a motion for panel rehearing and hearing en banc. Indeed, if the Court declares that the same grounds apply, then the updating and issue-expanding papers that would be allowed to be filed could trigger action on the complaints and lead to a finding that in fact Judge Ninfo and Chief Judge Walker have engaged in misconduct that have tainted the orders issued by the former and the participation of the latter in the dismissal of the appeal, so that such orders and dismissal must be quashed. Consequently, the question of the commonality of legal grounds for motion practice in the context of appeals and misconduct complaints is properly presented as part of this appeal.

Table of Contents

I. Chapter 16 of 28 U.S.C. -§§351 through 364- and the Complaint Rules allow the submission of papers subsequent to the filing of a judicial misconduct complaint

8. The basic principle that speaks in favor of allowing the submission of papers, including letters, motions, and evidentiary documents, subsequent to filing a §351 complaint is twofold: Nowhere in chapter 16 is it prohibited to do so; on the contrary, that chapter explicitly provides as follows:

> **§362. Other provisions and rules not affected**
> Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

9. The Federal Rules of Civil Procedure, such as Rules 7, 11, and 50, and those of Appellate Procedure, such as Rules 27, 29(b), and 32(c)(2), provide for the filing of motions and other papers after plaintiff has filed his complaint and a party its appeal, respectively.

10. The applicability of those Rules to misconduct complaints is recognized implicitly in the very first paragraph of the Complaint Rules, where it is stated that:

> Section 351 et seq. of Title 28 of the United States Code provides a way for any person to complain about a federal judge…These rules have been adopted under that authority.

11. Therefore, the Complaint Rules adopted by this Circuit to implement section 351 et seq. cannot legally overstep that enabling authority in order to prohibit the

subsequent filing of motions or other papers allowed by the Federal Rules. "Other paper" under Appellate Rule 32(c)(2) is a term more than broad enough to include a letter inquiring about complaint status, an updating statement of intervening events, and a motion expanding on an issue.

12. Complaint Rule 13(c) applies this principle by providing that:

> **(c) Presentation of Argument.** The complainant may submit written argument to the special committee. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

13. As far as written argument goes, the complainant can submit any at any time without the need to cause the special committee to exercise its discretion to permit him to offer such. Similarly, subsequent to the complaint, the complainant can submit other documents also to the chief judge, as indicated in the following provisions of the Complaint Rules.

II. Evenhandedness under the Complaint Rules and avoidance of partiality toward his peer judge complained about require the chief judge to accept and consider not only exonerating papers and statements of intervening events, but also incriminating ones submitted by the complainant subsequent to his complaint

14. Complaint Rule 4(a) provides that:

> …the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that corrective action has been taken, (3) concluded because intervening events have made action on the complaint no longer necessary, or (4) referred to a special committee.

15. If the chief judge can take into consideration intervening events, such as corrective action, as the basis for dismissing the complaint, then he must also be required to take intervening events, such as further evidence supporting the complaint, as the basis for referring it to a special committee. For the chief judge to agree to consider intervening events with an exonerating effect but not those further incriminating the complained about judge would mean that he has a bias toward finding a way to let his peer judge "off the hook" while avoiding any further evidence that could aggravate his peer's situation and force him to have a committee investigate his peer. To avoid even the appearance of such partiality toward one of his own, the chief judge must accept and consider subsequent papers submitted by the complainant.

16. Similarly, if under Complaint Rule 4(d)

> The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint…

then the chief judge must also accept and consider evidence submitted by the complainant subsequent to his complaint that shows that the problem has not been remedied or has even worsened.

17. The likelihood that there will be intervening events in line with those that gave rise to the complaint in the first place can only increase as the chief judge, disregarding his legal obligation to handle the complaint with promptness and

expeditiousness, allows months to go by without taking any action on the complaint. His disregard may be interpreted by his complained about peer as a condonation of the complained about conduct and, thus, as an exoneration or even a condonation, which may well encourage the peer judge to continue engaging in the same conduct. This perverse result of the chief judge's disregard of his promptness obligation provides additional reason for the chief to accept and consider subsequent documents stating facts that support the initial complaint or even provide the basis in their own right for a second misconduct complaint.

18. Moreover, if under Rule 4(c), the chief judge may dismiss the complaint by finding that the complained about conduct is not "conduct prejudicial to the effective and expeditious administration of the business of the courts", then after allowing time to slip by without acquitting himself of his promptness obligation the chief judge must accept and consider the complainant's subsequent evidence showing that the complained about conduct was neither effective nor expeditious. Proceeding in this way preserves the appearance of evenhandedness. In addition, it conserves judicial resources and spares the complainant any further waste of effort, time, and money by not forcing either the complainant to submit or the chief judge to deal with a second, third, or more complaints based on intervening events.

19. Taking into account intervening events in the context of the original complaint

also works toward reducing the objective chances of a Catch-22 situation arising to the detriment of the complainant: He submits his complaint and the chief judge dismisses it because the conduct of his complained about peer does not sufficiently lack in effectiveness or expeditiousness as a result of the chief judge's refusal to accept and consider the complainant's subsequently submitted statement of intervening events showing such lack. So the complainant submits a new complaint that comprises statements of both the original conduct and of intervening events; but the chief judge dismisses it under Rule 4(c)(3) allowing for dismissal of "charges that have been ruled on in previous complaints by the same complainant". However, if the complainant includes in his new complaint only the intervening events, it is dismissed too by the chief judge invoking the former grounds once more, that is, that the conduct does not sufficiently lack in effectiveness or expeditiousness.

20. Avoiding this 'damn if you do and damn if you don't' unfairness toward the complainant calls for taking the totality of circumstances described originally in the complaint as well as in other papers subsequently submitted until the moment that the chief judge either dismisses the complaint or refers it to a special committee. If the chief judge, disregarding his obligation to act promptly, unlawfully postpones sine die acting on the complaint, he should not also be allowed to disregard the explicit and implicit provisions of the Rules so as to

arbitrarily restrict the complainant to his original statement of the complained about conduct regardless of any additional conduct in which the complained about judge has engaged since.

21. Likewise, under Complaint Rule 4(c)(4) the chief judge can dismiss the complaint because "under the statute, the complaint is otherwise not appropriate for consideration". Such unfettered discretion allows bias toward the peer judge complained about and is the antithesis of procedure based on rules that lay out applicable criteria and lists types of facts to guide, limit, or mandate appropriate or required action. A semblance of evenhandedness can be approached by requiring the chief judge to accept and consider the complainant's subsequently submitted papers and statements of intervening events, which may set forth facts and arguments establishing that the complaint is appropriate for consideration under the statute.

22. In the same vein, Rule 4(b) provides that the chief judge:

> …may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, and (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation…The chief judge will not undertake to make findings of fact about any material matter that is reasonably in dispute.

23. If on the one hand, the chief judge can conduct an inquiry that can lead him to find for his complained about peer a quick and easy way out of the complaint, then on

the other hand, he must also accept and consider subsequently submitted papers and statements of intervening events that show 'the absence of any corrective action, the plain truth of the stated facts, and their capacity to be established through investigation'. If he conducts his 'inquiry to determine whether the stated facts are untrue', then he must also accept and consider facts that can help him determine that those facts are at least "reasonably in dispute" and should be ascertained by his referring them to a special committee. Only by doing so can the chief judge be evenhanded in dealing with his peer and the complainant.

24. Complaint Rule 4(b) also provides that for the purpose of conducting his inquiry:

> (b)…the chief judge may [1] request the judge…to file a written response to the complaint…[2] communicate orally or in writing with the complainant, the judge…and other people who may have knowledge of the matter, and [3] review any transcripts or other relevant documents.

25. If the chief judge can communicate with the parties and others, there is no reason, whether in law or in fact, why the complaining party cannot take the initiative subsequent to submitting his complaint to communicate with the chief judge to submit "other relevant documents". If the chief judge may communicate with even people other than the parties because such people "may have knowledge of the matter", then he has every reason to accept and consider "other relevant documents" subsequently submitted by the complainant, who by definition is supposed to "have knowledge of the matter". Either the chief judge is motivated

by an honest interest in gaining "knowledge of the matter" regardless of who takes the initiative to submit "other relevant documents" or he is just going through the motions of an inquiry and his real interest is in avoiding knowledge that could require him to take action against his peer by referring the matter to a special committee. Not even the chief judge can have it both ways.

III. The broad categories of materials to be sent to the judicial council indicates that far from the Complaint Rules requiring or authorizing the chief judge or any clerk to return unfiled to the complainant any documents that he submits subsequent to his complaint, such documents must be accepted and considered 'in connection with the complaint'

26. Complaint Rule 7 sets out the "Action of clerk of court of appeals upon receipt of a petition for review", which provides that among the copies that…

> (a)…The clerk will promptly cause to be sent to each member of the judicial council…[are] (3) any record of information received by the chief judge in connection with the chief judge's consideration of the complaint,…(7) any other documents in the files of the clerk that appear to the circuit executive to be relevant and material to the petition or a list of such documents, [and] (8) a list of any documents in the clerk's files that are not being sent because they are not considered by the circuit executive relevant and material…

27. These are very broad categories of materials. While (3) concerns information, whether recorded on a letter, a motion, an audio or video cassette, etc., and received in connection with the complaint, documents in (7) do not even have to be so connected, but merely to "appear" to be relevant and material to the

complainant's review petition to the judicial council. What is more, category (8) requires that even those documents not considered to be "relevant and material" be included on a list to be sent to the council. There can be no doubt that complainant's papers and statements of intervening events submitted to the chief judge in connection with and subsequent to the original complaint fall squarely within categories (3), (7), or (8). Logically, if the chief judge or any clerk receives them but refuses to file them and instead sends them back to the complainant, neither of them would have those documents when it came time upon receipt of the review petition to make copies thereof and send or include them on a list to be sent to the council members. Therefore, who came up with the idea and took the unjustified decision to return to Dr. Cordero his letter of February 2, 2004, to Chief Walker, his subsequent motion of April 11, and his request of April 18, described in para. 6, above? Is there anybody who reads the law and the rules and is sufficiently respectful of them to conform his or her acts to their requirements, his or her personal preferences notwithstanding?

IV. Relief requested

28. Dr. Cordero respectfully requests that the Court:

a) declare that

1) neither §351 et seq. nor the Complaint Rules require even implicitly, let alone explicitly, that the chief judge refuse to consider, not to mention

refuse even to take possession of, papers submitted subsequent to the complaint, whether they be letters, motions, statements, or evidentiary documents, and regardless of their purpose to inquire, expand on issues, or update the complaint with intervening events;

2) neither those sections nor the Rules authorize the clerk of court or even the circuit executive to return unfiled to the complainant any such papers that he submits "in connection with the chief judge's consideration of the complaint";

b) accept and consider:

3) the letter of February 2, 2004; that inquires about the status of the misconduct complaint of August 11, 2003, (19, infra), and reply thereto;

4) the attached motion of April 11, 2004, for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this Court to launch an investigation (22, infra), and grant it; and

5) the attached request of April 18, 2004, to review the decisions of the Clerk of Court concerning Dr. Cordero's motion and Statement of Facts under 28 U.S.C. §351, which presents other arguments, not contained in the instant motion, to demonstrate that federal law, FRAP, the local rules and the Complaint Rules of the Second Circuit allow motions in the context of

misconduct complaints (44, infra), and grant it;

c) grant any other relief that to the Court may appear just and fair.

Respectfully submitted on

May 15, 2004

Dr. Richard Cordero

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

Proof of Service

I, Dr. Richard Cordero, certify that I served by United States Postal Service on the following parties copies of my motion for declaratory judgment of May 15, 2004:

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

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

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660
fax (585) 232-4791

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Caption [use short title]

Docket Number(s): 03-5023

In re: Premier Van Lines

Motion for: Leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in its order of October 23, 2003, denying Dr. Cordero's request for a jury trial, which Dr. Cordero submitted to and is under consideration by this Court of Appeals

Statement of relief sought:

That this Court:

1) admit into evidence that court's October 23 decision as an extension of the same nucleus of operative facts evidencing bias against Appellant Dr. Cordero and which were submitted on appeal to this Court together with the substantive issues to which those facts give rise;

2) review that decision together with that court's July 15 decision already submitted and decide whether the court's vested interest in not allowing a jury to consider its participation in a pattern of non-coincidental, intentional, and coordinated wrongful activity makes it a party with an interest in the outcome of Dr. Cordero's request for a jury trial and disqualifies it from being impartial in its denial of the request; and

3) grant any other proper and just relief.

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

OPPOSSING PARTY: Hon. John C. Ninfo, II
US Court House
100 State Street
Rochester, NY 14614
tel. (585) 263-3148

Court-Judge/Agency appealed from: Hon. John C. Ninfo, II

Has consent of opposing counsel:
A. been sought? No respondent known

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Has argument date of appeal been set? No

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: October 31, 2003

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** [illegible].

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: 11-13-03

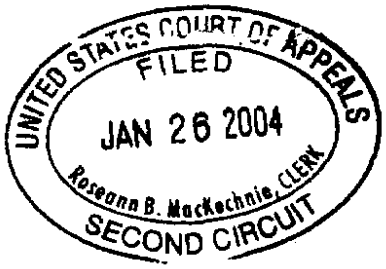
By:
By: Ana Vargas
Calendar Deputy Clerk

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 26th day of January, two thousand and four.

Before: Hon. John M. Walker Jr., *Chief Judge*
Hon. James L. Oakes,
Hon. Robert A. Katzmann,
Circuit Judges



Docket No. 03-5023

IN RE: PREMIER VAN LINES, INC.,

IT IS HEREBY ORDERED that appellant Cordero's motion for leave to file a brief on issue raised at oral argument be and it hereby is GRANTED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk

Arthur M. Heller
Motions Staff Attorney

18 CA2's grant of 26jan4 of leave for Dr Cordero to file a brief re jurisdictional issue raised at oral argument

cwr:20

Dr. Richard Cordero

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

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

February 2, 2004

Hon. John M. Walker, Jr.
Chief Judge
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Judicial conduct complaint 03-8547

Dear Chief Judge,

In August 2003, I filed a judicial conduct complaint under 28 U.S.C. §§372 and 351 concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York. Your Clerk of Court, Ms. Roseann B. MacKechnie, through her Deputy, Ms. Patricia Chin-Allen, acknowledged the filing of it by letter of September 2, 2003. To date I have not been notified of any decision that you may have taken in this matter.

I respectfully point out that Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules is that action will be taken expeditiously.

Indeed, this follows from the provisions of the law itself. Thus, 28 U.S.C. 372(c)(1) provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge shall transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall **promptly**- (A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added).

Despite these provisions in law and rules requiring prompt and expeditious action, this is the seventh month since the filing of my complaint but no notice of any action taken has been given to me or perhaps not action has been taken at all. Therefore, with all due respect I request that you let me know whether any action has been taken concerning my complaint and, if so, which, in order that I may proceed according to the pertinent legal provisions.

In the context of the misconduct complained about, I hereby update the evidence thereof through incorporation by reference of my brief of November 3, 2003, case 03-5023, supplementing the evidence of bias against me on the part of Judge Ninfo. This Court granted leave to file this brief by order of November 13, 2004.

Similarly, in that complaint I submitted that the special committee should investigate whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to my detriment, the only non-local pro se party. To buttress the need for that investigation, I point out that since December 10, 2003, I have requested from the clerk's office of Judge Ninfo's court copies of key financial and payment documents relating Premier Van Lines, which must exist since they concern the accounts of the debtor and the payment of fees out of estate funds and are mentioned in entries of docket no. 01-20692. Yet, till this day the clerk has not found them and has certainly not made them available to me.

1. The court order authorizing payment of fees to Trustee Kenneth 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., accountants, 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 assets of Premier's estate 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 to be filed in entry no. 62.

A court that cannot account for the way it handles money to compensate its appointees and make key decisions concerning the estate calls for an investigation guided by the principle of "follow the money" in order to determine whether it "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts".

Sincerely,

Dr. Richard Cordero

Cc: Letter of acknowledgment from Clerks MacKechnie and Chin-Allen; and order granting the motion to update evidence of bias.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

February 4, 2004

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

Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your letter, with attachments, dated February 2, 2004, addressed to Chief Judge John M. Walker, Jr.

I am returning your documents to you. A decision has not been made in the above-reference matter. You will be notified by letter when a decision has been made.

Sincerely,
Roseann B. MacKechnie, Clerk

By: Patricia C. Allen
Patricia C. Allen, Deputy Clerk

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Richard Cordero **Case no.: 04-8510**

MOTION FOR DECLARATORY JUDGMENT
THAT OFFICERS OF THIS COURT INTENTIONALLY
VIOLATED LAW AND RULES AS PART OF A PATTERN OF WRONGDOING
TO COMPLAINANT'S DETRIMENT
AND FOR THIS COURT TO LAUNCH AN INVESTIGATION

---

1. On Monday, March 22, Dr. Richard Cordero submitted a judicial misconduct complaint "addressed…to the Circuit Judge eligible to become the next chief judge of the circuit", who is the one to whom it should be transmitted when the judicial officer complained-about is the Chief Judge, as provided for by this Circuit's Rules Governing Complaints under 28 U.S.C. §351 (these Rules are referred to hereinafter as Rule #). This triggered **another** series of acts of disregard of law and rules by clerks of this Court that delayed the "acceptance" of the complaint for more than a week and caused Dr. Cordero **more** waste of effort, time, and money and inflicted upon him **more** of the aggravation concomitant of the trampling of one's rights and of evidence of **more** injustice to come. Establishing that such disregard of legality occurred in, of all places, this Court, identifying those liable for it, and finding its cause and objective are the subject matter of this motion.

Table of Contents

I. Statement of Facts describing a repeated effort by clerks to hinder the submission of Dr. Cordero's complaint about the Chief Judge

2. Last March 22, Dr. Cordero showed the deputy clerk behind the counter at In-Take Room 1803 an original and three copies of a judicial misconduct complaint about the Hon. John M. Walker, Chief Judge of this Court (i-25, below; see the Table of Contents, M-22, below) as well as a separate volume bearing on its cover the title "Evidentiary Documents" (26, below). Dr. Cordero asked to speak with Deputy Clerk Patricia Chin Allen. After the clerk behind the counter phoned her, she told Dr. Cordero that Clerk Allen was unavailable. He filed the complaint.

A. This Court bottlenecks the processing of all misconduct complaints through Clerk Allen, thus disregarding the 'promptness' requirement

3. Dr. Cordero asked for Clerk Allen because when on August 11, 2003, he filed the original complaint about the Hon. John C. Ninfo, II, and other officers in the bankruptcy and district courts in Rochester, he was told that Clerk Allen is the only clerk in the whole of this Court to handle such filings. Since on that occasion she was said to be on vacation for two weeks, nothing happened with the complaint until her return. Likewise on this occasion, Clerk Allen subsequently told Dr. Cordero that she would be on medical leave on March 25 and 26 and that nobody else in the Court could examine for conformity or process his complaint until she came back on Monday 29.

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit's Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts' integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence, intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness

requirement. It reveals the Court's attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks' handling of Dr. Cordero's complaint, in particular.

B. Dr. Cordero also filed a motion and the clerks misplaced the complaint with it, thus delaying the complaint's handling

5. So it happened that on Monday 22, Dr. Cordero also tendered to the clerk for filing five individually bound copies of a motion for something else in his appeal from the Rochester courts' decisions, docket no. 03-5023. Each copy was clearly identified as a motion by an Information Sheet bound with and on top of it.

6. Two days later, on Wednesday 24, that docket still did not show any entry for the motion. That got Dr. Cordero concerned about the complaint too, although he knows that complaints are not entered on the same docket. So he called Clerk Allen to find out whether she had reviewed and accepted the complaint. He found her, but she did not know anything about his misconduct complaint because none had been transmitted to her! At his request, she called the In-takers. However, none knew anything about it either. He asked that she have them search for it while he waited on the phone. Eventually, everything that he had filed on Monday was found on another floor with the case manager for the motion's case. The explanation offered was that the complaint's Statement of Facts and separate volume of "Evidentiary Documents" were thought to belong to the motion!

7. That explanation presupposes that all the clerks in the In-Take Room forgot Dr.

Cordero's conversation with them about his wanting to file a complaint, his request that they call Clerk Allen to review it while he was there, and his asking whether anybody else could review it since she was unavailable. Moreover, it presupposes that all those who handled it from the In-Take Room to the motions team failed to read the *second* line of the complaint's heading laid out thus (i, below):

STATEMENT OF FACTS
Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**
The Hon. John M. Walker, Jr., Chief Judge
of the Court of Appeals for the Second Circuit
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

8. For her part, Clerk Allen herself found that heading most confusing and said that 'it would of course be interpreted as a statement of facts in support of the motion', never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Documents"…forget'a 'bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four

copies for him to reformat and resubmit them. Her objections were the following:

a) The misconduct form was not on top, 'so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?' Dr. Cordero's suggestion that one might read the heading got him nowhere.

b) The complaint form was the wrong one, for its title refers to §372 rather that §351. Dr. Cordero said that was the form that he had received in connection with the original August 11 complaint; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes apparent; all to no avail. Both forms appear at M-23 and v-a, below, so that the Court may try to find any difference, let alone one significant enough to justify refusal of the complaint.

c) The complaint had a table of contents, but 'complaints have no such thing!'.

d) A major issue was Dr. Cordero's inclusion of documents with the Statement of Facts and with the separate bound volume, 'What for?! You can't do that!' He explained that those are documents created since his August complaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accompanying the opening brief) or E-# (E as in Exhibit, which was the title of a separate volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume

accompanying the March complaint the different title "Evidentiary Documents" was used). Subtleties of no significance to Clerk Allen.

e) An 'obvious' defect was that Dr. Cordero had bound the complaint, but 'a complaint must not be bound; rather, it must be stapled or clipped!' He indicated to Clerk Allen that Rule 2 does not prohibit binding. Moreover, FRAP 32(a)(3) provides that "The brief must be bound in any manner that is secure…and permits the brief to lie reasonably flat when open." However, Dr. Cordero's reasoning by analogy was lost on Clerk Allen. So he went for the practical and said that he could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. 'No!, Dr. Cordero, if the Rules do not say that you can do something, then you can't do it! It is that simple'.

9. These are the 'unacceptable' features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to comply with her unwritten arbitrary demands to implement 'the way things are done with complaints', which he had to discover the hard way after complying

with the written Rules, whether on point or applied by analogy.

C. Clerk Allen's March 24 letter imposes meaningless arbitrary requirements

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

1. Clerk Allen requires the separate volume to be marked "Exhibits"

11. Although Clerk Allen had told Dr. Cordero that she would write in the word "Exhibits", she wrote in her cover letter that "Exhibits should clearly be marked exhibits". As a result, Dr. Cordero had to unbind the volume of 85 documents, reformat the cover page to include the word "Exhibits" prominently enough so that she would see it, reprint it, and rebind the volume of several hundred pages.

12. However, this Circuit does not require anywhere that the documents accompanying a misconduct complaint be marked "Exhibits". Rule 2(d) reads thus:

> **(d) Submission of Documents**. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court's judges never deemed appropriate to impose? Why should a clerk be allowed to in the Court's name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges,

as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be 'confused' because they too are incapable, as the clerks allegedly were, to read past the first line and see:

EVIDENTIARY DOCUMENTS
supporting a complaint
UNDER 28 U.S.C. §351 ABOUT
The Hon. John M. Walker, Jr.,
Chief Judge
of...

14. Did Clerk Allen show that she lacks the capacity even to read and apply the Rules literary, let alone in an enlightened way given their underlying objective within their context, or was she following instructions to give Dr. Cordero a hard time to dissuade him from resubmitting the complaint or at least delay its acceptance?

2. Clerk Allen requires that the Complaint Form not be attached to the Statement of Facts, thereby flatly contradicting Rule 2(b)

15. In her March 24 letter Clerk Allen also wrote thus:

> The Complaint Form is a document separate from the Statement of Facts. They **should not be attached** to each other. *The Statement of Facts must be on the same sized paper as the Official Complaint Form.* (emphasis added)

16. However, Rule 2(b) expressly provide the opposite:

> (b) Statement of Facts. A statement **should be attached** to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. *The statement should not be longer than five pages (fives sides), and the paper size should not be larger than the paper the form is printed on.* (emphasis added)

17. The phrase in bold letters shows how Clerk Allen, by contradicting precisely what

the Rules provide, faulted Dr. Cordero, who had bound a Complaint Form to each of the original and three copies of his Statement of Facts.

18. Yet, Clerk Allen followed her Rules-contradicting sentence with an accurate restatement of the next sentence of the Rules regarding paper size for the Statement of Facts; both sentences are in italics here. The contiguity of this pair of sentences in Clerk Allen's letter indicates that when she quoted them she was reading the Rules, which sets forth these sentences successively. It cannot be said realistically that Clerk Allen just read the first sentence incorrectly but the next one correctly. This follows from the fact that she is the only clerk in the whole Court through whom all misconduct complaints are bottlenecked. Thus, when Dr. Cordero submitted his about the Chief Judge, Clerk Allen's top boss, she did not have to consult the Rules for the first time ever. She must know them by heart.

19. To say Clerk Allen made a mistake the first time she read the Rules to apply them to the first complaint she ever handled and has carried on that mistake ever since would be to indict her competence and that of her supervisor. But if that were the case, then the track record of all the misconduct complaints that she has ever handled must show that every time a complainant correctly submitted a Statement of Facts with the Complaint Form attached to it, she refused acceptance and required that the complainant detach them and resubmit them detached.

20. If so, what for!? If she keeps the original Form for the Court's record, what does she do with the copies if it is not to send them to the judges to whom she sends the

Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

D. Clerk Allen requires that no table of contents (TOC) be attached to the Statement of Facts

21. Rule 2(h) reads thus "(h) No Fee Required. There is no filing fee for complaints of misconduct or disability". That provision has the purpose and effect of facilitating the submission of such complaints by removing the hurdle of a fee. Hence, on whose authority does Clerk Allen, in handling such complaints, raise hurdles in blatant disregard for the letter as well as the spirit of the law and its Rules?

22. Clerk Allen raised another such hurdle when she wrote, "Please do not [sic] a table of contents to the Statement of Facts"? There is no provision whatsoever entitling her to make such requirement. And a requirement it was, for when Dr. Cordero resubmitted the original and three copies of the Statement each with a TOC, Clerk Allen removed and mailed the TOCs back to him! (para. 30 below)

23. For those who can reason by analogy, the justification for a TOC has its legal basis in Local Rule 32(b)(1)(B). It requires that the Appendix to an appeal brief contain "A detailed table of contents referring to the sequential page numbers".

24. For its part, Rule 2 provides as follows:

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

25. The justification for a TOC also has a practical basis. The complaint about the Chief Judge is predicated on his failure to deal with the complaint about Judge Ninfo. Between them they refer to 85 documents and use three formats of page numbers to identify the specific pages of those documents where relevant material appears, to wit, a simple number #, E-#, or A-#. Under those circumstances, it is reasonable to assume that the next eligible chief judge and the investigators will find a TOC a most useful research device. This is particularly so because there is only one copy of the separate volume of documents. Hence, a TOC attached to each of the four copies of the Statement of Facts and providing the 'names and addresses' of 85 'witnessing' documents allows those readers to read the titles of the documents to get an overview of the kind of supporting evidence available and then decide whether they want to request the separate volume for consultation.

26. It should be noted that Clerk Allen quoted verbatim Rule 2(d). This means that she understands the concept of authority for what she requires. So on whose authority does she require that for which she lacks any written authority in law or rule?

E. Clerk Allen fails to meet with Dr. Cordero as agreed to review the reformatted complaint

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the

Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

28. It is part of the character of people who make arbitrary decisions to be unreliable and not keep their word. Clerk Allen once more wasted Dr. Cordero's time by making him come to meet her in the Court so early in the morning for nothing. Except that from her point of view, it was not for nothing. By avoiding meeting him and reviewing the complaint while he was there, Clerk Allen gave herself another opportunity to delay the acceptance.

29. And so she did, for when Dr. Cordero returned home late in the afternoon, there was a message recorded by Clerk Allen asking that he call her. By that time it was too late. They spoke on the phone the following morning. She said that he had left blank the question of whether there was an appeal in that Court. He explained to her that the appeal did not relate to the complaint about the Chief Judge. She said that there was an appeal anyway, but that she would write it in.

30. However, she said that she had to send back to him the original and three copies of

the Statement of Facts because he had added to each a table of contents (TOC) and 25 pages that were duplicative of the first 25 pages in the separate volume of documents (vi and 1-25, below). He told her that not only had she not written in her March 24 letter anything about not attaching documents to the Statement, but also those pages contain documents created since the original complaint of August 11. It was to no avail. She would return the Statement copies so that he could remove the TOC and pages 1-25 from each because otherwise she would have to make copies also of the TOC and those pages when she copied the Statement for all the judges. Dr. Cordero asked her not to send them back once more, but rather remove whatever she wanted and file the complaint without any more delay. She said that she would have to cut the plastic ring combs (like the one binding these pages). He gave her permission to do so. A couple of days later four sets of TOCs and pages 1-25 were delivered by mail to Dr. Cordero. A cover letter signed by Clerk of Court Roseann B. MacKechnie stated that pages 1-25 were being returned because they were duplicates of those in the Exhibits. (M-27, below)

31. So Clerk Allen, with Clerk MacKechnie's approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by the Rules adopted by this Court's judges?! Moreover, why does Clerk Allen have

to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

II. Legal provisions violated by Clerk Allen and her superiors who approved or ordered her conduct

32. Clerk Allen sent Dr. Cordero a letter dated March 30, 2004, stating that "We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004". (M-28, below) This means that the complaint was not filed on March 22 when he first submitted the Statement of Facts and "Evidentiary Documents" volume and had them time stamped. So if he had not given in to the clerks' arbitrary form requirements, they would not have filed it. Yet, clerks not only lack authority to refuse to file a paper due to noncompliance with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

> The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule** or **practice**. (emphasis added)

33. Likewise, the Local Rules were adopted by a majority of the circuit judges as provided under FRAP Rule 47(a)(1)) and the clerks are there simply to apply them, not to add to or subtract from them on their whims. People that rely on those rules and make a good faith effort to comply with them, have a legal right to expect and require that clerks respect and apply them. That expectation is reasonable for it arises from the specific legal basis referred to above as well as others that determine the general working of the rules of procedure.

34. Thus, FRAP 32(e) provides that "Every court of appeals must accept documents that comply with the form requirements of this rule," whereby it prohibits those courts from refusing acceptance due to non-compliance with its local rules. On the contrary, FRAP goes on to provide that "By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule", whereby it states a policy choice in favor of acceptance of documents even if non-complying, as opposed to a policy of non-acceptance due to non-compliance. The logic of that policy makes it inadmissible for clerks to impose unwritten form requirements that they come up with arbitrarily, let alone to refuse acceptance due to non-compliance with such requirements. Consequently, for clerks to refuse acceptance of a complaint because its Statement of Facts has attached to it a TOC and some documents, regardless of whether they duplicate those in the separate volume of Exhibits, constitutes a per se violation of the Rules' policy to facilitate rather than hinder the filing of documents.

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no authority to disregard the law or the rules, but rather the obligation to show the

utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

36. Hence, when clerks disregard the law or rules, whether on a folly of their own or on their superiors' orders, they render themselves liable for all the waste of effort, time, and money and all the emotional distress that they intentionally inflict on others. Indeed, the infliction is intentional because a person is presumed to intend the reasonable consequences of her acts. When clerks force filers to redo what they have done correctly to begin with and to correct proper-form mistakes, which do not provide grounds for refusal to file, they can undeniably foresee the waste and distress that they will inflict on those filers. Here they have inflicted plenty.

A. A long series of acts of disregard for legality reveals a pattern of wrongdoing that has become intolerable

37. Enough is enough! The clerks' tampering with Dr. Cordero's right to file a misconduct complaint is only the latest act of disregard for rights and procedure by judges and other court officers to Dr. Cordero's detriment. Here is a sampler:

    a) The January 26 order on Dr. Cordero's appeal, docket no. 03-5023, stated, and stills does, that it was the district court's decisions that were dismissed, thus giving him the misleading or false impression that he had prevailed and did not have to start preparing his petition for rehearing.

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the clerk **must** serve on all parties a copy of the opinion…", (emphasis added).

Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

c) The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and Dr. Cordero did not receive it until March 1, so that he ended up having the same little amount of time in which to scramble to prepare, as a pro se litigant, the petition by the new deadline of March 10.

d) The motion for panel rehearing and hearing en banc that he filed on March 10 was not docketed until he called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks' normal level of performance or did somebody not want Dr. Cordero to file the petition?

e) Dr. Cordero's original letter and four copies, dated February 2, 2004, to Chief Judge Walker asking for the status of his August 11 complaint about Judge Ninfo, was refused by Clerk Allen and returned to him immediately with her letter of February 4, 2004. (1 and 4, below)

f) Cf. Instances of disregard for law, rules, and facts in the Rochester courts. (Opening Brief, 9.C, 54.D; Petition for a Writ of Mandamus 7.B-25.K)

g) Cf. Rochester court officers' disregard for even their obligations toward this Court. (Petition for a Writ of Mandamus, 26.L);

h) Cf. Motion of August 8, 2003, for recusal of Judge Ninfo and removal of the case to the U.S. District Court in Albany. (A-674 in the Exhibits)

i) Cf. Motion of November 3, 2003, for leave by this Court to file updating supplement of evidence of bias. (A-768 in the Exhibits)

j) Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge, and describing the egregious disregard of legality by Judge Ninfo and the trustees in Rochester on March 8, 2004 (i-v, below).

38. How many acts of disregard of legality are needed to detect a pattern of wrongdoing? How much commonality of interests and conduct permit to infer coordination between officers of this Court and those of the Rochester courts? When will so much frustration of reasonable expectations, legal uncertainty, and abuse *ever stop and I get just and fair process under the law!?* The line is drawn here!

III. Relief sought

39. Is there any circuit judge who cares and will do the right thing no matter who gets in the way? In that hope, Dr. Cordero respectfully requests that this Court:

a) declare that Clerks MacKechnie and Allen violate FRAP Rule 25(4) to Dr. Cordero's detriment;

b) declare whether said clerks and other officers of this Court did so in concert and following the instructions of their hierarchical superiors;

c) declare whether it can be inferred from their handling of Dr. Cordero's complaints of March 2004 and of August 11, 2003, and the foreseeability of the consequences that the clerks and their superiors:

1. intended to delay the submission of Dr. Cordero's judicial misconduct complaint and dissuade him from resubmitting it, thereby hindering the exercise of his right 11 U.S.C. §351 to complain about a judicial officer;

2. intended to cause Dr. Cordero to waste his time, effort, and money, and to inflict on him emotional distress;

3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

d) launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

e) order that the TOC and pages 1-25 (vi and 1-25, below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

Respectfully submitted on
April 11, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208; tel. (718) 827-9521

Dr. Richard Cordero
Movant Pro Se

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served my motion of April 11, 2004, for declaratory judgment and the launch of an investigation by handing it over in this Court's In-Take Room 1803 at the following address for transmission to the following parties:

The Hon. John M. Walker, Jr., Chief Judge

Ms. Roseann B. MacKechnie, Clerk of Court

Ms. Patricia Chin Allen, Deputy Clerk
United States Court of Appeals
for the Second Circuit
Thurgood Marshall United States Courthouse
40 Centre Street
New York, NY 10007

Dr. Richard Cordero

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

Table of Exhibits
of the Motion
of April 11, 2004

Blank

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Richard Cordero **Case no. 04-8510**

Request to Roseann MacKechnie Clerk of Court

To Review her Decisions Concerning Dr. Richard Cordero's Motion and Statement of Facts under 28 U.S.C. §351

I, Dr. Richard Cordero, address under penalty of perjury Clerk of Court Roseann MacKechnie as follows:

1. Within the last month I submitted two papers with which you have dealt specifically, namely:

   a) **Motion** for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this Court to launch an investigation, of April 11, 2004; and

   b) **Statement of Facts** Setting Forth a Complaint Under 28 U.S.C. §351 About The Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit 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, dated March 19, 2004, and assigned docket no. 04-8510.

Table of Contents

I. There is legal basis for submitting a motion concerning a judicial misconduct complaint; but if in doubt, the matter is for the Court, not its clerk, to decide

2. Turning to the motion first, therein I mentioned you by name among the officers that violated law and rules. You refused to file it, though I made my intention clear to have it filed together with the Statement in docket 04-8510. Instead you returned to me its original and four copies together with your letter of April 13, a

copy of which is attached hereto. There you stated that "The judicial conduct complaint procedure does not allow motion practice." However, you provided no legal basis whatsoever for that statement.

3. I respectfully request that you state your legal basis. This request is very much in order in an institution that is a court of law, whose mission, among others, it is to ensure that the government deals with citizens and citizens with each other according to the rule of law. What is more, this is a court of appeals, whose fundamental task it is to ensure that lower courts have correctly applied law and rules in any case brought before them for adjudication. Of all places, a court of appeals is among the worst institutions in our society where arbitrary action and abuse of power should be expected or tolerated. How can legality prevail in society if judges and clerks disregarded it? If your actions are in conformity with the rule of law, my request that you state such rule is reasonable and all the more justified because I can provide legal basis for the actions that I took to begin with, that is, the submission of a motion in the context of a judicial misconduct complaint.

A. The scope of applicability and relation between federal law, FRAP, Local Rules, and Complaint Rules , and when the court or the clerk is authorized to apply them

4. FRAP Rule 1(a) provides that "These rules govern procedure in the United States courts of appeals". That is an all-encompassing statement whose field of

application extents to all procedure in such courts. Any procedure not subject to FRAP at all must be exempt therefrom expressly.

5. For its part, FRAP Rule 47 provides that "Each court of appeals…may…make and amend rules governing its practice". However, not even a court of appeals can act in an arbitrary, undisclosed way when making its rules. Rule 47(a) provides that the court can only make them "after giving appropriate public notice and opportunity for comment". It follows that absent such notice and opportunity, the court cannot make local rules. By the same token, having made its rules in such a publicized way and thereby induce public reliance on them, the court, let alone its clerk, cannot suspend the application of any such rule arbitrarily, that is, without any legal or rational justification. So to proceed would cause unfair surprise, frustrate reasonable expectations as to the way the court conducts its business of administering justice, and undermine public trust in the court as a preeminent institution ensuring government by the rule of law.
6. Consequently, when there is no controlling law, FRAP does not authorize the clerk of court to improvise procedure. Rather, Rule 47(b) requires that in such situation it be the court of appeals to regulate practice. What is more, even then the court is not free to proceed any way it wishes. Confronted with a situation lacking a controlling law, the court of appeals is constrained to act in "any maner consistent with federal law, these rules, and local rules of the circuit". But not

even when walking in the reflected light of legality can the court impose a disadvantage on a party without giving him actual notice of what it requires of him.

7. Therefore, not even the court can decide how to proceed in the absence of controlling law by merely issuing a fiat or a self-serving conclusory statement. To proceed consistently with its obligation to "giv[e] appropriate notice and opportunity for comment", it must provide the legal basis for the procedure that it has determined is the applicable one in that particular case in light of available law and rules.
8. It follows that confronted with a situation not controlled by a specific law, the clerk of court cannot possibly take it upon herself to decide what to do, much less come up with something without even making an attempt to provide any legal basis therefor. Rather, the clerk must refer the situation to the court and let it apply by analogy the available laws and rules.
9. This way of handling situations not subject to a controlling law applies to the one at hand, that is, the submission of a motion under the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. 351 (hereinafter referred to as the Complaint Rules). Local Rule §0.24 used to contain the provisions on Complaints With Respect to Conduct of Judges. Now it refers to the Local Rules Appendix, Part E. As an appendix to the Local Rules, the Complaint Rules are subject the Local Rules,

which are applicable whenever they do not provide the procedure to follow in a given situation. In turn, if the Local Rules do not provide how to proceed, then FRAP Rule 47(b) spells out the course of action to take, namely, one consistent with federal law and rules and circuit local rules.

10. The applicability of FRAP and the Local Rules to the Complaint Rules is in line with the fact that under Rule 23 of the Complaint Rules the advisory committee appointed by the Court of Appeals for the Second Circuit for the study of rules of practice and internal operating procedures constitute also the advisory committee for the study of the Complaint Rules. This identity of such committee for both sets of rules is provided by 28 U.S.C. §2077(b). It is reasonable to assume that the same committee would not make sets of rules of procedure inconsistent with each other, particularly since those rules are intended to be applied by and to the same judges as they perform the same business of administering justice.

B. How to deal with motions relating to judicial misconduct complaints

11. The Complaint Rules neither provide for nor prohibit motions. In that case FRAP and the Local Rules apply. FRAP Rule 27 governs motion practice. Its general principle in section (a)(1) is "An application for an order or other relief is made by motion unless these rules prescribe another form". The wording of that

provision follows the principle "everything is allowed that is not expressly prohibited" and calls for an expansive interpretation of the situations in which motions are allowed.

12. Moreover, in section (b), Rule 47 provides that "The court may act on a motion for a procedural order…and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions". It follows with logical ease that unless thus authorized, the clerk lacks authority to act. She must either wait for the court to grant her such authority or she must refer the matter to the court and let it decide what to do. Referral to the court is the required course of action by the clerk when the motion is not even procedural, but rather, as mine is, substantive in character.

13. Nevertheless, reasoning by analogy, this means that the clerk could only deal with a motion under the Complaint Rules if she had been authorized by a court rule or order to do so regarding the 'specified type' of motion encompassing the motion in question. It is not by default that the clerk gets to decide how to handle any motion whatsoever however she fancies in the absence of a particular provision to do so. Far from it, Local Rule 27(h) provides what to do in this particular situation:

> (h) **Other Motions**. Any motion not provided for in this rule or in other rules of this court shall be submitted to the clerk, who will assign it for disposition in accordance with standing directions of the court or, if these are

> inapplicable, as directed by the judge presiding over the panel of the court in session or assigned for the hearing of motions when the court is not in session. The clerk will notify counsel if and when appearance before the court or a judge is required.

14. If the court had made provision for dealing with motions relating to judicial misconduct complaints, then it could only have done that consistently with FRAP Rule 47(a) "after giving appropriate public notice and opportunity for comment". It is reasonable to assume that such provision would be found in the Complaint Rules. But they are silent on motion practice. Hence, the Complaint Rules neither provide for nor prohibit motions.

C. How to deal by analogy with a motion relating to a misconduct complaint

15. Therefore, the submission of a motion relating to a misconduct complaint presents a novel situation. It is for the court, not its clerk, to deal with it by rule or order that applies by analogy the available laws and rules.

16. The analogy can be made to FRAP Rule 21(c). It provides that:

> (c) **Other Extraordinary Writs**. An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as practicable, to the procedures prescribed in Rule 21(a) and (b).

17. My motion conformed to FRAP 21:

(a)(1) It was served on all the parties named therein;

(a)(2)(A) was in may name;

(a)(2)(B) stated

(i) the relief sought (section III);

(ii) presented the issues to be dealt with (para. 1);

(iii) the necessary facts to understand those issues (section I);

(iv) the reasons why the relief should be granted (section II); and

(d) complied with the formal requirements of FRAP Rule 32(c)(2) and was submitted in an original and three copies.

18. Rule 21 further provides under (a)(3) that "Upon receiving the prescribed fee [Complaint Rule 2(h) provides that "There is no filing fee for complaints of misconduct or disability"] the clerk must docket the petition and submit it to the court". The clerk is not authorized to deal with it ad hoc.

19. Similarly, FRAP Rule 27(a) provides that "An application for an order or other relief is made by motion unless these rules prescribe another form." Since neither FRAP, the Local Rules, nor the Complaint Rules provide for or prohibit motions relating to misconduct complaints, Rule 27(a) is likely to be the more general and ordinary form of making an application to the court. In any event, there is no substantive difference between a petition under Rule 21 and a motion under Rule 27 given that the same fundamental requirements are applicable in both cases. Cf. Rule 27(a)(2)(A) providing that "A motion must state with

particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it".

20. For its part, Local Rule 27(b) provides that "Motions seeking substantive relief will normally be determined by a panel conducting a regular session of the court. These include, without limitation, motions…" Thus, my motion could have been submitted to such a panel and could have dealt with practically any matter.

D. The motion should have been submitted to the next eligible chief judge

21. However, Complaint Rule 3(a)(1) provides for a judicial misconduct complaint to be submitted to one judge, that is, either the chief judge or, as provided under Complaint Rule 18(e), the circuit judge eligible to become the next chief judge of the circuit. The latter was the addressee of mine. Since he is still considering my complaint, my motion was in the nature of supplemental evidence supporting the complaint and should have been submitted to him.

22. In the motion I complained about your conduct and that of other clerks. Precisely for the purpose of reviewing the action of the clerk, Local Rule 27(b)(2) provides that "…the action of the clerk may be reviewed by a single judge". Reasoning by analogy in the absence of controlling law, my motion should have been submitted to the next eligible chief judge.

II. There is legal basis for attaching exhibits, even if also contained in a separate volume, and practical reasons for attaching a table of contents to a misconduct complaint's Statement of Facts

23. I also received your letter of last March 29, where you stated that you were "returning the attachment to the revised Statement of Facts which we received today. These pages are duplicates of pages 1-25 of your Exhibits ("Evidentiary documents supporting a complaint Under 28 U.S.C. §351 About the Hon.,…")".

24. The Complaint Rules contain no prohibition on attaching documents to such a Statement, let alone any prohibition on the basis that they are already contained in an accompanying separate volume of evidentiary documents.

25. What Rule 2 of the Complaint Rules does provide is this:

> (d) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.
>
> (e) Number of Copies. …One copy of any supporting transcripts, exhibits, or other documents is sufficient.

26. One is entitled to expect from a clerk of court to be able to distinguish between a provision that states that one copy of certain documents is "sufficient" and the allegation that only one copy is allowed.

27. As opposed to the requirement to file a Statement of Facts in an original and several copies, the sufficiency of one copy of documents is likely intended for the convenience of the complainant and the reduction of his cost of submission.

Indeed, for the same purpose the same Rule 2 provides that "There is no filing fee for complaints of misconduct or disability". The effect of these provisions and the policy that they reveal are to facilitate rather than hinder the submission of such complaints, for they serve the public good of monitoring and eliminating judges that fail to maintain the high standards required of those entrusted with the lofty mission of administering justice.

28. Moreover, while one copy of documents is "sufficient", several copies are not only allowed, but they may also be very useful. This is the case here because the 10 documents comprised in pages 1-25 that you removed contain the most recent and relevant evidence in support of the complaint's Statement of Facts. I attached them, at the expense of my time, effort, and money, to facilitate their consultation by the judges or investigators to whom the copies of the Statement would be transmitted. You had no justification whatsoever, whether in law or in fact, to remove those pages from each of the Statements and thereby hinder their consultation by their readers!

29. Nor did Clerk Patricia Chin Allen have any basis at all in the above quoted sections (d) or (e) of Complaint Rule 2 or elsewhere to affirm in her letter to me of March 24 that "The exhibits should clearly be marked exhibits" and thereby refuse my separate volume of documents and force me to reformat it, which on the contrary, in perfect harmony with "(d) Submission of Documents" was titled

"Evidentiary Documents".

30. Nor did either of you have any legal basis for removing the Table of Contents (TOC) which was attached to each copy of the Statement. That TOC provided a valuable overview of the 85 documents included in the single separate volume by listing their full titles, which were not written out in the Statement, where reference was limited to a page number. The TOC also afforded every reader of the Statement a practicable way to decide whether to request the single volume for consultation or a copy of a specific document therein.

III. Did the clerks abuse the power of their positions and act in self-interest in their handling the motion and the Statement of Facts?

31. But did both of you and other clerks have motive to do so and instructions to follow? Did you remove the documents and TOC from the Statement and refuse to file my motion and force me to comply with so much arbitrary requirements and suffer unnecessary delay so as to weaken my complaint about your boss, the Chief Judge, and protect yourself from my complaint about you and other clerks working under your supervision?

32. One assertion can be reasonably and responsibly made: There have been so many mistakes in handling my papers and court papers concerning me, and the acts of disregard of the law, rules, and facts have been so repeated, flagrant, and consistently to my detriment and committed by so many judges and clerks in this

Court and the lower courts in Rochester appealed from that they form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against me. It should be evident that any court officers who in order to prevent their participation and that of their colleagues in such pattern from being examined and proved deprive a person of his rights engage in abuse of power and render themselves personally liable for the waste of effort, time, and money that they cause him and the emotional distress that they inflict on him. Court officers have no immunity from torts. Not even the President of the United States does.

IV. Course of action requested

33. Therefore, I respectfully request that you review your decisions concerning my complaint of March 19 and the subsequent motion, which decisions are contained in the three letters referred to above and that instead of the unsupported conclusory statements made therein, you state the legal basis for your actions and that of your subordinate, Clerk Allen.

34. However, if upon such review you are in doubt about the legal basis for those decisions, then the prudent and professionally responsible course of action to take is to avoid even the appearance of using your position to protect yourself and other colleagues and instead let the court make the pertinent decisions and allow the next eligible chief judge and investigators to have more rather than less

information with greater ease of access.

35. In concrete, I respectfully request that you:

a) **As to the motion** of April 11, 2004, convey to me in writing your willingness to file it with the next eligible chief judge and request that I resubmit the necessary copies;

b) **As to the Statement of Facts** of my complaint dated March 19, 2004 (docketed on March 29), without further delay attach to its original and each of its three copies the TOC and pages 1-25 that you removed and that to that end

1) request that I provide four sets of that attachment so that you may immediately transmit them to those to whom you transmitted the Statement; or

2) have your clerks photocopy the TOC and pages 1-25 of the separate volume of Exhibits (the ("Evidentiary Documents") and have them transmitted to those to whom you transmitted the Statement;

3) photocopy and attach the TOC and pages 1-25 to any copy of my Statement that you may be asked to make in the future;

c) transmit a copy of this request to the next eligible chief judge and to any

other officer to whom you have submitted the Statement;

d) file this request in docket 04-8510; and

e) let me know in writing the course of action that you have taken with respect to each of these requests.

Respectfully submitted on

April 18, 2004

Dr. Richard Cordero

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