

Dr. Richard Cordero

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October 18, 2005

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

faxed to (716)551-5103

Dear Ms. Frieday,

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

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

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

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

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

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

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

Hence, documents in just the docket of the *DeLano* bankruptcy indicate that Mr. DeLano is a 32-year veteran of the banking industry currently specializing in bankruptcies at M&T Bank. He declared having together with his wife only \$535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 period \$291,470. Likewise, since 1975 the DeLanos have engaged in a string of mortgages worth \$382,187 for the purchase of the very same residential home which today, 30 years later, is appraised at \$98,500 and on which they have equity of merely \$21,415 and still owe \$77,084! Similarly, he and his wife claim that after 30 years of work they have accumulated household goods worth the pittance of \$2,810. Moreover, both Judge Ninfo and Trustee George Reiber have refused to require the DeLanos to produce documents to account for the whereabouts of over \$670,000. For his part, District Court David Larimer tried to force me to file my appellate brief before Reporter Dianetti had even replied to my initial request of April 18, 2005, for the transcript, which if truthful will reveal the incriminating events involving Judge Ninfo and damaging testimony by Mr. DeLano at the March 1 hearing.

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

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

- 1) remove Reporter Dianetti from further handling the stenographic packs and folds –while ensuring their chain of custody- and the transcript and investigate her handling of them so far,
- 2) after ascertaining the reliability of her recording of the March 1 hearing, cause it to be transcribed by a trustworthy and experienced reporter unrelated to, and immune to influence from, Reporter Dianetti and any of the parties and District or Bankruptcy Court officers in *DeLano*; and
- 3) since the investigation of the evidence of the bankruptcy fraud scheme exceeds your competence and resources, refer this matter for investigation to U.S. Attorney General Alberto Gonzales and the FBI in Washington, D.C., not in Rochester or Buffalo.

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

sincerely yours,

Dr. Richard Cordero

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

*1220 U.S. Courthouse, 100 State Street
Rochester, New York 14614
(585)613-4200
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Paul R. Warren
Clerk of Court

Michelle A. Pierce
Chief Deputy

Todd M. Stickle
Deputy Clerk in Charge

October 20, 2005

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

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

Dear Judge Larimer:

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

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

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

Very truly yours,

/s/

Paul R. Warren
Clerk of Court

Enclosure

cc: Honorable John C. Ninfo, II
Richard Cordero

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585)613-4000

Dr. Richard Cordero
Appellant and creditor

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

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

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

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

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

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

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

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

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

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

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

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

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

11. Exactly these facts and arguments apply, *mutatis mutando*, to Trustee George Reiber, the trustee in *DeLano*, 04-20280, WBNY. He too felt no need whatsoever to object to Dr. Cordero's motions of July 13, August 23, and September 20 requesting his removal as trustee from *DeLano*, and his investigation for failing to perform his duties, among others, under 11 U.S.C. §704(4) and (7). Did he know that Judge Larimer would not grant those motions and, if so, how did he come to know it?

12. Moreover, none of the other parties filed any answer to the September 20 motion although they had had it for over three weeks before the October 14 order was issued. Did they too know that Judge Larimer would not grant it and, if so, does their conduct in this matter constitute further evidence of non-coincidental, intentional, and coordinated acts in support of wrongful activity?

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

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

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

Dated: October 25, 2005
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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

I. DeLano Parties

Ms. Mary Dianetti
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Trustee George M. Reiber
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II. Pfuntner Parties (02-2230,WBNY)

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