Dr. Richard Cordero

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August 11, 2003

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Lodging a complaint under 28 U.S.C. §372(c)(1)

Dear Ms. MacKechnie,

I hereby respectfully submit to you a complaint under 28 U.S.C. §372(c)(1) concerning the Hon. John C. Ninfo, II, United States Bankruptcy Judge at the Bankruptcy Court for the Western District of New York. Judge Ninfo has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. This is manifest in his mismanagement of a case in which I am a defendant pro se, namely, In re Premier Van Lines, Inc., docket no. 02-2230. The facts speak for themselves, for although this case was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order, issued orally at a pre-trial conference held last January 10 at the instigation of an assistant U.S. trustee, by not requiring the plaintiff or his attorney as little as to choose, as required by his order, one of the six dates that, pursuant to the order, I proposed for carrying out his order that I travel to Rochester to conduct an inspection at the plaintiff's warehouse in Avon; and
7. failed to insure execution by the plaintiff and his attorney of its second and last discovery order issued orally at a hearing last April 23, while I was required to travel and did travel to Rochester and then to Avon on May 19 to conduct the inspection.

As a result of Judge Ninfo's inexcusable inaction, this case has made no progress since it was filed. Nor will it make any for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that I will have to travel to Rochester a day in October and another in November to attend a hearing with the other parties – all of whom are locals- where we will deal with the motions that I have filed -including an application that I made as far back as last December 26 and that at his instigation I resubmitted on June 7- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. Then, after the hearings in October and November, I will be required to travel to Rochester for further hearings to be held once a months for seven to eight months!

The confirmation that this case has gone nowhere since it was filed last September comes from Judge Ninfo himself. In his order of July 15 he states that when we meet in October for the

first "discrete hearing" –a designation that I have failed to find in the F.R.Bankuptcy P. or the F.R.Civ.P.- we will begin by examining the plaintiff's complaint, thereby acknowledging that we will not have inched beyond the first pleading by the time the case will be in its 13th month.

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October meeting. He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared the plaintiff any sanctions, even after I had complied with his orders to my detriment and requested those sanctions and even when Judge Ninfo himself requested that I write a separate motion for sanctions and submit it to him.

Nor has the Judge imposed any adverse consequences on a party defaulted by his own Clerk of Court or on the trustee that submitted false statements to him. Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly from me. By contrast, Judge Ninfo has let everybody know, particularly me, that he would impose dire sanctions on me if I failed to comply. Thus, at the April 23 hearing, when the plaintiff wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered me to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to me removed at my expense to any other warehouse in Ontario, that is, whether in another county or another country, it did not matter to him.

By now it may have appeared to you too that Judge Ninfo is not impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against me. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail my appeals from decisions that the Judge has taken for the protection of the local parties and to the detriment of my legal rights. There are too many of those acts and they are too precisely targeted on me alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity.

Hence, the even graver issue that needs to be addressed is whether Judge Ninfo's conduct has been prejudicial to the effective and expeditious administration of court business because it forms part of a pattern of intentional and coordinated conduct engaged in by both the Judge and other court officers to achieve an unlawful objective for their benefit and that of third parties and consistently to my detriment. The evidence that justifies this query is set forth in detail in the accompanying Statement of Facts, which is followed with a copy of Judge Ninfo's July 15 order. To expedite the determination of this complaint, I am providing in triplicate them, this letter, as well as an appendix with most items in the record, to which I refer frequently in the Statement.

I trust that you sense the serious implications of this matter and, pursuant to §(c)(2), will promptly transmit this complaint to the chief judge of this circuit, the Hon. John M. Walker, Jr. Meantime, I look forward to receiving your acknowledgment of receipt of this complaint and, thanking you in advance, remain,

yours sincerely,

Dr. Richard Cordero

APPENDIX: COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER UNDER 28 U.S.C. § 372(c)

INSTRUCTIONS:

(a) All questions on this form must be answered.

(b) A separate complaint form must be filled out for each judicial officer complained against.

(c) Submit the correct number of copies of this form and the statement of facts. For a complaint against:

a court of appeals judge -- original and 3 copies
a district court judge or magistrate judge -- original and 4 copies
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

(d) Service on the judicial officer will be made by the Clerk's office. (For further information See Rule 3(a)(1)).

(e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, United States Courthouse, 40 Foley Square, New York, New York 10007.

1. Complainant's name: Dr. Richard Cordero

Address: 59 Crescent Street
Brooklyn, NY 11208-1515

Daytime telephone (with area code): ( ) 718-827-9521

2. Judge or magistrate judge complained about:

Name: Hon. John C. Ninfo, II

Court: U.S. Bankruptcy Court for the Western District of New York

3. **Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?**

[X] Yes [ ] No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: Bankruptcy Court for the Western District of NY

Docket number: 02-2230

Docket numbers of any appeals to the Second Circuit:

03-5023

Did a lawyer represent you?

[ ] Yes [X] No

If "yes" give the name, address, and telephone number of your lawyer:

4. **Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?**

[ ] Yes [X] No

If "Yes," give the docket number of each complaint.

5. **You should attach a statement of facts on which your complaint is based, see rule 2(b), and**

EITHER

(1) check the box and sign the form. You do not need a notary public if you check this box.

[X] *I declare under penalty of perjury that:*

(i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

(2) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

Dr. Richard Cordero
(signature)

Executed on August 11, 2003
(date)

OR

(2) check the box below and sign this form in the presence of a notary public;

[ ] I swear (affirm) that--

(i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

Blank

Dr. Richard Cordero

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STATEMENT OF FACTS

in support of a complaint under
28 U.S.C. §372(c)(1)
submitted on
August 11, 2003,
to
The Clerk of Court
of the
Court of Appeals for the Second Circuit*

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

by
Dr. Richard Cordero

1. The Hon. John C. Ninfo, II, United States Bankruptcy Judge at the Bankruptcy Court for the Western District of New York. (hereinafter referred to as the court or this court), has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. Moreover, he and other court officers at both the U.S. Bankruptcy Court and the U.S. District Court for the same district have participated in a series of events of disregard of facts, rules, and law so

*Dr. Cordero's letter of August 11, 2003, to Clerk of Court Roseann B. MacKechnie forms an integral part of this complaint. [C:1 above]

consistently injurious to Dr. Richard Cordero as to form a pattern of non-coincidental, intentional, and coordinated wrongful activity from which a reasonable person can infer their bias and prejudice against Dr. Cordero. The latter is the only pro se defendant and non-local –he lives in New York City, hundreds of miles away from the court and the other parties in Rochester- in adversary proceeding In re Premier Van Lines, Inc., docket no. 02-2230.

2. Systematically the court has aligned itself with the interests of parties to Premier adverse to Dr. Cordero. Sua sponte it has become their advocate, whether they were absent from the court because in default, as in Debtor David Palmer's case, or they were in court and very much capable of defending their interests themselves, as in the cases of Trustee Kenneth Gordon, Plaintiff James Pfuntner, and his attorney, David MacKnight, Esq.

3. By taking no action against them, the court has mismanaged this adversary proceeding so that 11 months after its filing in September 2002, it has failed to move it along the procedural stages provided for by the Federal Rules of Bankruptcy Procedure (F.R.Bkr.P.) and the Federal Rules of Civil Procedure (F.R.Civ.P.). Far from having set a trial date, it has not even scheduled discovery, but instead has announced a series of monthly hearings that will stretch out for 9 to 10 months beginning with the "discrete hearing" set for next October. There is no legal justification for the court to have followed this course of inaction and

to devise such a plan for future inefficient activity leading nowhere except to causing further waste of time, effort, and money and inflicting tremendous amount of aggravation on Dr. Cordero, the party that has challenged the court on appeal. So what has motivated the court? Have it and other court officers proceeded in an intentional and coordinated way to inflict on Dr. Cordero the waste and aggravation that they already have?

I. Issues presented

a) Whether the court's conduct has been prejudicial to the effective and expeditious administration of court business; and

b) Whether its conduct forms part of a pattern of intentional and coordinated conduct engaged in by both the Judge and other court officers to achieve an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

4. The evidence that justifies this query is set forth in detail below. The facts are stated chronologically in connection with each of three parties followed by the presentation of the latest statements of the court. Its July 15 order is found at page 55 below. Also, this Statement makes reference to its documentary evidence in the form of items on the record. To facilitate their consultation so as to expedite the review and determination of this complaint, those items and most of the record are collected in a separate appendix. Reference here to an item there bears the form (A-#), where # is the page number. The appendix contains a

comprehensive table of contents. Its Part A is organized chronologically and its Part B chronologically around certain parties, as is this Statement.

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II. Statement of facts illustrating a pattern of non-coincidental, intentional, and coordinated acts of the court and other court officers from which a reasonable person can infer their bias and prejudice against Dr. Cordero

A. The court has tolerated Trustee Gordon's submission to it of false statements as well as defamatory statements about Dr. Cordero

5. Dr. Cordero, who resides in New York City, entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993. From then on he paid storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about his property. Mr. Palmer and his attorney, Raymond Stilwell, Esq., assured him that it was safe and in his warehouse at Jefferson-Henrietta, in Rochester (A-18). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.

6. In search of his property in storage with Premier, Dr. Cordero was referred to Kenneth Gordon, Esq., the trustee appointed for its liquidation. The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract

was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him (A-16, 17).

7. Eventually Dr. Cordero found out from third parties (A-48, 49;109, ftnts-5-8; 352) that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but in a letter of September 23, 2002, improper in its tone and unjustified in its content, he also enjoined Dr. Cordero not to contact him or his office anymore (A-1).

8. Dr. Cordero applied to this court, to which the Premier case had been assigned, for a review of the Trustee's performance and fitness to serve (A-7).

9. In an attempt to dissuade the court from undertaking that review, Trustee Gordon submitted to it false statements as well as statements disparaging of the character and competence of Dr. Cordero. The latter brought this matter to the court's attention (A-32, 41). However, the court did not even try to ascertain whether the Trustee had made such false representations in violation of Rule 9011(b)(3) F.R.Bkr.P.. Instead, it satisfied itself with just passing Dr. Cordero's application to the Trustee's supervisor, an assistant U.S. Trustee (A-29), who was not even

requested and who had no obligation to report back to the court.

10. By so doing, the court failed in its duty to ensure respect for the conduct of business before it by an officer of the court and a federal appointee, such as Trustee Gordon, and to maintain the integrity and fairness of proceedings for the protection of injured parties, such as Dr. Cordero. The court's handling of Dr. Cordero's application to review Trustee Gordon's performance, even before they had become parties to this adversary proceeding, would turn out to be its first of a long series of manifestations of bias and prejudice in favor of Trustee Gordon and other parties and against Dr. Cordero.

1. The court dismissed Dr. Cordero's counterclaims against the Trustee before any discovery, which would have shown how it tolerated the Trustee's negligent and reckless liquidation of the Debtor for a year, and disregarded the legal standards applicable to a 12(b)(6) motion

11. In October 2002, Mr. Pfuntner served the papers for this adversary proceeding on several defendants, including Trustee Gordon and Dr. Cordero.

12. Dr. Cordero, appearing pro se, cross-claimed against the Trustee (A-70, 83, 88), who moved to dismiss (A-135). Before discovery had even begun or any initial disclosure had been provided by the other parties –only Dr. Cordero had disclosed numerous documents with his pleadings (A-11, 45, 62, 90, 123, 414)- and before any conference of parties or pre-trial conference under Rules 26(f) and 16

F.R.Civ.P., respectively, had taken place, the court summarily dismissed the cross-claims at the hearing on December 18, 2002. To do so, it disregarded the genuine issues of material fact at stake as well as the other standards applicable to motions under Rule 12(b)(6) F.R.Civ.P., both of which Dr. Cordero had brought to its attention (A-143).

2. The court excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", thereby condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero

13. At the December 18 hearing, the court excused the Trustee in open court when it stated that:

> I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court…it's all part of the Trustee just trying to resolve these issues. (Transcript, pp.10-11; A-274-275)

14. Thereby the court approved of the use of defamation and falsehood by an officer of the court trying to avoid review of his performance. By thus sparing Trustee Gordon's reputation as trustee at the expense of Dr. Cordero's, the court justified any reasonable observer in questioning its impartiality. Moreover, by blatantly showing its lack of ethical qualms about such conduct, the court also laid the foundation for the question whether it had likewise approved the Trustee's

negligent and reckless liquidation of Premier, which would have been exposed by allowing discovery. In the same vein, the court's approval of falsehood as a means 'to resolve issues' warrants the question of what means it would allow court officers to use to resolve matters at issue, such as its own reputation.

3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed and, surprisingly finding that it had been untimely filed, denied it

15. The order dismissing Dr. Cordero's crossclaims was entered on December 30, 2002, and mailed from Rochester (A-151). Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003 (A-153). It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved in district court to dismiss it as untimely filed; (A-156).

16. Dr. Cordero timely mailed a motion to extend time to file the notice under Rule 8002(c)(2) F.R.Bkr.P. Although Trustee Gordon himself acknowledged on page 2 of his brief in apposition that the motion had been timely filed on January 29 (A-235), the court surprisingly found that it had been untimely filed on January 30!

17. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly have made a mistake on

such a critical matter. Nevertheless, the court disregarded the factual discrepancy without even so much as wondering how it could have come about, let alone ordering an investigation into whether somebody and, if so, who, had changed the filing date and on whose order. The foundation for this query is provided by evidence of how court officers mishandled docket entries and the record for Dr. Cordero's cases (paras. 31 and 97 below). Instead, the court rushed to deny the motion to extend, which could have led to the review of its erroneous and wrongful dismissal of Dr. Cordero's cross-claims.

4. The court reporter tried to avoid submitting the transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it

18. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript (A-261).

19. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!," exclaimed Dr. Cordero. She told another

implausible excuse after which she promised to have everything in two days ‘and you want it from the moment you came in on the phone.’ What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283, 286).

20. There is further evidence supporting the implication of Reporter Dianetti’s comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant the court engages in exchanges with parties in Dr. Cordero’s absence. Thus, on many occasions the court has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms of civility and of its duty to afford all parties the same opportunity to be heard and hear it.

21. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking its gavel, but simply by just pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, the court brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left. What is not only likely but in fact certain is that by so doing, the court, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the court have given by such conduct to any

reasonable person at the opposite end of the phone line cause for offense and the appearance of partiality and unfairness?

22. 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, the date on her certificate. Indeed, it was filed two weeks later on March 26 (A-453, entry 71), a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon (A-246; 452, entries 60, 70). Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28.

23. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) on "promptly" delivering the transcript "to the party or judge" –was she even the one who sent it to the party?- or Rule 8007(a) F.R.Bkr.P. on asking for an extension.

24. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in use. But no imagination is needed, only an objective assessment of the facts and the applicable legal provisions, to ask whether the Reporter was told to

disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript to a higher-up court officer to be vetted before mailing a final version to Dr. Cordero. When a court officer or officers so handle a transcript, which is a critical paper for a party to ask on appeal for review of a court's decision, an objective observer can reasonably question in what other wrongful conduct that denies a party's right to fair and impartial proceedings they would engage to protect themselves.

B. The bankruptcy and the district courts denied Dr. Cordero's application for default judgment although for a sum certain by disregarding the plain language of applicable legal provisions as well as critical facts

25. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees for years. Mr. Palmer, as president of the Debtor (A-433, entries 13, 12), was already under the bankruptcy court's jurisdiction. Nonetheless, he failed to answer Dr. Cordero's summons and complaint (A-70). Hence, Dr. Cordero timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain (A-290, 294) on December 26, 2002. But nothing happened for over a month during which Dr. Cordero had no oral or written response from the court to his application.

26. Dr. Cordero called to find out. He was informed by Case Administrator Karen

Tacy that the court had withheld his application until the inspection of his property in storage because it was premature to speak of damages. Dr. Cordero indicated that he was not asking for damages, but rather for default judgment as a result of Mr. Palmer's failure to appear. Ms. Tacy said that Dr. Cordero could write to the court if he wanted.

27. Dr. Cordero wrote to the court on January 30, 2003, to request that the court either grant his application or explain its denial (A-302).

28. Only on February 4, did the court take action, or Clerk of Court Paul Warren, or Clerk Tacy, for that matter. In addition, when Dr. Cordero received a copy of the papers file by the court, what he read was astonishing!

1. The Bankruptcy Clerk of Court and the Case Administrator disregarded their obligations in the handling of the default application

29. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added) upon receiving Dr. Cordero's application of December 26, 2002 (A-290). Yet, it was only on February 4, 41 days later and only at Dr. Cordero's instigation (A-303), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay. He had to certify the fact of

default to the court so that the latter could take further action on the application. It was certainly not for the Clerk to wait until the court took action.

30. It is not by coincidence that Clerk Warren entered default on February 4, the date on the bankruptcy court's Recommendation to the district court (A-306). Thereby the Recommendation appeared to have been made as soon as default had been entered. It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.

31. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (A-450 et seq., docket entries 51, 46, 49, 50, 52, 53)? Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer. Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it?

32. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

2. The court disregarded the available evidence in order to prejudge a happy ending to Dr. Cordero's property search

33. In its Recommendation to the district court, the bankruptcy court characterized the default judgment application as premature because it boldly forecast that:

> 6. …within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993. (A-306)

34. The court wrote that on February 4, but the inspection did not take place until more than 3 three months later on May 19; it was not even possible to open all containers; the failure to enable the opening of another container led to the assumption that other property had been lost; and the single container that was opened showed that property had been damaged; (paras. 62 below et seq.).

35. What a totally wrong forecast! Why would the court cast aside all judicial restraint to make it? Because it was in fact a biased prejudgment. It sprang from the court's need to find a pretext to deny the application. Such denial was pushed through by the court disregarding the provisions of Rule 55, which squarely supported the application since it was for judgment for Mr. Palmer's default, not for damage to Dr. Cordero's property; Mr. Palmer had been found in default by Clerk of Court Warren (A-303); and it requested a sum certain. .

36. What is more, for its biased prejudgment, the court not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, the storage containers with Dr. Cordero's property were said to have been left behind by Mr. Palmer in the warehouse of Mr. Pfuntner. The latter had written in his complaint that property had been removed from his warehouse premises without his authorization and at night (A-24). Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged.

37. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From a court that forms anticipatory judgments, a reasonable person would not expect to receive fair and impartial treatment, much less a fair trial because at trial the prejudiced court could abuse its authority to show that its prejudgments were right.

3. The court prejudged issues of liability, before any discovery or discussion of the applicable legal standards, to further protect Mr. Palmer at the expense of Dr. Cordero

38. In the same vein, the court cast doubt on the recoverability of "moving, storage, and insurance fees…especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the

Cordero Property"; (A-307). On what evidence did the court make up its mind on the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero? The court has never requested disclosure of, not to mention scheduled discovery or held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry.

39. Such a leaning of the mind before considering pertinent evidence is called bias. From such a biased court, a reasonable person would not expect impartiality toward a litigant such as Dr. Cordero, who as pro se may be deemed the weakest among the parties; as the only non-local, and that for hundreds of miles, may be considered expendable; and to top it off has challenged the court on appeal.

4. The court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application, but that is a pretense factually incorrect and utterly implausible

40. The court also protected itself by excusing any delay in making its recommendation to the district court. So it stated in its Recommendation that:

> 10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers… (A-307)

41. However, that suggestion was never made. Moreover, Dr. Cordero would have had absolutely no motive to accept it if ever made: Under Rule 55 an application

for default judgment for a sum certain against a defaulted defendant is not dependent on proving damages. It is based on the defendant's failure to heed the stark warning in the summons (A-21) that if he fails to respond, he will be deemed to consent to entry of judgment against him for the relief demanded. Why would a reasonable person, such as Dr. Cordero, ever put at risk his acquired right to default judgment in exchange for aleatory damages that could not legally be higher than the sum certain of the judgment applied for? What fairness would a disinterested observer fully informed of the facts underlying this case expect from a court that to excuse its errors puts out such kind of untenable pretense?

C. The district court repeatedly disregarded the outcome-determinative fact that the application was for a sum certain

42. The district court, the Hon. David G. Larimer presiding, accepted the bankruptcy court's Recommendation and in its order of March 11, 2003, denied entry of default judgment. Its stated ground therefor was that:

> [Dr. Cordero] must still establish his entitlement to damages since the matter **does not involve a sum certain** [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate…the Bankruptcy Court is the proper forum for conducting [that] inquest. (emphasis added; A-339)

43. What an astonishing statement!, for in order to make it, the district court had to disregard five papers stating that the application for default judgment did involve a sum certain:

1) Dr. Cordero's Affidavit of Amount Due; (A-294);
2) the Order to Transmit Record and Recommendation; (A-295);
3) the Attachment to the Recommendation; (A-305);
4) Dr. Cordero's March 2 motion to enter default judgment; (A-314, 327) and
5) Dr. Cordero's March 19 motion for rehearing re implied denial of the earlier motion (A-342, 344-para.6).

44. The district court made it easy for itself to disregard Dr. Cordero's statement of sum certain, for it utterly disregarded his two motions that argued that point, among others.

45. After the district court denied without discussion and, thus, by implication, the first motion of March 2 (A-314), Dr. Cordero moved that court for a rehearing (A-342) so that it would correct its outcome-determinative error since the matter did involve a sum certain. However, the district court did not discuss that point or any other at all. Thereby it failed to make any effort to be seen if only undoing its previous injustice, or at least to show a sense of institutional obligation of reciprocity toward the requester of justice, a quid pro quo for his good faith effort and investment of countless hours researching, writing, and revising his motions. It curtly denied the motion "in all respects" period! (A-350).

46. Also with no discussion, the district court disregarded Dr. Cordero's contention that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the

plain language of Rule 55.

47. By making such a critical mistake of fact and choosing to proceed so expediently, the district court gave rise to the reasonable inference that it did not even read Dr. Cordero's motions, thereby denying him the opportunity to be heard, particularly since there was no oral argument. Instead, it satisfied itself with just one party's statements, namely the bankruptcy court's Recommendation. If so, it ruled on the basis of what amounted to the ex parte approach of the bankruptcy court located downstairs in the same building. It merely rubberstamped the bankruptcy court's conclusion…after mistranscribing its content, a quick job that did justice to nobody. Would such conduct give to an objective observer the appearance of unfairness toward Dr. Cordero and partiality in favor of the colleague court?

1. The district court disregarded Rule 55 to impose on Dr. Cordero the obligation to prove damages at an "inquest" and dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct it despite its prejudgment and bias

48. The equities of this case show that Mr. Palmer had such dirty hands that he did not even dare come to court to answer Dr. Cordero's complaint. Yet, both courts spared him the consequences of his default and instead weighed down Dr. Cordero's shoulders with the contrary-to-law burden of proving damages at an inquest. The latter necessarily would have to be conducted by the bankruptcy

court playing the roles of the missing defendant, its expert witness, the jury, and the judge. For a court to conduct an inquest under such circumstances would offend our adversarial system of justice, and all the more so because this court has demonstrated to have already prejudged the issues at stake and its outcome. Would an objective observer reasonably expect the bankruptcy court to conduct a fair and impartial inquest or the district court to review with any degree of care its findings and conclusions?

2. The bankruptcy court asked Dr. Cordero to resubmit the default judgment application only to deny the same application again by alleging that Dr. Cordero had not proved how he had arrived at the amount claimed or that he had served Mr. Palmer properly, issues that it knew about for six or more months

49. Pursuant to court order, Dr. Cordero flew to Rochester on May 19 and inspected the storage containers said to hold his stored property at Mr. Pfuntner's warehouse in Avon. At a hearing on May 21, he reported on the damage to and loss of property of his. Thereupon, the court sua sponte asked Dr. Cordero to resubmit his application for default judgment against Mr. Palmer. Dr. Cordero resubmitted the same application and noticed it for June 25 (A-472, 483).

50. At that hearing, the court surprised Dr. Cordero and how! The court alleged that it could not grant the application because Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had

claimed back on December 26, 2002! (A-294) So why did the court ask Dr. Cordero to resubmit the application if it was not prepared to grant it anyway? But this was not all.

51. At a hearing the following week, on July 2, Dr. Cordero brought up again his application for default judgment. The court not only repeated that Dr. Cordero would have to prove damages, but also stated that he had to prove that he had properly served Mr. Palmer because it was not convinced that service on the latter had been proper. What an astonishing requirement and how arbitrary!

52. Dr. Cordero served Mr. Palmer's attorney of record, David Stilwell, Esq.; the court has done likewise (A-449, entries 25, 29); Dr. Cordero certified service on him to Clerk of Court Warren (A-99) and the service was entered on "EOD 11/ 21/02" (A-448, between entries 13 and 14); Dr. Cordero served the application on both Mr. Palmer and Mr. Stilwell on December 26 (A-296). What is more, Clerk Warren defaulted Mr. Palmer on February 4, 2003, (A-479), thus certifying that Mr. Palmer was served but failed to respond. Hence, with no foundation whatsoever, the court cast doubt on the default entered by its own Clerk of Court.

53. Likewise, with no justification it disregarded Rule 60(b), which provides an avenue for a defaulted party to contest a default judgment. Instead of recommending the entry of such judgment under Rule 55 and allowing Mr. Palmer to invoke 60(b) to challenge service if he dare enter an appearance in

court, the court volunteered as Mr. Palmer's advocate in absentia. In so doing, the court betrayed any pretense of impartiality. Would a reasonable person consider that for the court to protect precisely the clearly undeserving party, the one with dirty hands, it had to be motivated by bias and prejudice against Dr. Cordero or could it have been guided by some other interest?

3. The court intentionally misled Dr. Cordero into thinking that it had in good faith asked him to resubmit with the intent to grant the application

54. If the court entertained any doubts about the validity of the claim or proper service although it had had the opportunity to examine those issues for six and eight months, respectively, it lacked any justification for asking Dr. Cordero to resubmit the application? If its doubts had not been dispelled or allayed, why take the initiative to ask Dr. Cordero to resubmit, particularly without disclosing any remaining doubts and alerting him to the need to dispel them? By so doing, it must have known that it would raise in him reasonable expectations that it would grant the application. It could also foresee the reasonable consequences of springing on him untenable grounds for denial: It would inevitably disappoint those expectations and do so all the more acutely for having put him through unnecessary work. It follows that the court intentionally inflicted emotional distress on Dr. Cordero by taking him for a fool! Would a reasonable person trust this court at all, let alone trust it to be fair and impartial in subsequent judicial proceedings?

D. The bankruptcy court has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations

1. After the court issued the first order and Dr. Cordero complied with it to his detriment, it allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months

55. On December 10, 2002, Assistant U.S Trustee Kathleen Dunivin Schmitt requested a status conference for January 8 (A-358). At the only meeting ever in this adversary proceeding, a pre-trial conference held on January 10, the court orally issued only one onerous order: Dr. Cordero must travel from NY City to Rochester and to Avon to inspect the storage containers that bear labels with his name at Plaintiff Pfuntner's warehouse. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six stretching over a three week period by letter of January 29 to the court and the parties (A-365, 368). Nonetheless, the court neither answered it nor informed Dr. Cordero of the most convenient date.

56. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, Mr. MacKnight, who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed. But Dr. Cordero had to keep those six dates open

on his calendar for no good at all and to his detriment.

2. When Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex part the court, which changed the terms of the first order

57. However, the time came when Mr. Pfuntner wanted to get the inspection over with to clear his warehouse, sell it, and be in Florida worry-free to carry on his business there. Out of the blue he called Dr. Cordero on March 25 and proposed three consecutive dates in one week. When Dr. Cordero asked whether he had taken the necessary preparatory measures discussed in his January 29 letter, Mr. Pfuntner claimed not even to have seen the letter.

58. Thereupon, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P. Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually. (A-372)

3. The court required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester

59. Dr. Cordero raised a motion on April 3 to ascertain this change of the terms of the court's first order and insure that the necessary transportation and inspection measures were taken beforehand; (A-378). The court received the motion on April 7, and on that very same day, (A-454, entries 75 and 76) thus, without even

waiting for a responsive brief from Mr. MacKnight, whose position it must already have known, the court wrote to Dr. Cordero denying his request to appear by phone at the hearing –as Dr. Cordero had on four previous occasions- and requiring that he travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester; (A-386). That this was an illogical pretext is obvious and that it was arbitrary is shown by the fact that thereafter the court allowed Dr. Cordero to appear four more times by phone. Unable to travel to Rochester shortly after that surprising requirement, Dr. Cordero had to withdraw his motion; (A-394).

4. The court showed no concern for the disingenuous motion that Mr. MacKnight submitted to it and that Dr. Cordero complained about in detail, whereby the court failed to safeguard the integrity of judicial proceedings

60. Then Mr. MacKnight raised his own motion on April 10; (A-389). Therein he was so disingenuous that, for example, he pretended that Mr. Pfuntner had only sued in interpleader and should be declared not liable to any party, while concealing the fact that Trustee Gordon and the Bank had stated in writing, even before the case had started, that they laid no claim to any stored property (A-63, 66,) . So there were no conflicting claims and no basis for interpleader at all. Mr. MacKnight also pretended that Mr. Pfuntner had abstained from bringing that motion before "as an accommodation to the parties", while holding back that

it was Mr. Pfuntner, as plaintiff, who had sued them to begin with even without knowing whether they had any property in his warehouse, but simply because their names were on labels affixed to storage containers (A-364)…some 'accommodation'! Mr. MacKnight also withheld the fact that now it suited Mr. Pfuntner to drop the case and skip to sunny Florida, so that he was in reality maneuvering to strip the parties of their claims against him through the expedient of a summary judgment while leaving them holding the bag of thousands of dollars in legal fees and shouldering the burden of an enormous waste of time, effort, and tremendous aggravation. Dr. Cordero analyzed in detail for the court Mr. MacKnight's mendacity and lack of candor, to no avail; (A-400; cf. 379 et seq.).

61. Although the court has an obligation under Rule 56(g) to sanction a party proceeding in bad faith, it disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would a reasonable person expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

5. The court issued at Mr. Pfuntner's instigation its second order imposing on Dr. Cordero an onerous obligation that it never imposed on any of the other parties and then allowed Mr. Pfuntner and Mr. MacKnight to flagrantly disobey it as they did the first one

62. Nor did the court impose on Mr. Pfuntner or Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court ordered Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense from Mr. Pfuntner's warehouse to any other anywhere in Ontario, that is, whether in another county or another country.

63. Pursuant to the second court order, Dr. Cordero went all the way to Rochester and on to Avon on May 19 to inspect at Mr. Pfunter's warehouse the containers said to hold his property. However, not only did both Mr. Pfunter and his warehouse manager fail even to attend, but they had also failed to take any of the necessary preparatory measures discussed since January 10 and which Mr. MacKnight had assured the court at the April 23 hearing had been or would be taken care of before the inspection.

64. At a hearing on May 21, Dr. Cordero reported to the court on Mr. Pfuntner's and Mr. MacKnight's failures concerning the inspection and on the damage to and loss of property of his. Once more the court did not impose any sanctions on Mr.

Pfuntner or Mr. MacKnight for their disobedience of the second discovery order and merely preserved the status quo.

6. The court asked Dr. Cordero to submit a motion for sanctions and compensation only to deny granting it even without Mr. Pfuntner and Mr. MacKnight responding or otherwise objecting to it

65. But the court was not going to make it nearly that easy for Dr. Cordero. At that May 21 hearing Dr. Cordero asked for sanctions against and compensation from Mr. Pfuntner and Mr. MacKnight for having violated to his detriment both discovery orders. The court asked that he submit a written motion. Dr. Cordero noted that he had already done so. The court said that he should do so in a separate motion and that in asking him to do so the court was trying to help him.

66. Dr. Cordero wrote a motion on June 6 for sanctions and compensation under Rules 37 and 34 F.R.Civ.P., made applicable in adversary proceedings by Rules 7037 and 7034 F.R.Bkr.P., respectively, to be imposed on Mr. Pfuntner and Mr. MacKnight. It was not only a legal document that set out in detail the facts and the applicable legal standards, but also a professionally prepared statement of account with exhibits to demonstrate the massive effort and time that Dr. Cordero had to invest to comply with the two discovery orders and deal with the non-compliance of the other parties. To prove compensable work and its value, it contained an itemized list more than two pages long by way of a bill as well as a

statement of rates and what is more, it provided more than 125 pages of documents to support the bill.

67. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions were warranted too: Neither Mr. Pfuntner, Mr. MacKnight, nor the warehouse manager attended the inspection and none of the necessary preparatory measures were taken. Worse still, they engaged in a series of bad faith maneuvers to cause Dr. Cordero not to attend the inspection, in which case they would ask the court to find him to have disobeyed the order and to order his property removed at his expense from Mr. Pfuntner's warehouse; and if Dr. Cordero nevertheless did attend, to make him responsible for the failure of the inspection, for the fact is that Mr. Pfuntner never intended for the inspection to take place. It was all a sham!

68. Yet, Mr. Pfuntner and Mr. MacKnight had nothing to worry about. So much so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and compensation. Mr. MacKnight did not even object to it at its hearing on June 25. The court did it for them at the outset, volunteering to advocate their interests just as it had advocated Mr. Palmer's to deny Dr. Cordero's application for default judgment.

7. The court's trivial grounds for denying the motion showed that it did not in good faith ask Dr. Cordero to submit it, for it never intended to grant it

69. The court refused to grant the motion. It alleged that Dr. Cordero had not presented the tickets for transportation –although they amount to less than 1% of the total- and that he had not proved that he could use Mr. MacKnight's hourly rate –even though that is the legally accepted lodestar method for calculating attorney's fees-. But these were just thinly veiled pretexts. The justification for that statement is that the court did not even impose any of the non-monetary sanctions. It simply was determined to protect Mr. Pfuntner and Mr. MacKnight from any form of punishment for having violated two of its own orders, its obligation to safeguard the integrity of the judicial process notwithstanding.

70. The court was equally determined to expose Dr. Cordero to any form of grief available. Thus, it denied the motion without giving any consideration to where the equities lay between complying and non-complying parties with respect to its orders; or to applying a balancing test to the moral imperative of compensating the complying party and the need to identify a just measuring rod for the protection of the non-complying parties required to compensate; or to the notion of substantial compliance when proving a bill for compensation; let alone the applicable legal standards for imposing sanctions. Even a court's intent can be inferred from its acts: Once more, this court had simply raised Dr. Cordero's

expectations when requiring him to submit this motion because 'I'm trying to help you here', while it only intended to dash them after putting him through a tremendous amount of extra work. The court intentionally inflicted emotional distress on Dr. Cordero since it again took him for a fool! Is this not the way for a court to impress upon a reasonable person the appearance of so intense prejudice and gross unfairness as to amount to injurious spite?

E. The court has decided after 11 months of having failed to comply with even the basic case management requirements, that starting on the 13th month it will build up a record over the next nine to ten months during which it will maximize the transactional cost for Dr. Cordero, who at the end of it all will lose anyway

71. The June 25 hearing was noticed by Dr. Cordero to consider his motion for sanctions and compensation as well as his default judgment application. However, the court had its own agenda and did not allow Dr. Cordero to discuss them first. Instead, it came up with the allegation that it could hardly understand Dr. Cordero on speakerphone, that the court reporter also had problems understanding him, and that he would have to come to Rochester to attend hearings in person; that the piecemeal approach and series of motions were not getting the case anywhere and that it had to set a day in October and another in November for all the parties to meet and discuss all claims and motions, and then it would meet with the parties once a month for 7 or 8 months until this matter could be solved.

72. Dr. Cordero protested that such a way of handling this case was not speedy and certainly not inexpensive for him, the only non-local party, who would have to travel every month from as far as New York City, so that it was contrary to Rules 1 F.R.Civ.P. and 1001 F.R.Bkr.P.

73. The court replied that Dr. Cordero had chosen to file cross-claims and now he had to handle this matter that way; that he could have chosen to sue in state court, but instead had sued there, and that all Mr. Pfuntner wanted was to decide who was the owner of the property; that instead Dr. Cordero had claimed $14,000, but the ensuing cost to the court and all the parties could not be justified; that the series of meetings was necessary to start building a record for appeal so that eventually this matter could go to Judge Larimer.

74. The court's statements are mind-boggling by their blatant bias and prejudice as well as disregard of the facts and the law. To begin with, it is just inexcusable that the court, which has been doing this work for over 30 years (A-276), has mismanaged this case for eleven months since September 2002, so that it has:

    1. failed to require even initial disclosure under Rule 26(a);
    2. failed to order the parties to hold a Rule 26(f) conference;
    3. failed to demand a Rule 26(f) report;
    4. failed to hold a Rule 16(b) scheduling conference;
    5. failed to issue a Rule 16(b) scheduling order;

6. failed to demand compliance with its first discovery order by not requiring Mr. MacKnight as little as to choose one of Dr. Cordero's six proposed dates for the Rochester trip and inspection;
7. failed to insure execution by Mr. Pfuntner and Mr. MacKnight of its second and last discovery order.

75. It is only now that the court wants to 'start building a record'…what a damning admission that it has not built anything for almost a year! However, it wants to build it at Dr. Cordero's expense by requiring him to travel monthly to Rochester for an unjustifiably long period of seven to eight months after the initial hearings next October and November. This is not so much an admission of incompetence as it is an attempt to further rattle Dr. Cordero and maximize the transactional cost to him in terms of money, time, and effort, just as the court put Dr. Cordero through the extra work of resubmitting the default judgment application (paras. 49 above et seq.) and writing a separate sanctions and compensation motion (paras. 65 above et seq.) only to deny both of them on already known or newly concocted grounds.

1. The court will in fact begin in October, not with the trial, but with its series of hearings, or rather "discrete hearings", whatever those are

76. At the June 25 hearing to the court proposed a slate of dates for the first hearings in October and November and asked the parties to state their choice at a hearing the following week.

77. At the July 2 hearing, Dr. Cordero again objected to the dragged-out series of hearings. The court said that the dates were for choosing the start of trial. Nevertheless, Dr. Cordero withheld his choice in protest.

78. But the court has just issued an order dated July 15 (page 55 below) where there is no longer any mention of a trial date. The dates in October and November are for something that the court designates as "discrete hearings". Dr. Cordero has been unable so far to find in either the F.R.Bkr.P. or the F.R.Civ.P. any provision for "discrete hearings", much less an explanation of how they differ from a plain 'hearing'. Therefore, he has no idea of how to prepare for a "discrete hearing".

79. Anyway the point is this: There is no trial, just the series of hearings announced by the court at the June 25 hearing, which will be dragged out for seven to eight months after those in October and November. There is every reason to believe that the court will in fact drag out this series that long, for it stated in the order that at the "discrete hearings" it will begin with Plaintiff Pfuntner's complaint. Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case past the opening pleading. Given the totality of circumstances relating to the way the court has treated Dr. Cordero, would an objective observer reasonably fear that by beginning at that elemental stage of the case, the court will certainly have enough time to teach Dr. Cordero a few lessons of what it entails for a non-local pro se to come into its court and question the

way it does business with Trustee Gordon or the other locals?

2. The court is so determined to make Dr. Cordero lose that at a hearing it stated that it will require him to prove beyond a reasonable doubt the evidence in support of his motions

80. At the July 2 hearing Dr. Cordero protested the court's denial of his motion for sanctions and compensation and his default judgment application. The court said that if he wanted, he could present his evidence for his motions in October. However, it warned him that he would have to present his evidence properly, that it was not enough to have evidence, but that it also had to be properly presented to meet the burden of proof beyond a reasonable doubt, and that on television sometimes the prosecutor has the evidence but he does not meet the burden of reasonable doubt and he ends losing his case, and that likewise at trial Dr. Cordero would have to be prepared to meet that burden of proof.

81. What an astonishing statement! It was intended to shock Dr. Cordero and it did shock him with the full impact of its warning: It did not matter if he persisted in pursuing his motions, the court would hold the bar so high that the he would be found to have failed to clear it. It was not just a warning; it was the announcement of the court's decision at the end of trial, the one still sine die!

82. But the shock was even greater when Dr. Cordero, a pro se litigant, realized that he could not be required to play the role of a prosecutor, that this is an adversary

proceeding and as such a civil matter, not a criminal case. Upon further research and analysis, Dr. Cordero became aware of the fact that to prove something beyond a reasonable doubt is the highest of three standards of proof, and that there are two lower ones applied to civil matters, namely proof by a preponderance of the evidence and the one requiring clear and convincing evidence. Moreover, there is no compelling reason why Dr. Cordero should not be allowed to prove his claims against the other parties by a preponderance of the evidence, the lowest standard. The court's warning was just intended to further rattle Dr. Cordero and intentionally inflict on him even more emotional distress by frustrating him with the awareness of the futility of his effort. There is further evidence supporting this statement.

3. The court latched on to Mr. MacKnight's allegation that he might not have understood Dr. Cordero and that it might be due to his appearances by phone so as to justify its denial of further phone appearances that it nevertheless continues to allow in other cases

83. It was Mr. MacKnight who in a paper dated June 20 alleged that:

> The undersigned has been unable to fully understand all Cordero's presentations when he appears by telephone means, though the undersigned believes though is by no means certain that he has understood the substance of Cordero's arguments. [sic] (A-489)

84. From this passage it becomes apparent that the source of Mr. MacKnight's inability to understand does not reside in Dr. Cordero, regardless of how he

appears in court. Nonetheless, the court rallied to Mr. MacKnight's side and picked up his objection to make it its own. Requiring Dr. Cordero to appear in person in court will run up his expenses excessively and wreak havoc with his calendar, for the court will require him to be in court at 9:30 a.m. so that he will have to leave NY City on Tuesday and stay at a hotel in order to be in court on time the next morning…and maybe until the following day! (page 60 below)

85. Indeed, the court's objective at the end of this dragged-out process is not to achieve a just and equitable solution to the controversy among the parties. Rather, it already knows that the record will be that of a case so unsatisfactorily decided that it will be appealed; it even knows that the appeal will land in Judge Larimer's hands. Could an objective observer who knew how receptive Judge Larimer was to the court's recommendation to deny Dr. Cordero's default judgment application (paras. 42 above et seq.) reasonably infer from the court's comment that the court was letting Dr. Cordero know that he could be as dissatisfied with its rulings and object as much as he liked, an appeal would again get him nowhere?; and thus, that Dr. Cordero is doomed to lose, they will make sure of it?

4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights

86. The court blames Dr. Cordero for having to travel now to Rochester monthly since he chose to sue in federal court. This statement flies in the face of the facts. To begin with, Mr. Palmer had the bankruptcy and liquidation of his company, Premier, dealt with in federal court under federal law. Then Mr. Pfuntner brought his adversary proceeding in federal court under federal law. He sued not only Dr. Cordero, but also Trustee Gordon, a federal appointee, and other parties; (A-21).

87. Contrary to the court's misstatement, Mr. Pfuntner did not only want to determine who owned what in his warehouse. He also sued for administrative and storage fees, and liens. Mr. MacKnight demanded in the Cover Sheet $20,000 and asked in the complaint for indemnification "together with the reason [sic] attorneys fees [sic] and other expense for bringing this proceeding"; (A-27).

88. What is more, no two parties were adverse claimants to the same property in Mr. Pfuntner's warehouse. Far from it, Trustee Gordon and the Bank have stated that they either ask that Dr. Cordero "have access to and repossession of [his] assets" or 'have no objection to his obtaining his belongings' (A-1, 69). Thus, Mr. Pfuntner's claim in interpleader is bogus. All Mr. Pfuntner wanted was to

recoup somehow the lease fees that Mr. Palmer owes him. Hence, he sued everybody around, even the Hockey Club, which stated not to have any property in the warehouse at all, but whose name Mr. Pfuntner found on a label (A-364).

89. If Dr. Cordero had filed his counter-, cross-, and third-party claims in state court, he would still have had to travel to Rochester, so what difference does it make whether he has to travel to Rochester to attend proceedings in a state court in Rochester or in a federal court in Rochester? If Dr. Cordero had filed his claims in state court, whether in New York City or in Rochester, Mr. Pfuntner and the other parties could have removed them to federal court under 28 U.S.C. §1452(a) if only for reasons of judicial economy, assuming that the state court had agreed to exercise jurisdiction at all given that property of the Premier estate was involved, e.g. the storage containers and vehicles, over which the federal court has exclusive jurisdiction under 28 U.S.C. §1334(e).

5. The court already discounted one of Dr. Cordero's claim against one party and ignores his other claims against the other parties

90. The court asserted that Dr. Cordero sued for $14, 000. This amount is only one item of Dr. Cordero's claim against only one party, namely, Mr. Palmer. The total amount of that claim appears in Dr. Cordero's application for default judgment against that party, to wit, $24,032.08 (A-294). The reason for the court asserting that the claim is only $14,000 is that in its Recommendation of February 4, 2003,

for the district court to deny the application, the court cast doubt on the recoverability of "moving, storage, and insurance fees" (para. 38 above; A-307), never mind that to do so it had to indulge in a prejudgment before having the benefit of disclosure, discovery, or a defendant given that Mr. Palmer has not showed up to challenge either the claim or the application.

91. Since that February 4 prejudgment, the court's prejudice against Dr. Cordero has intensified to the point that now the court has definitely discounted the amount in controversy (page 57 below), although it legally remains valid until disposition of the claim at trial or on appeal. What is more, the court has already dismissed Dr. Cordero's claims against the other parties, for example, the claim for $100,000 against Trustee Gordon for defamation and the claim for the Trustee's reckless and negligent liquidation of Premier, claims that the court dismissed but that are on appeal and can be reinstated, unless the court presumes to prejudge the decision of the Court of Appeals for the Second Circuit. Likewise, the court's prejudice has already dismissed Dr. Cordero's claims against Mr. Dworkin, Jefferson Henrietta Associates, Mr. Delano, and the Bank for their fraudulent, reckless, or negligent conduct in connection with Dr. Cordero's property as well as those for breach of contract, not to mention the request for punitive damages (A-70). And why would the court ignore Dr. Cordero's claims against Mr. MacKnight's client, Mr. Pfuntner, for compensation, among other things, for

denying his right to access, inspect, remove, and enjoy his property? (A-56)

92. This set of facts begs the question whether a court that reduces a party's claim to a minimal expression even before a trial date is anywhere in the horizon and loses sight altogether of other claims can give the appearance of either impartiality or knowing what it is talking about. Would an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic elements of a case that has been before it for almost a year or rather because its bias and prejudice against Dr. Cordero prompt it to make any statements, however ill-considered or contrary to the facts, so long as they may harm or rattle Dr. Cordero? Is it not quite illogical for the court, on the one hand, to blame Dr. Cordero for having run up excessive costs for the court and the parties given that his claim is only for $14,000, and on the other hand, to drag out this case for the next 9 to 10 months?

6. The court gave short notice to Dr. Cordero that he had to appear in person, the cost to him notwithstanding, to argue his motion for sanctions for the submission to it of false representations by Mr. MacKnight -who had not bothered even to file a response-, thus causing Dr. Cordero to withdraw the motion

93. There must be no doubt that the court intends to maximize Dr. Cordero's transactional cost of prosecuting this case: On June 5 Mr. MacKnight submitted representations to the court concerning Dr. Cordero's conduct of the inspection;

(A-495). Whereas Mr. MacKnight did not attend, Dr. Cordero did and he knows those representations to be objectively false. After the appropriate request for Mr. MacKnight to correct them and the lapse of the safe heaven period under Rule 9011 F.R.Bkr.P., Dr. Cordero moved for sanctions on July 21; (A-498). Mr. MacKnight must have received from the court such an unambiguous signal that he need not be afraid of the court imposing any sanctions requested by Dr. Cordero that again he did not even bother to oppose the motion.

94. Instead, the court had Case Administrator Karen Tacy call Dr. Cordero near noon on Thursday, July 31, to let him know that it had denied his request to appear by phone and that if he did not appear in person, it would deny his July 21 motion; otherwise, he could contact all the parties to try to obtain their consent to its postponement until the hearing in October.

95. The court waited until only 6 days before the return date of August 6 to let him know, though it could have made up its mind and let him know as soon as it received it (para. 59 above). Moreover, it knows, because Dr. Cordero has brought it to its attention, that Mr. MacKnight has ignored almost all his letters and phone calls (A-402 et seq.), and has even challenged the validity of Mr. Pfuntner's written agreement to the May 19 inspection. Dr. Cordero could not risk being left waiting by Mr. MacKnight only to play into his hands given the foreseeable consequences. He withdrew the motion and renoticed it for October; (A-505).

96. To appear in person would have cost Dr. Cordero an enormous amount of money, for he would have had to buy flight and hotel tickets at the highest, spot price and cut to pieces two weekdays on very short notice. And what for? To be in court at 9:30 a.m. for a 15 to 20 minutes hearing. Would an objective person who knew about the court's indifference to the submission of falsehood to it have expected the court to give more importance to imposing sanctions for the sake of the court's integrity than to denying them to make Dr. Cordero's trip for naught in order to keep wearing him down financially and emotionally?

F. Bankruptcy and district court officers to whom Dr. Cordero sent originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals, thereby creating the risk of the appeal being thrown out for non-compliance with an appeal requirement

97. Dr. Cordero knew that to perfect his appeal to the Court of Appeals he had to comply with Rule 6(b)(2)(B)(i) and (iii) F.R.A.P. by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so surprisingly prevented him from refiling his notice of appeal to the district court (paras. 15 above et seq.). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District

Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement file submitted in January 2003 (A-ii: 1-152) was back in bankruptcy court; hence, he was supposed to send his Redesignation and Statement to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

98. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a cover letter to District Clerk Rodney Early; (A-469).

99. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of the notice of appeal to the Court of Appeals, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as Cordero v. Palmer. Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?

100. The district court transferred the record on May 19 to the Court of Appeals. The latter, in turn, acknowledged the filing of the appeal by letter to Dr. Cordero. When he received it on May 24, imagine his shock when he found out that the Court's docket showed no entry for his Redesignation and Statement! (A-467) Worse still, he checked the bankruptcy and the district court's dockets and neither had entered it or even the letter to District Clerk Early! (A-455, 459, 463)

101. Dr. Cordero scrambled to send a copy of his May 5 Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie; (A-468). Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. As to the May 5 letter to District Clerk Early, the Court of Appeals docket carries an entry only as of May 28 that it was received; (A-470).

102. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandych, that they just did not know how to handle a Redesignation and Statement, is simply untenable. Dr. Cordero's appeal cannot be the first one ever from those courts to the Court of Appeals; those officers must know that they are supposed to record every event in their cases by entering each in their dockets; and **'**certify and send the Redesignation and Statement to the circuit clerk,' as required under Rule 6(b)(2)(B). Actually, it was a ridiculous excuse!

103. No reasonable person can believe that these omissions in both courts were merely coincidental accidents. They furthered the same objective of preventing Dr. Cordero from appealing. The officers must have known that the failure to submit the Redesignation and Statement would have been imputed to Dr. Cordero and

could have caused the Court to strike his appeal. But there is more.

1. Court officers also failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals

104. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to the Court and, if so, whether they were intentional.

105. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding Pfuntner v. Gordon et al did not carry an entry for the district court's March 27 denial "in all respects" of Dr. Cordero's motion for reconsideration in Cordero v. Gordon. By contrast, it did carry such an entry for the district court's denial, also of March 27, of Dr. Cordero's motion for reconsideration in Cordero v. Palmer (A-454, entry-69, 453-66).

106. Also on May 19, the district court certified the record on appeal to the Court of Appeals, but it failed to send to the Court copies of either of the March 27 decisions that Dr. Cordero is appealing from and which are necessary to determine his appeal's timeliness. The fact is that the Court's docket for this case

as of July 7, 2003 (A-470), did not have entries for copies of either of the March 27 decisions, although it carried entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero's notice of appeal to the Court (A-429) made it clear that the March 27 orders were the main orders from which he was appealing (A-211, 350) since it is from them that the timeliness of his notice of appeal would be determined. Dr. Cordero discussed this matter with Deputy Appeals Court Clerk Rodriguez on July 15 and sent him copies of both March 27 ; (A-507)

107. Is this further evidence that bankruptcy and district court officers, in general, enter in their dockets and send to the Court of Appeals just the notices and papers that they want and, in particular, that their failure to enter and send Dr. Cordero's Re-designation of Items and Statement of Issues was intentionally calculated to adversely affect his appeal? If those court officers dare tamper with the record that they must submit to the Court, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? This evidence justifies the question whether they manipulated the filing date of Dr. Cordero's motion to extend time to file notice of appeal (paras. 15 above et seq.) so as to bar his appeal from the court's dismissal of his cross-claims against Trustee Gordon. If so, what did they have to gain from it and on whose orders did they do it?

III. Relief requested

108. Dr. Cordero respectfully requests that:

a) this complaint be reviewed and determined promptly;

b) he be spared further bias and prejudice at the hands of the court and court officers at the Bankruptcy and District Courts for the Western District, with all that such abuse entails in terms of additional waste of time, effort, and money, as well as even more emotional distress;

c) to that end, and under 28 U.S.C. §1412, which provides as follows;

> A district court may transfer a case or proceeding under title 11 to a district court for another district, **in the interest of justice** or for the convenience of the parties; (emphasis added).

this case be removed to the District Court for the Northern District of New York, held at Albany, which is at about the same distance from all parties;

d) he be granted any other relief that is just and fair.

Respectfully submitted,
under penalty of perjury,

on August 11, 2003,

Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC.,

CASE NO. 01-20692

Debtor.

JAMES PFUNTNER,

Plaintiff,

vs. A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,
RICHARD CORDERO, ROCHESTER
AMERICANS HOCKEY CLUB, INC.
and M&T BANK,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,
DAVID DELANO, and JEFFERSON
HENRIETTA ASSOCIATES,

Third-party Defendants.

ORDER

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner") commenced an adversary proceeding against Kenneth W. Gordon, Esq., as trustee ("Gordon"), Richard Cordero ("Cordero"), Rochester Americans Hockey Club, Inc. ("Rochester Hockey") and M&T Bank ("M&T") (the "Adversary Proceeding"); and

WHEREAS, the Adversary Proceeding sought to have the Court determine: (1) the rights of the various parties, if any, in property (the "Stored Property") which Premier Van Lines, Inc. (the "Debtor") had stored, pursuant to a lease (the "Lease") with Pfuntner at his property at 2140 Sacket Road, Avon, New York ("Sacket Road"); (2) that Pfuntner had no liability, or that he should otherwise be indemnified for any adverse claims to the Stored Property; (3) that the unpaid monthly rental due under the Lease, or reasonable storage charges for the Stored Property, be paid by the Debtor to Pfuntner as Chapter 11 and 7 administrative expenses; (4) that the Court vacate the automatic stay so as to permit Pfuntner to: (a) evict the Debtor and those claiming under the Debtor from Sacket Road in New York State Court; (b) remove the goods left at Sacket Road by the third parties; and (c) collect from those responsible such fair use and occupancy fees as may be determined by a New York State Court; and (5) various other requests for relief; and

WHEREAS, in this non-core proceeding, in November 2002, Cordero filed an Answer and Counterclaim, and Crossclaims against David Palmer ("Palmer"), the principal shareholder of the Debtor, Gordon, Pfuntner, David Dworkin ("Dworkin"), the owner or manager of the Jefferson-Henrietta Warehouse formerly utilized by the Debtor, and David Delano ("Delano"), an officer of M&T Bank, which held a security interest in the personal property assets of the Debtor; and

WHEREAS, on December 23, 2002, this Court granted Gordon's Motion to Dismiss Cordero's Crossclaims against him, which was appealed to and affirmed by the United States District Court for the Western District of New York (the "District Court"), and is now

on appeal to the United States Court of Appeals for the Second Circuit; and

WHEREAS, on February 4, 2003, for various reasons, including that Cordero had failed to provide satisfactory evidence that would demonstrate that he had incurred damages of $14,000.00, the Bankruptcy Court recommended to the District Court in this non-core matter that the default judgment requested by Cordero not be entered against Palmer; and

WHEREAS, in March 2003, the District Court determined that it was not appropriate to enter a default judgment in favor of Cordero and against Palmer, and referred Cordero's request for a default judgment back to the Bankruptcy Court for a determination of damages; and

WHEREAS, a trip by Cordero to Sacket Road did not result in: (1) a satisfactory inspection of all of the property stored by the Debtor at Sacket Road, including the property of Cordero that was at one time stored with the Debtor; (2) the ability of Cordero to fully determine whether there was any damage to his stored property, and, if there was, whether any of the various entities that had stored his property for him over approximately the last ten years might be responsible for any such damage, and if so, which entities; (3) Cordero's ability to remove his stored property; and (4) this matter being satisfactorily resolved by all of the interested parties; and

WHEREAS, as a result of: (1) Pfuntner and his representatives having failed to take the necessary steps for Cordero to accomplish at least the first three of the items set forth in the preceding paragraph; and (2) the Court advising Cordero that it would

entertain a motion for reasonable reimbursement in connection with his trip to Sacket Road, in June 2003, Cordero filed a motion for sanctions and compensation to be paid by Pfuntner and his attorney (the "Sanction Motion"); and

WHEREAS, the Sanction Motion included: (1) a request for compensation for Cordero at the rate of $250.00 per hour for the hours he spent on various matters involved in the Adversary Proceeding, including preparing and researching the Sanction Motion; and (2) the reimbursement of undocumented travel expenses, for a total request of $36,075.00; and

WHEREAS, in connection with the Sanction Motion, Cordero's only justification for requesting compensation for his time at $250.00 per hour is that Pfuntner advised him that this was the amount he paid his attorney, however, there is no proof of that in the record, and there is no other justification in the record for compensating a *pro se* litigant at that rate, so that the compensation issue and the undocumented expenses will be the subject of inquiry at the upcoming hearings; and

WHEREAS, the Court, in recently reviewing Cordero's renewed motion for a default judgment against Palmer, has focused on the Affidavit of Service of the Crossclaim, which does not indicate that Palmer was properly personally served by mail in accordance with the Federal Rules of Civil Procedure, so that this service issue will be the subject of inquiry at the upcoming hearings; and

WHEREAS, although the Court has allowed Cordero to appear by telephone in connection with a number of pretrial proceedings and motions in this Adversary Proceeding, in the Court's opinion few of

those telephone appearances have resulted in an accurate and comprehensive record; and

WHEREAS, the Court believes that setting this Adversary Proceeding down for discrete hearing dates in October and November, when the Court will not have any other matters before it and Cordero can appear in person, will: (1) afford the interested parties a sufficient amount of time to meet and negotiate to determine whether this matter, which should be able to be settled, can be settled without the need for further hearings and proceedings; (2) complete any discovery which they believe may be required; (3) afford Cordero, who has represented himself *pro se* in this Adversary Proceeding, the opportunity to consult with an attorney: (a) to discuss substantive legal, factual and other relevant matters involved in the Adversary Proceeding; and (b) to advise him how to properly prepare and present evidence at the upcoming hearings should Cordero continue to elect not to be represented by counsel; (4) afford the parties sufficient time to finally complete an inspection of the Stored Property at Sacket Road, and attempt to assess: (a) the ownership of the Property; (b) any damages to the Property; and (c) whether any parties to the Adversary Proceeding are responsible for any such damage; and (5) afford the Court the opportunity to focus more fully on this non-core Adversary Proceeding so that at the discreet hearings it can make the necessary findings, conclusions and rulings, based upon a full and complete record, that will finalize the matter; and, therefore,

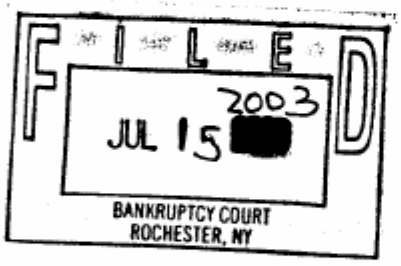
For the above reasons, and in order to: (1) ensure that there is a full and complete record created in this Adversary Proceeding; and (2) ensure that the Court can effectively manage the numerous issues that have been raised and assist the parties in concluding

the matter, this matter, and all related hearings, motions and proceedings, are set down for a discrete hearing at 9:30 a.m. in the Rochester Courtroom on October 16, 2003, at which time the Court will address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward, and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court, and if necessary for further hearings on November 14, 2003 at 9:30 a.m. in the Rochester Courtroom.

SO ORDERED.

DATED: July 15, 2003

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE



ITEMS IN THE RECORD*

accompanying

The Statement of Facts

submitted in support of a complaint under

28 U.S.C. §372(c)(1)

on

August 11, 2003

to

The Clerk of Court

of

THE COURT OF APPEALS
FOR THE SECOND CIRCUIT

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

by and for

Dr. Richard Cordero

59 Crescent Street

Brooklyn, NY 11208

tel. (718) 827-9521

*See Note on ToEC last page.

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

August 25, 2003

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

RE: Judicial Conduct Complaint

Dear Dr. Cordero:

This letter is to acknowledge receipt of your correspondence dated August 11, 2003, received in the Office of the Clerk.

To the extent that your correspondence is intended to be a judicial conduct complaint, it is being returned to you because of the following reasons: (i) no complaint form and (ii) statement of facts exceeds allowable length (limited to five (5) pages [see Rule 2(b)];

For your convenience, I enclose a copy of the *Official Complaint Form* and a copy of the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351 (formerly known as § 372(c))*.

Please keep in mind that non-compliance with the rules will delay the filing and processing of your submission since documents that fail to comply will be returned.

Sincerely,

Roseann B. MacKechnie, Clerk

By: Patricia C. Allen
Deputy Clerk

Enclosures

C:62 CA2 Clerk Allen returning on 8/25/3 due to improper form Dr. Cordero's §372(c)(1) complaint v Judge Ninfo

Dr. Richard Cordero

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

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August 11, 2003

STATEMENT OF FACTS

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit 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

I. The court's failure to move the case along its procedural stages

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, Pfuntner v. Trustee Kenneth Gordon, et al., dkt. no. 02-2230, which derived from bankruptcy case In re Premier Van Lines, Inc., dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29[1])and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as last December 26 and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. At those hearings Dr. Cordero will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

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[1] This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#.

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13th month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23 hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case

A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that

he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-45, 46; 108, ftnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

B. The Court Reporter tries to avoid submitting the transcript of the hearing

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

F. Court officers have disregarded even their obligations toward the Court of Appeals

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

III. The issues presented

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

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 the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on
August 11, 2003, and, after being reformatted, on August 27, 2003

Dr. Richard Cordero

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER
UNDER 28 U.S.C. § 351 et. seq.

INSTRUCTIONS:

(a) All questions on this form must be answered.

(b) A separate complaint form must be filled out for each judicial officer complained against.

(c) Submit the correct number of copies of this form and the statement of facts. For a complaint against:

a court of appeals judge -- original and 3 copies
a district court judge or magistrate judge -- original and 4 copies
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

(d) Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).

(e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.

1. **Complainant's Name:** Dr. Richard Cordero

Address: 59 Crescent Street
Brooklyn, NY 11208-1515

Daytime Telephone No. (include area code): (718) 827-9521

2. **Judge or magistrate judge complained about:**

Name: Hon. John C. Ninfo, II

Court: U.S. Bankruptcy Court for the Western District of New York

3. **Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?**

[ ] Yes [ ] No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: U.S. Bankruptcy Court for the Western District of New York

Docket number: 02-2230, derived from 01-20692

Docket numbers of any appeals to the Second Circuit:

03-5023

Did a lawyer represent you?

[ ] Yes [ ] No

If "yes" give the name, address, and telephone number of your lawyer:

4. **Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?**

[ ] Yes [ ] No

If "Yes," give the docket number of each complaint.

5. **You should attach a statement of facts on which your complaint is based, see rule 2(b), and**

EITHER

(1) **check the box and sign the form. You do not need a notary public if you check this box.**

[ ] I declare under penalty of perjury that:

(i) **I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and**

(2) **The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.**

Dr. Richard Cordero

(signature)

Executed on August 27, 2003

(date)

OR

(2) check the box below and sign this form in the presence of a notary public;

[ ] I swear (affirm) that--

(i) **I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and**

Sept. 3, 2003

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

September 2, 2003

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

Re: *Judicial Conduct Complaint*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your complaint.

I await the submissin of your conformed exhibits. The exhibits you submitted includes material not mentioned in the Statement of Facts. Rule 2(d) states that "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.

Please keep in mind that non-compliance with the rules will delay the filing and processing of your submission.

Sincerely,

Roseann B. MacKechnie, Clerk

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

EXHIBITS

accompanying

The Statement of Facts

submitted in support of a complaint under

28 U.S.C. §351

on

August 11, 2003

to

THE COURT OF APPEALS
FOR
THE SECOND CIRCUIT

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

by

Dr. Richard Cordero

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

Sept 10, 2003

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

September 2, 2003

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

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero:

We hereby acknowledge receipt of your complaint, dated August 27, 2003, received in this office on August 28, 2003.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351.*

You will be notified by letter once a decision has been filed.

Sincerely,

Roseann B. MacKechnie, Clerk

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Clerk Allen's acknowledgment of 9/2/3 of Dr. Cordero's complaint v J Ninfo & notice of filing it as 03-8547 C:73

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RULES OF THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT GOVERNING COMPLAINTS AGAINST JUDICIAL OFFICERS UNDER 28 U.S.C. § 351 et. seq.

Preface to the Rules

Section 351 et. seq. of Title 28 of the United States Code provides a way for any person to complain about a federal judge or magistrate judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see Rule 18(e).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under § 351. The chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in any of these ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of the chief judge and six other judges of the court of appeals and the chief judge of each of the district courts within the Second Circuit.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) The Purpose of the Procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges or magistrate judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties.

The law's purpose is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.

(b) What May be Complained About. The law authorizes complaints about judges or magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability."

"Conduct prejudicial to the effective and expeditious administration of the business of the courts" does not include making wrong decisions -- even very wrong decisions -- in the course of hearings, trials, or appeals. It does not include conduct engaged in by a judicial officer prior to appointment to the bench. The law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling."

"Mental or physical disability" may include temporary conditions as well as permanent disability.

(c) Who May be Complained About. The complaint procedure applies to judges of the United States courts of appeals, judges of the United States district courts, judges of United States bankruptcy courts, and United States magistrate judges. These rules apply, in particular, only to judges of the Court of Appeals for the Second Circuit and to district judges, bankruptcy judges, and magistrate judges of federal courts within the circuit. The circuit includes Connecticut, New York and Vermont.

Complaints about other officials of federal courts should be made to their supervisors in the various courts. If such a complaint cannot be satisfactorily resolved at lower levels, it may be referred to the chief judge of the court in which the official is employed. The circuit executive, whose address is United States Courthouse, Foley Square, New York, New York 10007, is sometimes able to provide assistance in resolving such complaints. All complaints must be submitted in writing.

(d) Time for Filing. Complaints should be filed promptly. A complaint may be dismissed if it is filed so long after the events in question that the delay will make fair consideration of the matter impossible. A complaint may also be dismissed if it does not indicate the existence of a current problem with the administration of the business of the courts.

(e) Limitations on Use of the Procedure. The complaint procedure is not intended to

provide a means of obtaining review of a judge's or magistrate judge's decision or ruling in a case. The judicial council of the circuit, the body that takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that.

The complaint procedure may not be used to have a judge or magistrate judge disqualified from sitting on a particular case. A motion for disqualification should be made in the case.

Also, the complaint procedure may not be used to force a ruling on a particular motion or other matter that has been before the judge or magistrate judge too long. A petition for mandamus can sometimes be used for that purpose.

RULE 2. HOW TO FILE A COMPLAINT

(a) Form. Complaints should be filed on the official form for filing complaints in the Second Circuit, which is reproduced in the appendix to these rules. Forms may be obtained by writing or telephoning the clerk of the Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, New York 10007 (telephone (212) 857-8702). Forms may be picked up in person at the office of the clerk of the court of appeals or any district court or bankruptcy court within the circuit.

(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 (five sides), and the paper size should not be larger than the paper the form is printed on. Normally, the statement of facts will include –

(1) A statement of what occurred;
(2) The time and place of the occurrence or occurrences;
(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) Legibility. Complaints should be typewritten if possible. If not typewritten, they must be legible.

(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. If the complaint is about a judge of the court of appeals, an original plus three copies of the complaint form and the statement of facts must be filed; if it is about a district judge or magistrate judge, an original plus four copies must be filed; if it is about a bankruptcy judge, an original plus five copies must be filed. One copy of any supporting transcripts, exhibits, or other documents is sufficient. A separate complaint, with the required number of copies, must be filed with respect to each judge or magistrate judge complained about.

(f) Signature and Oath. The form must be signed by the complainant and the truth of the statements verified in writing under oath. As an alternative to taking an oath, the complainant may declare under penalty of perjury that the statements are true. The complainant's address must also be provided.

(g) Where to File. Complaints should be sent to

Clerk of Court
United States Court of Appeals
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability."

(h) No Fee Required. There is no filing fee for complaints of misconduct or disability.

RULE 3. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A COMPLAINT

(a) Receipt of Complaint in Proper Form.

(1) Upon receipt of a complaint against a judge or magistrate judge

filed in proper form under these rules, the clerk of the court will open a file, assign a docket number, and acknowledge receipt of the complaint. The clerk will promptly send copies of the complaint to the chief judge of the circuit (or the judge authorized to act as chief judge under rule 18(e)) and to the judge or magistrate judge whose conduct is the subject of the complaint. The original of the complaint will be retained by the clerk.

(2) If a district judge or magistrate judge is complained about, the clerk will also send a copy of the complaint to the chief judge of the district court in which the judge or magistrate judge holds appointment. If a bankruptcy judge is complained about, the clerk will send copies to the chief judges of the district court and the bankruptcy court. However, if the chief judge of a district court or bankruptcy court is a subject of the complaint, the chief judge's copy will be sent to the judge eligible to become the next chief judge of such court.

(b) Receipt of Complaint About Official Other Than a Judge or Magistrate Judge of the Second Circuit. If the clerk receives a complaint about an official other than a judge or magistrate judge of the Second Circuit, the clerk will not accept the complaint for filing, and will so advise the complainant.

(c) Receipt of Complaint Not in Proper Form. If the clerk receives a complaint against a judge or magistrate judge of this circuit that uses a complaint form but does not comply with the requirements of Rule 2, the clerk will normally not accept the complaint for filing and will advise the complainant of the appropriate procedures. If a complaint against a judge or magistrate judge is received in letter form, the clerk will normally not accept the letter for filing as a complaint, will advise the writer of the right to file a formal complaint under these rules, and will enclose a copy of these rules and the accompanying forms.

Chapter II: Review of a Complaint By the Chief Judge

RULE 4. REVIEW BY THE CHIEF JUDGE

(a) Purpose of Chief Judge's Review. When a complaint in proper form is sent to the chief judge by the clerk's office, 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.

(b) Inquiry by Chief Judge. In determining what action to take, the chief judge, with such assistance as may be appropriate, 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. For this purpose, the chief judge may request the judge or magistrate judge whose conduct is complained of to file a written response to the complaint. The chief judge may also communicate orally or in writing with the complainant, the judge or magistrate judge whose conduct is complained of, and other people who may have knowledge of the matter, and may review any transcripts or other relevant documents. The chief judge will not undertake to make findings of fact about any material matter that is reasonably in dispute.

(c) Dismissal. A complaint will be dismissed if the chief judge concludes --

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the complaint is frivolous, a term that includes making charges that are wholly unsupported or have been ruled on in previous complaints by the same complainant; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Corrective Action. 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 or that action on the complaint is no longer necessary because of intervening events.

(e) Appointment of Special Committee. If the complaint is not dismissed or concluded, the chief judge will promptly appoint a special committee, constituted as provided in Rule 9, to investigate the complaint and make recommendations to the judicial council. However, ordinarily a special committee will not be appointed until the judge or magistrate judge complained about has been invited to respond to the complaint and has been allowed a reasonable time to do so. In the discretion of the chief judge, separate complaints may be joined and assigned to a single special committee.

(f) Notice of Chief Judge's Action.

(1) If the complaint is dismissed or the proceeding concluded on the basis of corrective action taken or because intervening events have made action on the complaint unnecessary, the chief judge will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. The memorandum will not include the name of the complainant or of the judge or magistrate judge whose conduct was complained of. The order and the supporting memorandum, which may be incorporated in one document, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). The complainant will be notified of the right to petition the judicial council for review of the decision and of the deadline for filing a petition.

(2) If a special committee is appointed, the chief judge will notify the complainant, the judge or magistrate judge whose conduct is complained of, and any judge entitled to receive a copy of the complaint pursuant to Rule 3(a)(2) that the matter has been referred, and will inform them of the membership of the committee.

(g) Report to Judicial Council. The chief judge will from time to time report to the judicial council of the circuit on actions taken under this rule.

CHAPTER III: Review of Chief Judge's Disposition of a Complaint

RULE 5. PETITION FOR REVIEW OF CHIEF JUDGE'S DISPOSITION

If the chief judge dismisses a complaint or concludes the proceeding on the ground that corrective action has been taken or that intervening events have made action unnecessary, a petition for review may be addressed to the judicial council of the circuit. The judicial council may deny the petition for review, or grant the petition and either return the matter to the chief judge for further action or, in exceptional cases, take other appropriate action.

RULE 6. HOW TO PETITION FOR REVIEW OF A DISPOSITION BY THE CHIEF JUDGE

(a) Time. A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

(b) Form. A petition should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order. . ." There is no need to enclose a copy of the original complaint.

(c) Legibility. Petitions should be typewritten if possible. If not typewritten, they must be legible.

(d) Number of Copies. Only an original is required.

(e) Statement of Grounds for Petition. The letter should set forth a brief statement of the reasons why the petitioner believes that the chief judge should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition.

(f) Signature. The letter must be signed by the complainant.

(g) Where to File. Petition letters should be sent to

Clerk of Court
United States Court of Appeals
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

The envelope should be marked "Misconduct Petition" or "Disability Petition."

(h) No Fee Required. There is no fee for filing a petition under this procedure.

RULE 7. ACTION BY CLERK OF COURT OF APPEALS UPON RECEIPT OF A PETITION FOR REVIEW

(a) Receipt of Timely Petition in Proper Form. Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the clerk of the court of appeals will acknowledge receipt of the petition. The clerk will promptly cause to be sent to each member of the judicial council, except for any member disqualified under rule 18, copies of (1) the complaint form and statement of facts, (2) any response filed by the judge or magistrate judge, (3) any record of information received by the chief judge in connection with the chief judge's consideration of the complaint, (4) the chief judge's order disposing of the complaint, (5) any memorandum in support of the chief judge's order, (6) the petition for review, (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, (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, (9) a ballot that conforms with Rule

8(a). The clerk will also send the same materials, except for the ballot, to the circuit executive and the judge or magistrate judge whose conduct is at issue, except that materials previously sent to a person may be omitted.

(b) Receipt of Untimely Petition. The clerk will not accept for filing a petition that is received after the deadline set forth in Rule 6(a), and will so advise the complainant.

(c) Receipt of Timely Petition Not in Proper Form. Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the clerk will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within fifteen days of the date of the clerk's letter or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed in accordance with paragraph (a) of this rule. If the deficiencies are not corrected, the clerk will reject the petition, and will so advise the complainant.

RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER

(a) Review Panel. The Chief Judge shall designate six members of the judicial council (other than the chief judge) to serve as a review panel. A review panel shall be composed of three circuit judges and three district judges. Membership on the review panel shall be changed after four months so that all members of the council shall serve on a review panel once each year. A review panel shall act for the judicial council on all petitions for review of a chief judge's dismissal order, except those petitions referred to the full membership of the council pursuant to Rule 8(b).

(b) Mail Ballot. Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) deny the petition for review, or (2) refer the petition to the full membership of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council member voting to place the petition on the agenda of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.

The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be placed on the agenda of a council meeting upon the votes of at least two members of the council; otherwise, the petition for review will be denied.

Upon referral of a petition to the full membership of the judicial council, the clerk shall send to each member of the council not then serving on the review panel the materials specified in Rule 7(a).

(c) Availability of Documents. Upon request, the clerk will make available to any member of the judicial council or to the judge or magistrate judge complained about any document from the files that was not sent to the council members pursuant to Rule 7(a).

(d) Quorum and Voting. If a petition is placed on the agenda of a meeting of the judicial council, a majority of council members eligible to participate (see Rule 18(b)) shall constitute a quorum and is required for any effective council action.

(e) Rights of Judge or Magistrate Judge Complained About.

(1) At any time after the filing of a petition for review by a complainant, the judge or magistrate judge complained about may file, and before the judicial council makes any decision unfavorable to the judge or magistrate judge will be invited to file, a written response with the clerk of the court of appeals. The clerk will promptly distribute copies of the response to each member of the judicial council who is not disqualified and to the complainant. The judge or magistrate judge may not communicate with council members individually about the matter, either orally or in writing.

(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

(f) Notice of Council Decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

(2) If the decision is unfavorable to the complainant, the complainant will be notified that the law provides for no further review of the decision.

(3) A memorandum supporting a council order will not include the name of the complainant or the judge or magistrate judge whose conduct was complained of. If the order of the council denies a petition for review of the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

Chapter IV: Investigation and Recommendation By Special Committee

RULE 9. APPOINTMENT OF SPECIAL COMMITTEE

(a) Membership. A special committee appointed pursuant to rule 4(e) will consist of the chief judge of the circuit and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate judge, the district judge members of the committee will be from districts other than the district of the judge or magistrate judge complained about.

(b) Presiding officer. At the time of appointing the committee, the chief judge will designate one of its members (who may be the chief judge) as the presiding officer. When designating another member of the committee as the presiding officer, the chief judge may also delegate to such member the authority to direct the clerk of the court of appeals to issue subpoenas related to proceedings of the committee.

(c) Bankruptcy Judge or Magistrate Judge as Adviser. If the judicial officer complained about is a bankruptcy judge or magistrate judge, the chief judge may designate a bankruptcy judge or magistrate judge, as the case may be, to serve as an adviser to the committee. The chief judge will designate such an adviser if, within ten days of notification of the appointment of the committee, the bankruptcy judge or magistrate judge complained about requests that an adviser be designated. The adviser will be from a district other than the district of the judge or magistrate judge complained about. The adviser will not vote but will have the other privileges of a member of the committee.

(d) Provision of Documents. The chief judge will send to each other member of the committee and to the adviser, if any, copies of (1) the complaint form and statement of facts, and (2) any other documents on file pertaining to the complaint (or to that portion of the complaint referred to the special committee).

(e) Continuing Qualification of Committee Members. A member of a special committee who was qualified at the time of appointment may continue to serve on the committee even though the member relinquishes the position of chief judge, circuit judge, or district judge, as the case may be, but only if the member continues to hold office under article III, section 1, of the Constitution of the United States.

(f) Inability of Committee Member to Complete Service. If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge of the circuit will determine whether to appoint a replacement member, either a circuit or district judge as the case may be. However, no special committee appointed under these rules will function with only a single member, and the quorum and voting requirements for a two-member committee will be applied as if the committee had three members.

RULE 10. CONDUCT OF AN INVESTIGATION

(a) Extent and Methods to be Determined by Committee. Each special committee will determine the extent of the investigation and the methods of conducting it that are appropriate in the light of the allegations of the complaint. If, in the course of the investigation, the committee develops reason to believe that the judge or magistrate judge may be engaged in misconduct that is beyond the scope of the complaint, the committee may, with written notice to the judge or magistrate judge, expand the scope of the investigation to encompass such misconduct.

(b) Criminal Matters. If the complaint alleges criminal conduct on the part of a judge or magistrate judge, or in the event that the committee becomes aware of possible criminal conduct, the committee will consult with the appropriate prosecuting authorities to the extent permitted by 28 U.S.C. § 351 et. seq. in an effort to avoid compromising any criminal investigation. However, the committee will make its own determination about the timing of its activities, having in mind the importance of ensuring the proper administration of the business of the courts.

(c) Staff. The committee may arrange for staff assistance in the conduct of the investigation. It may use existing staff of the judicial branch or may arrange, through the Administrative Office of the United States Courts, for the hiring of special staff to assist in the investigation.

(d) Delegation. The committee may delegate duties in its discretion to subcommittees, to staff members, to individual committee members, or to an adviser designated under Rule 9(c). The authority to exercise the committee's subpoena powers may be delegated only to the presiding officer. In the case of failure to comply with such subpoena, the judicial council or special committee may institute a contempt proceeding consistent with 28 U.S.C. § 332(d).

(e) Report. The committee will file with the judicial council a comprehensive report of its investigation, including findings of the investigation and the committee's recommendations for council action. Any findings adverse to the judge or magistrate judge will be based on evidence in the record. The report will be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held pursuant to rule 11.

(f) Voting. All actions of the committee will be by vote of a majority of all of the members of the committee.

RULE 11. CONDUCT OF HEARINGS BY SPECIAL COMMITTEE

(a) Purpose of Hearings. The committee may hold hearings to take testimony and receive other evidence, to hear arguments, or both. If the committee is investigating allegations against more than one judge or magistrate judge it may, in its discretion, hold joint hearings or separate hearings.

(b) Notice to Judge or Magistrate Judge Complained About. The judge or magistrate judge complained about will be given adequate notice in writing of any hearing held, its purposes, the names of any witnesses whom the committee intends to call, and the text of any statements that have been taken from such witnesses. The judge or magistrate judge may at any time suggest additional witnesses to the committee.

(c) Committee Witnesses. All persons who are believed to have substantial information to offer will be called as committee witnesses. Such witnesses may include the complainant and the judge or magistrate judge complained about. The witnesses will be questioned by committee members, staff, or both. The judge or magistrate judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.

(d) Witnesses Called by the Judge or Magistrate Judge. The judge or magistrate judge complained about may also call witnesses and may examine them personally or through counsel. Such witnesses may also be examined by committee members, staff, or both.

(e) Witness Fees. Witness fees will be paid as provided in 28 U.S.C. § 1821.

(f) Rules of Evidence; Oath. The Federal Rules of Evidence will apply to any evidentiary hearing except to the extent that departures from the adversarial format of a trial make them inappropriate. All testimony taken at such a hearing will be given under oath or affirmation.

(g) Record and Transcript. A record and transcript will be made of any hearing held.

RULE 12. RIGHTS OF JUDGE OR MAGISTRATE JUDGE IN INVESTIGATION

(a) Notice. The judge or magistrate judge complained about is entitled to written notice of the investigation (rule 4(f)(2)), to written notice of expansion of the scope of an investigation (rule 10(a)), and to thirty days written notice of any hearing (rule 11(b)).

(b) Presentation of Evidence. The judge or magistrate judge is entitled to a hearing, and has the right to present evidence and to compel the attendance of witnesses and the production of documents at the hearing. Upon request of the judge or magistrate judge, the chief judge or a designee will direct the clerk of the court of appeals to issue a subpoena in accordance with 28 U.S.C. § 332(d)(1).

(c) Presentation of Argument. The judge or magistrate judge may submit written argument to the special committee at any time, and will be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(d) Attendance at Hearings. The judge or magistrate judge will have the right to attend any hearing held by the special committee and to receive copies of the transcript and any documents introduced, as well as to receive copies of any written arguments submitted by the complainant to the committee.

(e) Receipt of Committee's Report. The judge or magistrate judge will have the right to receive the report of the special committee at the time it is filed with the judicial council.

(f) Representation by Counsel. The judge or magistrate judge may be represented by counsel in the exercise of any of the rights enumerated in this rule. The costs of such representation may be borne by the United States as provided in rule 14(h).

RULE 13. RIGHTS OF COMPLAINANT IN INVESTIGATION

(a) Notice. The complainant is entitled to written notice of the investigation as provided in rule 4(f)(2). Upon the filing of the special committee's report to the judicial council, the complainant will be notified that the report has been

filed and is before the council for decision. The Judicial Council may, in its discretion release the special committee's report to the complainant.

(b) Opportunity to Provide Evidence. The complainant is entitled to be interviewed by a representative of the committee. If it is believed that the complainant has substantial information to offer, the complainant will be called as a witness at a hearing.

(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.

(d) Representation by Counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

Chapter V: Judicial Council Consideration of Recommendations of Special Committee

RULE 14. ACTION BY JUDICIAL COUNCIL

(a) Purpose of Judicial Council Consideration. After receipt of a report of a special committee, the judicial council will determine whether to dismiss the complaint, conclude the proceeding on the ground that corrective action has been taken or that intervening events make action unnecessary, refer the complaint to the Judicial Conference of the United States, or order corrective action.

(b) Basis of Council Action. Subject to the rights of the judge or magistrate judge to submit argument to the council as provided in rule 15(a), the council may take action on the basis of the report of the special committee and the record of any hearings held. If the council finds that the report and record provide an inadequate basis for decision, it may (1) order further investigation and a further report by the special committee or (2) conduct such additional investigation as it deems appropriate.

(c) Dismissal. The council will dismiss a complaint if it concludes –

(1) that the claimed conduct, even if the claim is true, is not "conduct prejudicial to the effective and expeditious administration of the business of the courts" and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(2) that the complaint is directly related to the merits of a decision or procedural ruling;

(3) that the facts on which the complaint is based have not been demonstrated; or

(4) that, under the statute, the complaint is otherwise not appropriate for consideration.

(d) Conclusion of the Proceeding on the Basis of Corrective Action Taken. The council will conclude the complaint proceeding if it determines that appropriate action has already been taken to remedy the problem identified in the complaint, or that intervening events make such action unnecessary.

(e) Referral to Judicial Conference of the United States. The judicial council may, in its discretion, refer a complaint to the Judicial Conference of the United States with the council's recommendations for action. It is required to refer such a complaint to the Judicial Conference of the United States if the council determines that a circuit judge or district judge may have engaged in conduct –

(1) that might constitute grounds for impeachment; or

(2) that, in the interest of justice, is not amenable to resolution by the judicial council.

(f) Order of Corrective Action. If the complaint is not disposed of under paragraphs (c) through (e) of this rule, the judicial council will take such other action as is authorized by law to assure the effective and expeditious administration of the business of the courts.

(g) Combination of Actions. Referral of a complaint to the Judicial Conference of the United States under paragraph (e) or to a district court under paragraph (f) of this rule will not preclude the council from simultaneously taking such other action under paragraph (f) as is within its power.

(h) Recommendation About Fees. If the complaint has been finally dismissed, the judicial council, upon request of the judicial officer, shall consider whether to recommend that the Director of the Administrative Office reimburse the judicial officer for attorney's fees and expenses.

(i) Notice of Action of Judicial Council. Council action will be by written order. Unless the council finds that, for extraordinary reasons, it would be contrary to the interests of justice, the order will be accompanied by a memorandum, which may be incorporated into one document, setting forth the factual determinations on which it is based and the reasons for the council action. The memorandum will not include the name of the complainant or of the judge or magistrate judge whose conduct was complained about. The order and the supporting memorandum will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2). However, if the complaint has been referred to the Judicial Conference of the United States pursuant to paragraph (e) of this rule and the council determines that disclosure would be contrary to the interests of justice, such disclosure need not be made. The complainant and the judge or magistrate judge will be notified of any right to seek review of the judicial council's decision by the Judicial Conference of the United States and of the procedure for filing a petition for review.

(j) Public Availability of Council Action. Materials related to the council's action will be made public at the time and in the manner set forth in rule 17.

RULE 15. PROCEDURES FOR JUDICIAL COUNCIL CONSIDERATION OF A SPECIAL COMMITTEE'S REPORT

(a) Rights of Judge or Magistrate Judge Complained About. Within ten days after the filing of the report of a special committee, the judge or magistrate judge complained about may address a written response to all of the members of the judicial council. The judge or magistrate judge will also be given an opportunity to present oral argument to the council, personally or through counsel. The judge or magistrate judge may not communicate with council

members individually about the matter, either orally or in writing, except as the judicial council has authorized one or more of its members to engage in such communications on its behalf.

(b) Conduct of Additional Investigation by the Council. If the judicial council decides to conduct additional investigation, the judge or magistrate judge complained about will be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in rules 10 through 13 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony to avoid unnecessary repetition of testimony presented before the special committee.

(c) Quorum and Voting. A majority of council members eligible to participate (see Rule 18(b)) shall constitute a quorum and is required for any effective council action, except that, in accordance with 28 U.S.C. § 152(e), a decision to remove a bankruptcy judge from office requires a majority of all the members of the council.

Chapter VI: Miscellaneous Rules

RULE 16. CONFIDENTIALITY

(a) General Rule. Consideration of a complaint by the chief judge, a special committee, or the judicial council will be treated as confidential business, and information about such consideration will not be disclosed by any judge, magistrate judge, or employee of the judicial branch or any person who records or transcribes testimony except in accordance with these rules.

(b) Files. All files related to complaints of misconduct or disability, whether maintained by the clerk, the chief judge, members of a special committee, members of the judicial council, or staff, and whether or not the complaint was accepted for filing, will be maintained separate and apart from all other files and records, with appropriate security precautions to ensure confidentiality.

(c) Disclosure of Memoranda of Reasons. Memoranda supporting orders of the chief judge or the judicial council, and dissenting opinions or separate

statements of members of the council, may contain such information and exhibits as the authors deem appropriate.

(d) Availability to Judicial Conference. If a complaint is referred under rule 14(e) to the Judicial Conference of the United States, the clerk will provide the Judicial Conference with copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the Judicial Conference or its Committee to Review Circuit Council Conduct and Disability Orders, in connection with their consideration of a referred complaint or a petition under 28 U.S.C. § 355 for review of a council order, the clerk will furnish any other records related to the investigation.

(e) Availability to District Court. If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 14(f)(3), the clerk will provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its determination. Upon request of the chief judge of the district court, the judicial council may authorize release of any other records relating to the investigation.

(f) Impeachment Proceedings. The judicial council may release to the legislative branch any materials that are believed necessary to an impeachment investigation of a judge or a trial on articles of impeachment.

(g) Consent of Judge or Magistrate Judge Complained About. Any materials from the files may be disclosed to any person upon the written consent of both the judge or magistrate judge complained about and the chief judge of the circuit. The chief judge may require that the identity of the complainant be shielded in any materials disclosed.

(h) Disclosure by Judicial Council in Special Circumstances. The judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that the council concludes that such disclosure is justified by special circumstances and is not prohibited by 28 U.S.C. § 355.

(i) Disclosure of Identity by Judge or Magistrate Judge Complained About. Nothing in this rule will preclude the judge or magistrate judge complained about from acknowledging that such judge is the judge or magistrate judge

referred to in documents made public pursuant to rule 17.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) General Rule. A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee or of it is disposed of by council order dismissing the complaint for reasons other than mootness, or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge or magistrate judge complained about without such judge's consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate judge will be disclosed.

(4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate judge is to be disclosed.

(5) The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) Manner of Making Public. The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at the United States Courthouse, Foley Square, New York, New York 10007. The clerk will send copies of the publicly available materials to the Administrative Office of the United States Courts, Office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) Decisions of Judicial Conference Standing Committee. To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.

(d) Special Rule for Decisions of Judicial Council. When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) Complaints Referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18. DISQUALIFICATION

(a) Complainant. If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. If the complaint is filed by a judge, or identified by the chief judge pursuant to 28 U.S.C. § 351(a), that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

(b) Judge Complained About. A judge whose conduct is the subject of a complaint will be disqualified from participating in any consideration of the complaint except to the extent that these rules provide for participation by a judge or magistrate judge who is complained about. This subsection shall not apply where a complainant files complaints against a majority of the members of the judicial council, in which event, the council members, including those complained against, may refer the complaints, with or without a recommendation for appropriate action, to the Judicial Conference of the United States or to the judicial council of another circuit, or may take other appropriate action, including disposition of the complaints on their merits.

(c) Member of Special Committee Not Disqualified. A member of the judicial council who is appointed to a special committee will not be disqualified from participating in council consideration of the committee's report.

(d) Judge or Magistrate Judge Under Investigation. Upon appointment of a special committee, the judge or magistrate judge complained about will automatically be disqualified from serving on (1) any special committee appointed under Rule 4(e), (2) the judicial council of the circuit, (3) the Judicial Conference of the United States, and (4) the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States. The disqualification will continue until all proceedings regarding the complaint are finally terminated, with no further right of review. The proceedings will be deemed terminated thirty days after the final action of the judicial council if no petition for review has at that time been filed with the Judicial Conference.

(e) Substitute for Chief Judge. If the chief judge of the circuit is disqualified or otherwise unable to participate in consideration of the complaint, the duties and responsibilities of the chief judge under these rules will be assigned to the circuit judge eligible to become the next chief judge of the circuit.

RULE 19. WITHDRAWAL OF COMPLAINTS AND PETITIONS FOR REVIEW

(a) Complaint Pending Before Chief Judge. A complaint that is before the chief judge for a decision under rule 4 may be withdrawn by the complainant with the consent of the chief judge.

(b) Complaint Pending Before Special Committee or Judicial Council. After a complaint has been referred to a special committee for investigation, the complaint may be withdrawn by the complainant only with the consent of both (1) the judge or magistrate judge complained about and (2) the special committee (before its report has been filed) or the judicial council.

(c) Petition for Review of Chief Judge's Disposition. A petition to the judicial council for review of the chief judge's disposition of a complaint may be withdrawn by the petitioner at any time before the judicial council acts on the petition.

RULE 19A. ABUSE OF THE COMPLAINT PROCEDURE

If a complainant files vexatious, harassing, or scurrilous complaints, or otherwise abuses the complaint procedure, the council, after affording the complainant an opportunity to respond in writing, may restrict or impose conditions upon the complainant's use of the complaint procedure. Any restrictions or conditions imposed upon a complainant shall be reconsidered by the council periodically.

RULE 20. AVAILABILITY OF OTHER PROCEDURES

The availability of the complaint procedure under these rules and 28 U.S.C. § 351 et. seq. will not preclude the chief judge of the circuit or the judicial council of the circuit from considering any information that may come to their attention suggesting that a judge or magistrate judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge all the duties of office by reason of disability.

RULE 21. AVAILABILITY OF RULES AND FORMS

These rules and copies of the complaint form prescribed by rule 2 will be available without charge in the office of the clerk of the court of appeals, United States Courthouse, Foley Square, New York, New York 10007, and in each office of the clerk of a district court or bankruptcy court within this circuit.

RULE 21A. NO IMPLICATION OF CONSTITUTIONALITY

The adoption of these rules shall not be construed as indicating any views with respect to the constitutionality of 28 U.S.C. § 351 et. seq. or any action taken hereunder.

RULE 22. EFFECTIVE DATE

These rules apply to complaints filed on or after November 2, 2002. The handling of complaint filed before that date will be governed by the rules previously in effect.

RULE 23. ADVISORY COMMITTEE

The advisory committee appointed by the Court of Appeals for the Second Circuit for the study of rules of practice and internal operating procedures shall also constitute the advisory committee for the study of these rules, as provided by 28 U.S.C. § 2077(b), and shall make any appropriate recommendations to the circuit judicial council concerning these rules.

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER
UNDER 28 U.S.C. § 351 et. seq.

INSTRUCTIONS:

(a) All questions on this form must be answered.

(b) A separate complaint form must be filled out for each judicial officer complained against.

(c) Submit the correct number of copies of this form and the statement of facts. For a complaint against:

a court of appeals judge -- original and 3 copies
a district court judge or magistrate judge -- original and 4 copies
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

(d) Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).

(e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.

1. Complainant's Name: _____

Address: _____

_____

Daytime Telephone No. (include area code): _____

2. Judge or magistrate judge complained about:

Name: _____

Court: _____

3. Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?

[ ] Yes [ ] No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: _____

Docket number: _____

Docket numbers of any appeals to the Second Circuit:

_____

Did a lawyer represent you?

[ ] Yes [ ] No

If "yes" give the name, address, and telephone number of your lawyer:

4. Have you previously filed any complaints of judicial misconduct or disability against <u>any</u> judge or magistrate judge?

[ ] Yes [ ] No

If "Yes," give the docket number of each complaint.

5. You should attach a statement of facts on which your complaint is based, see rule 2(b), and

EITHER

(1) check the box and sign the form. You do not need a notary public if you check this box.

[ ] I declare under penalty of perjury that:

(i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

(2) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

_____
(signature)

Executed on _____
(date)

OR

(2) check the box below and sign this form in the presence of a notary public;

[ ] I swear (affirm) that--

(i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

(3) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

_____
(signature)

Executed on _____
(date)

Sworn and subscribed to before me
this ____ day of _____200_.

_____
(Notary Public)

My commission expires: _____

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.

Sept 10, 2003

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

September 2, 2003

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

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero:

We hereby acknowledge receipt of your complaint, dated August 27, 2003, received in this office on August 28, 2003.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351.*

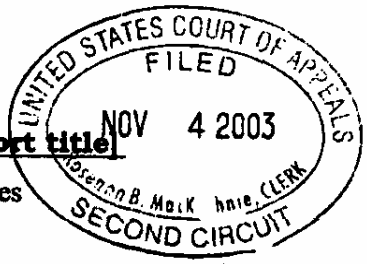
You will be notified by letter once a decision has been filed.

Sincerely,

Roseann B. MacKechnie, Clerk

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

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:

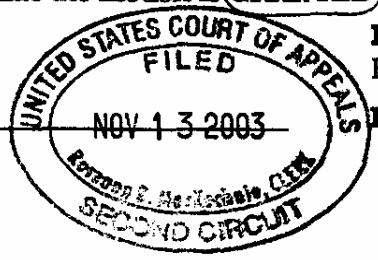
Dr. Richard Cordero

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: [signature]
By: Ana Vargas
Calendar Deputy Clerk

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

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 11, 2004

Madam Justice Ginsburg
The Supreme Court of the United States
U.S. Supreme Court Building, 1 First Street, N.E.
Washington, D.C. 20543

Dear Madam Justice,

On August 11, 2003, I submitted to the Court of Appeals for the Second Circuit a complaint based on detailed evidence of judicial misconduct on the part of U.S. Bankruptcy Judge John C. Ninfo and other court officers in the Bankruptcy and District Courts for the Western District of New York. The specific instances of systematic disregard of the law, rules, and facts were so numerous, so protective of the local parties and injurious to me alone, the only non-local and pro se party, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Receipt of the complaint was acknowledged on September 2; it was assigned docket no. 03-8547. Although the provisions of law governing such complaints, that is, 28 U.S.C. §§372 and 351, and the implementing rules of this Circuit require 'prompt and expeditious' action on the part of the chief judge and its notification to the complainant, it is the seventh month since submission but I have yet to be informed of what action, if any, has been taken.

What is more, on February 2, I wrote to the Hon. Chief Judge John M. Walker, Jr., to inquire about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To my astonishment, the original and all the copies that I submitted were returned to me immediately on February 4. One can hardly fathom the reason for the inapplicability to a judicial misconduct complaint already in its seventh month after submission of the basic principles of our legal system of the right to petition and the obligation to update information, which is incorporated in the federal rules of procedure. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

There is still more. The pattern of wrongdoing has materialized in more than 10 decisions adopted by the bankruptcy and district courts, which I challenged in an appeal bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted those decisions with bias and prejudice against me and denied me due process. Yet, the order dismissing my appeal, adopted by a panel including the Chief Judge, does not even discuss that pattern, let alone protect me on remand from further targeted misconduct and systemic wrongdoing that have already caused me enormous expenditure of time, effort, and money as well as unbearable aggravation. Where the procedural mechanics of jurisdiction are allowed to defeat the courts' reason for existence, namely, to dispense justice through fair and impartial process, then there is every justification for escalating the misconduct complaint to the next body authorized to entertain it. It is not reasonable to expect that a complainant should wait sine die just to find out the status of his complaint despite the evidence that it is not being dealt with and that he is being left to fend for himself at the wrongful hands of those that treat him with disregard for law, rules, and facts.

Therefore, I am respectfully addressing myself to you as the justice with supervisory responsibilities for this Circuit, and to the members of the Judicial Council of this Circuit, to request that you consider the documents attached hereto and bring my complaint and its handling so far to the attention of the Council so that it may launch an investigation of the judges complained-about and I be notified thereof. Meantime, I look forward to hearing from you and remain,

sincerely yours,

Dr. Richard Cordero

C:110 Dr. Cordero's request of 2/11/4 to 2nd Cir Justice Ginsburg for Judicial Council to investigate §351 complaint

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

[Sample of letters to members of the Judicial Council, 2nd Cir.] February 13, 2004

The Hon. Dennis Jacobs
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Judge Jacobs,

On August 11, 2003, I submitted to the Court of Appeals for the Second Circuit a complaint based on detailed evidence of judicial misconduct on the part of U.S. Bankruptcy Judge John C. Ninfo and other court officers in the Bankruptcy and District Courts for the Western District of New York. The specific instances of disregard of the law, rules, and facts were so numerous, so protective of the local parties and injurious to me alone, the only non-local and pro se party, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Receipt of the complaint was acknowledged on September 2; it was assigned docket no. 03-8547. Although the provisions of law governing such complaints, that is, 28 U.S.C. §§372 and 351, and the implementing rules of this Circuit require 'prompt and expeditious' action on the part of the chief judge and its notification to the complainant, it is the seventh month since submission but I have yet to be informed of what action, if any, has been taken.

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There is still more. The pattern of wrongdoing has materialized in more than 10 decisions adopted by the bankruptcy and district courts, which I challenged in an appeal bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted those decisions with bias and prejudice against me and denied me due process. Yet, the order dismissing my appeal, adopted by a panel including the Chief Judge, does not even discuss that pattern, let alone protect me on remand from further targeted misconduct and systemic wrongdoing that have already caused me enormous expenditure of time, effort, and money as well as unbearable aggravation. Where the procedural mechanics of jurisdiction are allowed to defeat the courts' reason for existence, namely, to dispense justice through fair and impartial process, then there is every justification for escalating the misconduct complaint to the next body authorized to entertain it. It is not reasonable to expect that a complainant should wait sine die just to find out the status of his complaint despite the evidence that it is not being dealt with and that he is being left to fend for himself at the wrongful hands of those that treat him with disregard for law, rules, and facts.

Therefore, I am respectfully addressing myself to you as member of the Judicial Council of this Circuit and to Justice Ginsburg, as the justice with supervisory responsibilities for this Circuit, to request that you consider the documents attached hereto and bring my complaint and its handling so far to the attention of the Council so that it may launch an investigation of the judges complained-about and I be notified thereof. Meantime, I look forward to hearing from you and remain,

sincerely yours,

Dr. Richard Cordero

List of Members of the Judicial Council of the Second Circuit

to whom the letters of February 11 and 13, 2004, were individually addressed
requesting that they cause the Council to investigate
the misconduct complaint against Judge John C. Ninfo, II, WBNY
and its handling by Chief Judge John M. Walker, Jr., CA2

by

Dr. Richard Cordero

Madam Justice **Ginsburg**
Circuit Justice for the Second Circuit
The **Supreme Court** of the United States
1 First Street, N.E.
Washington, D.C. 20543
tel. (202) 479-3000

Circuit Judges

Judge Jose A. Cabranes, CA2
Judge Guido Calabresi, CA2
Judge Dennis Jacobs, CA2
Judge Rosemary S. Pooler, CA2
Judge Chester J. Straub, CA2
Judge Robert D. Sack., CA2

U.S. Court of Appeals
for the Second Circuit
Member of the Judicial Council
40 Foley Square
New York, NY 10007-1561
tel. (212) 857-8500

District judges

The Hon. Frederick J. **Scullin**, Jr.
U.S. District Court, NDNY
Member of the Judicial Council
445 Broadway, Suite 330
Albany, NY 12207
tel. (518) 257-1661

The Hon. Edward R. **Korman**
U.S. District Court, EDNY
Member of the Judicial Council
75 Clinton Street
Brooklyn, NY 11201
tel. (718) 330-2188

The Hon. Michael B. **Mukasey**
U.S. District Court, SDNY
Alexander Hamilton Custom House
Member of the Judicial Council
One Bowling Green
New York, NY 10004-1408
tel. (212) 805-0136

The Hon. Robert N. **Chatigny**
U.S. District Court, District of **Connecticut**
Richard C. Lee U.S. Courthouse
Member of the Judicial Council
141 Church Street
New Haven, Ct 06510
tel. (203) 773-2140

The Hon. William **Sessions**, III
U.S. District Court, District of **Vermont**
Member of the Judicial Council
P.O. Box 928
Burlington, VT 05402-0928
tel. (802) 951-6350

Table of Exhibits

accompanying the letters of February 11 and 13, 2004
sent to members of the Judicial Council, 2nd Cir.,
requesting that they cause the Council to investigate
the misconduct complaint against Judge John C. Ninfo, II, WBNY
and its handling by Chief Judge John M. Walker, Jr., CA2
by
Dr. Richard Cordero

I. Statement of the Complaint

1. **Abbreviated Statement of Facts** of Dr. Richard Cordero of August 11, 2003, as reformatted on August 27, 2003, in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit 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 ..... vi [C:63]
2. Letters from **Court of Appeals** Clerks Roseann MacKechnie and Patricia Chin-Allen of **September 2**, 2003, **acknowledging** receipt of the **complaint** and docketing it as no. 03-8547 ..... xi [C:73]
3. Dr. **Cordero**'s letter of **February 2, 2004**, **to** the Hon. John M. Walker, Jr., **Chief Judge** for the Court of Appeals for the Second Circuit, inquiring about the status of the complaint and updating its supporting evidence ..... xiii [C:105]
    1. Letter from **Court of Appeals** Clerks Roseann MacKechnie and Patricia Chin-Allen of **September 2**, 2003, **acknowledging** receipt of the **complaint** and docketing it as no. 03-8547 ..... xi [C:73]
    2. **Order** of the Court of Appeals of November 13, 2003, **granting** Dr. Cordero's **motion** to **update evidence** of **bias** in case no. 03-5023 ..... xv [C:108]
4. Letter from **Court** of Appeals Clerks Roseann MacKechnie and Patricia Chin-Allen of **February 4, 2004**, **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of February 2, 2004, to the Chief Judge ..... xvi [C:109]

5. **Decision** of the Court of Appeals of January 26, 2004, **dismissing** Dr. Cordero's **appeal** *In re Premier Van et al.*, dkt. no. 03-5023.....xvii [C:119]

6. **Exhibits: Detailed Statement of Facts** in support of a complaint under 28 U.S.C. §372(c)(1) submitted on August 11, 2003, to the Clerk of Court of the Court of Appeals for the Second Circuit 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 .....E-1 [E in C1 file]

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   4. Judge **Ninfo's order** of July 15, 2003 .....E-61 [E:55]

II. DOCUMENTS SUPPORTING THE COMPLAINT (FROM THE APPENDIX IN *IN RE PREMIER VAN* ET AL., 03-5023, CA2)

[A-# in A folder]

1. Letter of Kenneth **Gordon,** Esq., Chapter 7 Trustee, of **September 23**, 2002, **to** Dr. Richard **Cordero**, with copy **to** Hon. Judge John C. **Ninfo**, II, United States Bankruptcy Judge for the Western District of New York, **and others**..... A-1

2. Dr. **Cordero**'s letter of **September 27**, 2002, **to** the Judge **Ninfo**..... A-7

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4. Dr. Richard **Cordero**'s letter of **September 27**, 2002, **to** Trustee **Gordon**..... A-11

5. Trustee **Gordon**'s letter of **June 10, 2002**, **to** Dr. **Cordero** A-16

6. Trustee **Gordon**'s letter of **April 16, 2002**, **to** David **Dworkin**, manager/owner of the Jefferson-Henrietta warehouse A-17

7. Letter of Raymond **Stilwell**, Esq., attorney for Premier Van Lines, Debtor in the Chapter 7 bankruptcy case no. 01-20692, of **May 30, 2002, to** Dr. Richard **Cordero**..... A-18

8. Trustee **Gordon**'s letter o**f October 1**, 2002, **to** Judge **Ninfo and others**..... A-19

9. James **Pfuntner**'s **Summons and Complaint** of October 3, 2002, in Adversary Proceeding no: **02-2230** (received on or around **October 20**, 2002; see pages 32, 49, and 52)..... A-21

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12. Dr. **Cordero**'s letter of **October 7**, 2002, **to** Att. **MacKnight** A-34
13. Dr. **Cordero**'s letter of **October 14**, 2002, **to** Assistant U.S. Trustee **Schmitt** A-37
14. Dr. **Cordero**'s **Rejoinder** and Application for a Determination of **October 14**, 2002, **to** Assistant U.S. Trustee **Schmitt** A-38
15. Letter of Christopher **Carter**, owner of Champion Moving & Storage, Inc., of **July 30, 2002**, **to** Dr. **Cordero** A-45
16. Christopher **Carter**'s letter of **July 30, 2002**, **to** Vince **Pusateri**, Vice President of M&T Bank, general lienholder against Premier Van Lines, Inc., debtor A-46-48
17. Assistant U.S. Trustee **Schmitt**'s letter of **October 22**, 2002, **to** Dr. **Cordero**, with copy to Judge Ninfo and Trustee Gordon A-53
18. Dr. **Cordero**'s **Answer and Counterclaim** of **November 1**, 2002, in Adversary Proceeding no. 02-0223 ..... A-56
19. **Letter of Michael** Beyma**, Esq., attorney for M&T Bank, of** August 15, 2002**,** to **Dr. Richard** Cordero A**-**63
20. Dr. **Cordero**'s **Amended Answer** with Cross-claims of **November 21**, 2002 ..... A-70
21. Dr. **Cordero**'s letter of **November 21**, 2002, **to** Bankruptcy Clerk Paul **Warren** and Case Administrator Karen **Tacy** A-95
22. Dr. **Cordero's Appeal** of **November 25**, 2002, against a Supervisory Opinion of Assistant U.S. Trustee Schmitt **to** U.S. Trustee **Schwartz**, with copy to Judge Ninfo and Trustee Gordon. A-101
23. Trustee **Gordon**'s Affirmation in Support of Motion to **Dismiss Cross-claim**, of **December 5**, 2002 ..... A-135
24. Dr. **Cordero**'s Memorandum **in Opposition** in Bankruptcy Court to the Trustee's Motion **to Dismiss**, of **December 10**, 2002 ..... A-143
25. Judge **Ninfo's order** entered on **December 30**, 2002, to **Dismiss Cross-claim** against Trustee Gordon A-151
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29. Trustee **Gordon**'s memorandum of law of **February 5**, 2003, in Bankruptcy Court **in opposition** to Dr. Cordero's motion **to extend time** for appeal..... A-234

30. Dr. **Cordero**'s affirmation of **February 26**, 2003, in support of motion in Bankruptcy Court for **relief** from order **denying** the motion to **extend time** to file notice of appeal A-242

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32. **Transcript** of hearing on December 18, 2002, received on March 28, 2003..... A-262

33. Dr. **Cordero**'s letter of **March 30**, 2003, **to** Mary **Dianetti**..... A-283

34. Mary **Dianetti's** letter of **April 11**, 2003, **to** Dr. **Cordero**..... A-286

35. **Dr.** Cordero**'s** application **of** December 26**, 2002, for entry of** default judgment **against David** Palmer..... A-290

36. Dr. Cordero's Affidavit of Amount Due..... A-294

37. **Dr.** Cordero**'s letter of** January 30, 2003, to **Judge** Ninfo..... A-302

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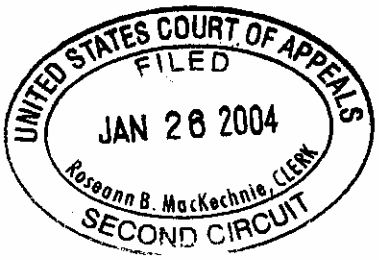
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

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



PRESENT:

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

----------X

IN RE: PREMIER VAN LINES, INC.,
Debtor.

----------X

RICHARD CORDERO,
Third-Party-Plaintiff-Appellant,

v.

No. 03-5023

KENNETH W. GORDON, ESQ.,
Trustee-Appellee,

DAVID PALMER,
Third-Party-Defendant-Appellee.

----------X

APPEARING FOR APPELLANT: Richard Cordero, Brooklyn, NY

APPEARING FOR APPELLEES: Kenneth W. Gordon, Esq., Gordon & Schaal, LLP, Rochester, New York

Appeal from orders of the United States District Court for the Western District of New York (David G. Larimer, District Judge).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the appeal from orders of the District Court is **DISMISSED.**

Third-party-plaintiff-appellant Richard Cordero appeals from two interlocutory orders issued by the district court. In one of the orders, the district court (1) denied Cordero's motion for default judgment against appellee David Palmer, whom Cordero had joined as a third party in an adversary proceeding within the bankruptcy proceedings commenced by Premier Van Lines, and (2) remanded to the bankruptcy court for further proceedings. In the second order, the district court affirmed the bankruptcy court's dismissal of a cross-claim asserted by Cordero against bankruptcy trustee Kenneth Gordon. The adversary proceedings remain pending before the bankruptcy court at the present time.

Having carefully considered all of Cordero's arguments on appeal, including those raised in the supplemental brief he filed following oral argument, we conclude that we lack jurisdiction to consider the merits of Cordero's claims because the orders he seeks to appeal are non-final and non-appealable.

Pursuant to § 158(d) of the Bankruptcy Act, 28 U.S.C. § 158(d), this court has jurisdiction to review a district court's order in a bankruptcy case only if that order is "final." See In re Prudential Lines, Inc., 59 F.3d 327, 331 (2d Cir. 1995). The first order Cordero seeks to appeal is not final within the meaning of § 158(d) because the district court remanded Cordero's motion for a default judgment to the bankruptcy court for further proceedings. See In re Prudential Lines, 59 F.3d at 331 ("This court has adopted the prevailing view that courts of appeals lack jurisdiction over appeals from orders of district courts remanding for significant further proceedings in bankruptcy courts.") (internal quotation marks omitted). The second order Cordero seeks to appeal is also not final because, in the bankruptcy context, the dismissal of a single cross-claim asserted within a larger adversary proceeding is not a final, appealable order. Id. at 332.

Finally, insofar as Cordero seeks the bankruptcy judge's recusal, to move the proceedings to a different judicial district, or to appeal the bankruptcy court's orders denying Cordero's recusal and removal motions and his belated motion for an extension

of time in which to file a notice of appeal, these claims challenge decisions issued by the bankruptcy court that have not been reviewed by the district court. Pursuant to § 158(d), the jurisdiction of the court of appeals in bankruptcy actions is limited to review of final decisions emanating from the district court. See In re Fugazy Express, Inc., 982 F.2d 769, 774-75 (2d Cir. 1992) (this court lacks jurisdiction over appeals taken from non-final orders originating in the bankruptcy court). Contrary to Cordero's assertions in his supplemental brief, this limitation is unaffected by the provisions of 28 U.S.C. § 455(a). Cf. In re Smith, 317 F.3d 918, 923 (9th Cir. 2002) (reviewing district court's affirmance of bankruptcy judge's denial of motion to recuse). Accordingly, we lack jurisdiction over these claims as well.

For the reasons set forth above, Cordero's appeal is **DISMISSED** for lack of jurisdiction.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: Lucille Carr
Lucille Carr, Deputy Clerk

Docket no. 03-5023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR PANEL REHEARING
AND
HEARING EN BANC

In re Premier Van et al.

Richard Cordero,
Cross and Third party plaintiff-Appellant
v.
Kenneth Gordon,
Cross defendant-Appellee
and (no. 03-cv-6021L, WDNY)
David Palmer,
Third party defendant-Appellee
(no. 03-MBK-6001L, WDNY)

Dr. Richard Cordero respectfully petitions that this Court's order of January 26, 2004, (Appendix=A-842, infra) dismissing his appeal from orders issued by the U.S. Bankruptcy and District Courts for the Western District of NY be reviewed by the panel and in banc on the following factual and legal considerations:

I. Why this Court should hear this petition en banc

1. This petition should be heard an banc because: There is abundant material evidence that judges, administrative personnel, and attorneys in the bankruptcy and district courts in Rochester have disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local

party, who resides in New York City, and the benefit of the local ones in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him (A-674, infra).

2. The resulting abuse and that yet to be heaped on remand on Dr. Cordero, a pro se litigant, can wear him down until he is forced to quit his pursuit of justice (para. 22, infra). The reality that everybody has a breaking point should be factored in by every member of this Court when deciding whether to hear this appeal. It was dismissed on the procedural ground that the appealed orders lack finality. Under these circumstance, the Supreme Court would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all," *Cobbledick v. United States,* 60 S.Ct. 540, 540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940). Hence, Dr. Cordero appeals to the commitment to justice and professional responsibility of the Court's members to review this case so that they may relieve him of so much abuse and ensure that he has his day in a court whose integrity affords him just and fair process.

3. If doing justice to one person were not enough to intervene, then this Court should do so to ensure just and fair process for all similarly situated current and future litigants and to protect the trust of the public at large in the circuit's judicial system that this Court is charged with protecting (A-813, infra). Resolving conflicts of law among panels or circuits cannot be a more important ground for a hearing en banc than safeguarding the integrity of the judicial process while

aligning itself with Supreme Court pronouncements. Without honest court officers, the judicial process becomes a shell game where the law and its rules are moved around, not by respect for legality and a sense of justice, but rather by deceit, self-gain, and prejudice. To which are you committed?

II. The appealed order dismissing a cross-claim against Trustee Gordon is not just that of the bankruptcy court, but is also the subsequent order of the district court holding that Dr. Cordero's appeal from that dismissal was, although timely mailed, untimely filed, which is a conclusion of law that cannot possibly be affected by any pending proceedings in either court, so that the order is final and appealable

4. Bankruptcy Judge John C. Ninfo, II, dismissed (A-151) the cross-claims against Trustee Kenneth Gordon (A-83) on the latter's Rule 12(b)(6) FRCP motion, while disregarding the genuine issues of material fact that Dr. Cordero had raised (Opening Brief=OpBr-38). This dismissal is final, just as is the dismissal of a complaint unless leave to amend is explicitly granted. *Elfenbein v. Gulf & Western Industries, Inc.*, 90 F.2d 445, 448 n. 1 (2d Cir. 1978).

5. Dr. Cordero appealed to the district court (A-153), but the Trustee moved to dismiss alleging the untimeliness of the filing of the appeal notice, never mind that it was timely mailed. Dr. Cordero moved the district court twice to uphold his appeal (A-158, 205). Twice it dismissed it (A-200, 211). Likewise, twice he appealed to the bankruptcy court to grant his timely mailed motion to extend time to file notice to appeal (A-214, 246). Twice the bankruptcy court denied relief (A-

240, 259), alleging that the motion too had been untimely filed, although even Trustee Gordon had admitted that it had been timely *filed* (OpBr-11).

6. Consequently, there is no possibility in law whereby Dr. Cordero could for a fifth time appeal the issue of timelines to either court. Nor is it possible, let alone likely, that either will sua sponte revise their decisions and reverse themselves. As the bankruptcy put it, 'the district court order establishing that Dr. Cordero's appeal was untimely' "is the law of the case" (A-260). Thus, res judicata prevents any such appeal or sua sponte reversal. Similarly, it is not possible for Dr. Cordero, well over a year after the entry in 2002 of the underlying order dismissing his cross-claims, to move the bankruptcy court to review it and reinstate them; nor could that court sua sponte review it and reverse itself.

7. Due to these orders, Trustee Gordon is beyond Dr. Cordero's reach in this case, and since the Trustee settled with the other parties, he is no longer a litigating party. No pending proceedings in the courts below could ever change the legal relation between Dr. Cordero and the Trustee. Each order is final because it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment", *Catlin v. United States*, 65 S.Ct. 631, 633, 324 U.S. 229, 233, 89 L.Ed. 911 (1945). Their legal relation can only change if this Court reviews either or both of those orders and determines that they are tainted by bias against Dr. Cordero (OpBr-9, 54); and that they are unlawful because the bankruptcy court disregarded the law applicable to a 12(b)(6) motion (OpBr-10, 38) and to

defamation (OpBr-38); and both courts disregarded the Bankruptcy Rules, such as 9006(e) complete-on-mailing and (f) three-additional-days (OpBr-25). What else could possibly be necessary to make an order final and appealable to this Court?

8. This Court can reach the bankruptcy court order (A-151) dismissing the cross-claims because 1) it was included in the notice of appeal to this Court (A-429), and 2) in *In re Bell*, 223 F.3d 203, 209 (2d Cir. 2000*)* it stated that in an appeal from a district court's review of a bankruptcy court ruling, the Court's review of the bankruptcy court is "independent and plenary." Thus, through its review of the district court order dismissing the appeal for untimeliness, the Court can reach the underlying bankruptcy court order dismissing the cross-claims.

III. The district court order remanding to the bankruptcy court the application for default judgment is:

1) final because the further proceedings ordered by the district court were in fact ordered by the bankruptcy court on April 23 and undertaken on May 19, 2003, and

2) appealable because such proceedings were ordered in disregard of the express provisions of Rule 55 FRCP and without any other legal foundation, an issue of law raised on appeal to, and rehearing in, the district court, and reviewable by this Court since the unlawful obligation imposed on Dr. Cordero to participate in the proceedings and the grounds for it cannot possibly be changed by future developments in those courts

9. Dr. Cordero brought third party claims against Mr. David Palmer, the owner of the moving and storage company Premier Van Lines, for having lost his stored property, concealed that fact, and committed insurance fraud (A-78, 87, 88).

Although he was already under the bankruptcy court's jurisdiction as an applicant for bankruptcy, Mr. Palmer failed to answer. Dr. Cordero timely applied for default judgment for a sum certain under Rule 55 FRCP. (A-290, 294) Yet, the court belatedly (A-302) recommended to the district court (A-306) that the default judgment application be denied and that Dr. Cordero be required to inspect his property to prove damages, in total disregard of Rule 55 and without citing any legal basis whatsoever for imposing that obligation on him (OpBr-13).

10. Dr. Cordero submitted to the district court a motion presenting factual and legal grounds why it should dismiss the recommendation and enter default judgment (A-314). However, District Judge David Larimer accepted the recommendation without even acknowledging his motion and required that he "still establish his entitlement to damages since the matter does not involve a sum certain" (A-339). But it did involve a sum certain! (A-294) By making this gross mistake of fact, the district court undercut its own rationale for requiring that Dr. Cordero demonstrate his entitlement in "an inquest concerning damages" to be conducted by the bankruptcy court. Moreover, it cited no statutory or regulatory provision or any case law whatsoever as source of its power to impose that obligation on Dr. Cordero in contravention of Rule 55, which it did not even mention (OpBr-13).

11. Dr. Cordero discussed that outcome-determinative mistake of fact and lack of legal grounds in a motion for rehearing (A-342; cf. OpBr-16). In disposing of it, the district court not only failed to mention, let alone correct, its mistake, or to

provide any legal grounds, but it also failed to provide any opinion at all, just a lazy and perfunctory "The motion is in all respects denied." (A-350; cf. A-211, 205; Reply Brief=ReBr-19) That is all that was deemed necessary between judges that so blatantly disregard law, rules, and facts (OpBr-9-C; 48-53). They have carved their own judicial fiefdom of Rochester out of the territory of this circuit (A-780, infra), where they lord it over attorneys and parties by replacing the laws of Congress with the law of the locals, based on close personal relations and the fear of retaliation against those who challenge their distribution of favorable and unfavorable decisions (A-804.IV, infra).

12. Although the bankruptcy court recommended to the district court that Dr. Cordero's property in storage be inspected to determine damage, it allowed its first order of inspection to be disobeyed with impunity by Plaintiff James Pfuntner and his Attorney David MacKnight to the detriment of Dr. Cordero and without providing him any of his requested compensation or sanctions (OpBr-18). As a result, the inspection did not take place.

13. Then precisely at the instigation of Mr. Pfuntner and his attorney, it ordered at a hearing on April 23, 2003, that Dr. Cordero travel to Rochester to inspect his property, which Mr. Pfuntner said had been left in his warehouse by his former lessee, Mr. Palmer, the owner of the storage company Premier. Although this inspection was the "inquest" for whose conduct by the bankruptcy court the district court denied Dr. Cordero's application for default judgment against Mr. Palmer

and remanded, the bankruptcy court allowed this order to be disobeyed too: None of the necessary preparatory measures were taken (A-365) and neither Mr. Pfuntner, nor his attorney or storage manager even showed up at the inspection. Yet, Dr. Cordero did travel to Rochester and the warehouse on May 19, 2003.

14. At a hearing on May 21 attended by Mr. Pfuntner's attorney, Dr. Cordero reported on the inspection. It had to be concluded that some of his property was damaged and other had been lost (Mandamus Brief-34; Mandamus Appendix= MandA-522-H). Yet, the biased bankruptcy court neither sanctioned the locals that showed but contempt for its orders nor had them compensate Dr. Cordero.

15. It follows that as a matter of fact, the further proceedings for which the case was remanded by the district to the bankruptcy court took place; and as a matter of law, they should never have taken place because requiring them and compelling Dr. Cordero's participation violated Rule 55 FRCP and neither of those courts offered any other legal grounds whatsoever for denying his default judgment application and imposing such requirements. No number of further proceedings will undo the consequences and cancel the implications of the district and bankruptcy rulings. Both must be considered final and appealable (A-821, infra).

16. How could it be said that this Court was dedicated to dispensing justice if it concerns itself with just operating the mechanics of procedure by delivering Dr. Cordero back into the hands of the district and bankruptcy courts for them to injure him with their bias and deprive him of his rights under the law, the sum

certain he sued for, and his emotional wellbeing? Meanwhile, those courts have continued protecting Mr. Palmer, another local party, even after he was defaulted by the Clerk of Court (MandA-479). Thus, he has been allowed to stay away from the proceedings despite being under the bankruptcy court's jurisdiction, whereby he shows nothing but contempt for judicial process. With whom do the equities lie? The procedure of final rulings should not be rolled out if it also allows biased courts to crush Dr. Cordero, for it also crushes the sense of equity that must make this Court recoil at the injustice of this situation. Rather than deliver him to them for further abuse, this Court should take jurisdiction of their rulings to establish that they wronged him and prevent them from doing so again by removing the case to a court unrelated to the parties and unfamiliar with the case.

IV. Bankruptcy court orders were appealed for lack of impartiality and disregard for law, rules, and facts to the district court, which was requested to withdraw the case from the bankruptcy court but refused to do so, whereby the district court did review those orders and the issue of bias so that its order of denial is final and appealable to this Court

17. The legal grounds and factual evidence of partiality and disregard for legality on which the district court was requested (A-342, 314) to withdraw the case from the bankruptcy court were swept away with a mere "denied in all respects" without discussion by a district court's order (A-350), one among those appealed to this Court. Hence, Dr. Cordero went back to the bankruptcy court and invoked those

grounds and evidence to request that it disqualify itself under 28 U.S.C. §455(a) (A-674, infra). The bankruptcy court denied the motion too.

18. Consequently, there was no justification either in practice or in logic to resubmit the substance of those grounds and evidence in order to appeal that denial to the district court. How counterintuitive it is to expect that what Dr. Cordero's initial attack on the bankruptcy court could not move the district court to do, the bankruptcy court's own subsequent defense, if appealed to its defending district court, would cause the latter to disqualify the bankruptcy court and remand the case! A reasonable person is expected to use common sense.

19. That reasoning is particularly pertinent because the district court was requested not once, but twice (A-331, 348) to withdraw the case from the bankruptcy court to itself under 28 U.S.C. §157(d) "for cause shown". Yet, it did not even acknowledge the request, let alone discuss it in its "denied in all respect" fiat or its earlier perfunctory order predicated on an outcome-determinative mistake of fact (para. 10, 11, supra). Thus, it would be counterintuitive to expect that if Dr. Cordero appealed to such district court the bankruptcy court's refusal to disqualify itself and remove the case to another district, the district court would roll up its sleeves and write a meaningful opinion to affirm, not to mention reverse, a decision concerning contentions by Dr. Cordero that it has disregarded twice before. And what a waste of judicial resources!, and of Dr. Cordero's time, effort, and money. Does he matter?

20. The counterintuitive nature of this expectation is also supported by practical considerations: The district court showed the same lack of impartiality toward Dr. Cordero and the same disregard for law, rules, and facts that the bankruptcy court had showed so that their conduct formed a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing (OpBr-9, 54; ReBr-19). A reasonable person, upon whose conduct the law is predicated, may rightly assume that if after the bankruptcy court refused to recuse itself and remove, Dr. Cordero had appealed to the district court, the latter could not reasonably have been expected to condemn the bankruptcy court, for in so doing it would have inevitably indicted itself; and what could conceivably be even riskier, it would have betrayed its coordination with the bankruptcy court. For that too, an appeal that endangered those vested interests would have been a wasteful exercise in futility.

21. There is no justification in practice for this Court to require a litigant to engage in such futility and endure the tremendous aggravation concomitant with it. The unreflective insistence on procedure should not be allowed to defeat substance and establish itself as the sole guiding principle of judicial action, the adverse consequences to those who appeal for justice to the courts notwithstanding. On the contrary, the Supreme Court sets the rationale for pursuing the objective of justice ahead of operating the mechanics of procedure: “There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a

losing party would be irreparably injured if review were unavailing"; *Republic Natural Gas Co. v. Oklahoma,* 68 U.S. 972, 976, 334 S.Ct. 62, 68, 92 L.Ed.2d 1212, 1219 (1948). Those words are squarely applicable here.

22. Dr. Cordero was drawn into this Rochester case as the only non-local defendant. He must prosecute it pro se because a Rochester attorney would hardly risk, for the sake of a one-time non-local client, antagonizing the judges and officers of the fiefdom of Rochester and it would cost him a fortune that he does not have to hire an NYC attorney. So he performs all his painstakingly conscientious legal research and writing at the expense of an enormous amount of time, money, and effort. Under those circumstances, when courts drag this case out, either intentionally to wear him down or unwittingly by subordinating justice to its procedure, they inflict on him irreparable injury. This effect must be taken into account in deciding whether to hear this appeal because determining finality requires a balancing test applied to several considerations, "the most important of which are the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other", *Dickinson v. Petroleum Conversion Corp.,* 70 S.Ct. 322, 324, 338 U.S. 507, 511, 94 L.Ed. (1950).

23. Preventing anymore irreparable injury to Dr. Cordero and ensuring the integrity of its circuit's judicial system are grounds for the Court to take jurisdiction of this appeal by using the inherent power that emanates from the potent rationale behind its diversity of citizenship jurisdiction: the fear that state courts may be partial

toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as detracting from the public's trust in the system of justice. Here that fear has materialized in federal courts that favor the locals at the expense of the sole non-local who dared challenge them.

24. Whether the cause of lack of impartiality is diversity of locality or personal animus and self-gain, it has the same injurious effect on the administration of justice. Section 455(a) combats it by imposing the obligation on a judge to disqualify himself whenever "his impartiality might be reasonably questioned". The Supreme Court has interpreted this language to mean that for disqualification under §455(a) it suffices that there be a situation "creating an appearance of impropriety"; *Liljeberg,* 486 U.S. 847, at 859-60, para. 1, supra.

25. Given the high stakes, to wit, a just and fair process, §455(a) sets a very low threshold for its applicability: not proof, not even evidence, just 'a reasonable question'. Yet, Dr. Cordero has presented a pattern of disregard of laws, rules, and facts so consistently injurious to him and protective of the local parties as to prove the bias against him of both courts and court officers therein. So why would this Court set the triggering point for its intervention at such high levels as an appeal by Dr. Cordero from the bankruptcy to the district court despite the pro-forma character and futility of that exercise under the circumstances?

26. Intervening only at such injury-causing high level contradicts the principle that the Court recognized in *Ginett v. Computer Task Group, Inc.*, 962 F.2d 1085, 1097 (2d Cir. 1992), of avoidance of the hardship that appellant would sustain if review was delayed. Requiring an intervening appeal to the district court is most unwarranted here because the bankruptcy court, who decided not to disqualify itself as requested by Dr. Cordero, submitted sua sponte its decision to this Court on November 19, 2003, whereby it in practice requested its review by the Court.

27. Instead of reviewing it, the Court dismissed Dr. Cordero's appeal. Thereby it has exposed him to more blatant bias from the bankruptcy court and its partner in coordinated acts of wrongdoing, the district court (ReBr-19). Indeed, it is reasonable to fear that those courts will interpret the Court's turning down the opportunity, offered on that November 19 'platter', to review the decision refusing recusal as its condonation of their conduct. Will this Court leave Dr. Cordero even more vulnerable to more and graver irreparable injury from prejudiced courts that disregard legality while applying the law of the locals?

28. This interpretation is all the more likely because to support its refusal to take jurisdiction of Dr. Cordero's appeal and its requirement that he first appeal from the bankruptcy to the district court, this Court could find no stronger precedent than a non-binding decision from another circuit, namely, *In re Smith,* 317 F.3d 918, 923 (9th Cir. 2002). Its value is even weaker because Dr. Cordero already submitted to the district court grounds and evidence for disqualifying the

bankruptcy court and withdrawing the case, but it disregarded them. Thus, it already had its opportunity to review the matter. Now it is this Court's turn.

v. Relief sought

29. Dr. Cordero respectfully requests that this Court:

a. take jurisdiction of this appeal, vacate the orders tainted by bias or illegality, and "in the interest of justice" remove this case under 28 U.S.C. §1412 to a court that can presumably conduct a just and fair jury trial and is roughly equidistant from all parties, such as the U.S. district court in Albany;

b. launch, with the assistance of the FBI (A-805, infra), a full investigation of the lords of the fiefdom of Rochester and their vassals, guided by the principle 'follow the money' of bankruptcy estates and professional persons fees (11 U.S.C. §§326-331), and intended to bring them back into the fold of legality;

c. award Dr. Cordero costs and attorney's fees and all other just compensation.

Respectfully submitted under penalty of perjury,

Dr. Richard Cordero

March 10, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Petitioner Pro Se
tel. (718) 827-9521

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b. Motion of November 3, 2003,for leave to file an updating supplement of evidence of bias..... A-768 [A:801]

c. Outline of oral argument delivered by Dr. Cordero on December 11, 2003..... A-803 [A:837]

d. Motion of December 28, 2003, for leave to brief the issue of jurisdiction..... A-810 [A:844]

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[Opening Brief=A:1301; Reply Brief=A:1511; Mandamus Brief=A:615]

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by fax or United States Postal Service on the following parties copies of my petition for panel rehearing and hearing en banc:

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Chapter 7 Trustee
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Rochester, New York 14618
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Rochester, New York 14614
tel. (585) 263-5812
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United States District Court
District of Connecticut
450 MAIN STREET
HARTFORD, CONNECTICUT 06103-9998

CHAMBERS OF
ROBERT N. CHATIGNY
CHIEF JUDGE

(860) 240-3659

March 1, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero,

This will acknowledge receipt of your recent submission directed to me in my capacity as a member of the Second Circuit Judicial Council. You request that I bring your complaint of judicial misconduct and its handling so far to the attention of the Council, that an investigation be launched, and that you be kept informed.

The Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers make no provision for the action you request. The Rules provide that complaints of judicial misconduct are to be reviewed in the first instance by the chief judge of the circuit. If the chief judge is disqualified from acting, the duties of the chief judge under the Rules are to be assigned to the circuit judge eligible to become the next chief judge. The initial disposition of a complaint by the chief judge (or his substitute) is subject to review by the Council as a whole pursuant to a petition filed in accordance with the procedure set forth in Chapter III of the Rules.

The Rules appear to make no provision for requests for expedited handling of complaints. However, if you would like to make such a request, I believe it should be directed to Chief Judge Walker.

Very truly yours,

Robert N. Chatigny

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312

CHAMBERS OF
MICHAEL B. MUKASEY
CHIEF JUDGE

PHONE
(212) 805-0234

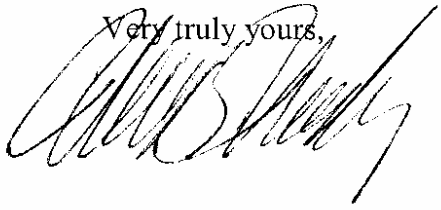
March 2, 2004

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

Dear Dr. Cordero:

I have your letter of February 13, 2004. The letter appears to state that you have filed a complaint of judicial misconduct and that you are not satisfied with the result. That is not a reason to bring this matter before the Judicial Council, and I have neither the authority nor the inclination to act further with respect to it.

Very truly yours,



C:140 Dis J Mukasey's letter of 3/2/4 to Dr. Cordero stating mistakenly a result of the complaint has been reached

Sample of letters sent individually and personalized to the following members of the Judicial Council:

Madam Justice Ginsburg
Circuit Justice

Circuit Judges
The Hon. Jose A. Cabranes
The Hon. Dennis Jacobs
The Hon. Guido Calabresi
The Hon. Rosemary S. Pooler

District Judges
The Hon. Chester J. Straub
Hon. Frederick J. Scullin, Jr.
The Hon. Edward R. Korman
The Hon. William Sessions, III

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

March 22, 2004

The Hon. Jose A. Cabranes
Circuit Judge
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Judge Cabranes,

Last February 13, I sent you, in your capacity as member of the Judicial Council of the Second Circuit, a letter concerning a judicial complaint that I lodged under 28 U.S.C. §351 with this Court and about which to date, in the eighth month since, I have not been notified of any action taken at all.

That letter, a copy of which is attached hereto, was bound with copies of all pertinent documents, 80 of them in over 200 pages. I turned the bound file on February 13 into the hands of Deputy Clerk Ms. Harris at the Take-in Office in Room 1803 for transmission to you.

However, I have yet to receive any acknowledgement of receipt, not to mention any substantive response. Therefore, I would be most indebted to you if you would kindly let me know whether my letter and accompanying documents reached you and, if so, by when I can expect to receive a reply from you.

Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

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

March 29, 2004

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

Re: *Judicial Conduct Complaint*

Dear Mr. Cordero:

Your letters of March 22, 2004, addressed to Judge Calabresi and Judge Straub relating to Judicial Conduct Complaint 03-8547 have been forwarded to this office.

Please be advised that the matter is under consideration. You will be notified as soon as a decision is made.

Very truly yours,

Roseann B. MacKechnie

cc: Honorable Guido Calabresi
Honorable Chester J. Straub

SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE-ROOM 2904
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE

JOHN M. WALKER, JR.
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

March 30, 2004

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

Re: Judicial Conduct Complaint, #03-8547

Dear Dr. Cordero:

In my capacity of Secretary to the Judicial Council, I am responding to your inquiries dated March 22, 2004 to some members of the Judicial Council. I have reviewed the above referenced docket number. The matter is pending before the Court. You will receive a copy of the order in due course. In the meantime, kindly direct any future questions to me as it is inappropriate for the members of the Council to correspond regarding pending litigation.

I trust this information is of assistance to you.

Very truly yours,

Karen Greve Milton
Circuit Executive

KGM/jdk
cc: Members of the Judicial Council
Roseann B. MacKechnie, Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

June 8, 2004

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Judicial Conduct Complaint, Docket No. 03-8547

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed June 8, 2004, dismissing your judicial conduct complaint.

Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351, you have the right to petition the judicial council for review of this decision.

A petition for review should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . . "

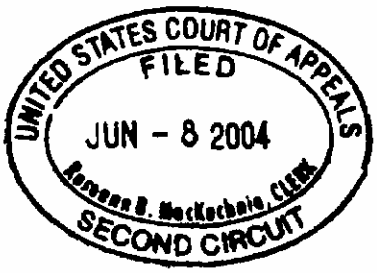
The petition for review must be received in the Clerk's Office **no later than July 9, 2004.**

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

ORIGINAL

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



----------X

In re:
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 03-8547

----------X

Dennis Jacobs, Acting Chief Judge:

On August 28, 2003, Complainant filed a complaint with the Clerk's Office of the U.S. Court of Appeals for the Second Circuit, pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 351 (formerly § 372(c)) (the "Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a Bankruptcy Court Judge (the "Judge") of this Circuit with misconduct.

Background

A review of the docket sheet in this case indicates that in September 2002, Complainant, in addition to several others, was named as a defendant in an adversary proceeding in Bankruptcy Court. After his cross-claims against the trustee were dismissed in December 2002, Complainant filed a motion for default judgment as well as a notice of appeal. In February 2003, the Bankruptcy Court denied a motion for an extension of time to file the notice of appeal, and in March 2003, the District Court granted a motion by the trustee to dismiss the appeal. Since that time, Complainant has filed numerous motions, including a motion for reconsideration, a renewed motion for default judgment,

a motion for sanctions, and a motion to recuse. The motion for reconsideration was denied, and it appears from the docket sheet that hearings were scheduled on the other motions. One was conducted in October 2003, after which Complainant's motion for recusal was denied. In addition, the Second Circuit recently denied Complainant's related mandamus petition.

Allegations

The Statement of Facts recites that the Judge "fail[ed] to move the case along its procedural stages." Specifically, Complainant alleges that the Judge failed to hold conferences, issue orders, schedule discovery, rule on motions, "impose[] consequences on a [defaulted] party;" and that the Judge took no action on Complainant's request that the judge review the trustee's performance and fitness to serve. Complainant also alleges that the Judge dismissed his cross-claims "with no regard to the legitimate questions of material fact regarding the [t]rustee's negligence and recklessness[.] Indeed, [the Judge] even excused [the trustee's] defamatory and false statements . . . thus condoning the [t]rustee's use of falsehood and showing gross indifference to its injurious effect on [Complainant]." He also asserts that the Judge has exhibited "bias and prejudice against" him and that the Judge allowed the other parties "to violate two discovery orders and submit disingenuous and false statements while charging [Complainant] with burdensome obligations." He adds that the District Court Judge, who is not named on the complaint form, "totally disregarded the fact that the damages have nothing to do with a Rule 55 application for default judgment where liability is predicated on defendant's failure to appear."

The Statement of Facts further alleges that: the Trustee's performance was "negligent and reckless; the court reporter "tried to avoid submitting the transcript"; the "Clerk of Court and Case

Administrator disregarded their obligations in handling [Complainant's] application for default judgment"; and that the court officers made efforts to "derail" Complainant's appeals "to the detriment of [his] legal rights."

Disposition

Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." *See* Local Rules 1(b) and 4(c)(1).

Complainant's statements concerning the treatment of motions, the handling of scheduling matters, and various rulings amount to a challenge to the merits of a decision or a procedural ruling. However, "[t]he complaint procedure is not intended to provide a means of obtaining a review of a judge's or magistrate's decision or ruling in a case. The judicial council of this circuit . . . does not have the power to change a decision or ruling. Only a court can do that." Local Rule 1(e); *see* Local Rule 1(b) (the Act does not cover "wrong decisions - even very wrong decisions - in the course of hearings, trials or appeals"). Allegations relating to the merits of the case must be pursued through normal appellate procedures. Similarly, a judicial misconduct complaint may not be used to force the Bankruptcy Judge to rule on Complainant's motions or other aspects of the case. *See* Local Rule 1(e).

Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Local Rule 4(c)(3).

Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges of the United States courts of appeals, district courts, and bankruptcy courts, as well as

United States magistrate judges. *See* Local Rule 1(c).

For the reasons stated above, the complaint is dismissed. The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

DENNIS JACOBS
Acting Chief Judge

Signed: New York, New York
June 8, 2004

(ORDER LIST: 546 U.S.)

WEDNESDAY, FEBRUARY 1, 2006

ORDER

It is ordered that the following allotment be made of the Chief Justice and the Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42 and that such allotment be entered of record, effective February 1, 2006.

For the District of Columbia Circuit, John G. Roberts, Jr., Chief Justice,

For the First Circuit, David H. Souter, Associate Justice,

For the Second Circuit, Ruth Bader Ginsburg, Associate Justice,

For the Third Circuit, David H. Souter, Associate Justice,

For the Fourth Circuit, John G. Roberts, Jr., Chief Justice,

For the Fifth Circuit, Antonin Scalia, Associate Justice,

For the Sixth Circuit, John Paul Stevens, Associate Justice,

For the Seventh Circuit, John Paul Stevens, Associate Justice,

For the Eighth Circuit, Samuel A. Alito, Jr., Associate Justice,

For the Ninth Circuit, Anthony M. Kennedy, Associate Justice,

For the Tenth Circuit, Stephen Breyer, Associate Justice,

For the Eleventh Circuit, Clarence Thomas, Associate Justice,

For the Federal Circuit, John G. Roberts, Jr., Chief Justice.

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[C:150-168 reserved]

Docket no. 03-5023

UNITED STATES COURT OF APPEALS
FOR
THE SECOND CIRCUIT

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

Kenneth Gordon,
Cross defendant-Appellee
and (no. 03-cv-6021L)

David Palmer,
Third party defendant-Appellee
(no. 03-MBK-6001L)

Appeal
from the
United States District Court
for the Western District of New York

Opening brief and addendum
for and by

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

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Docket no. 03-5023

United States Court of Appeals

for

the Second Circuit

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

OPENING BRIEF OF APPELLANT PRO SE RICHARD CORDERO

Kenneth Gordon,
Cross defendant-Appellee
and (no. 03-cv-6021L)

David Palmer,
Third party defendant-Appellee
(no. 03-MBK-6001L)

I. Preliminary Statement

The two orders appealed from were issued on March 27, 2003, (SPA-9&19, below) by the Hon. David G. Larimer, U.S. District Judge of the U.S. District Court for the Western District of New York. Underlying them were an order entered on December 30, 2002, (SPA-1) and a recommendation of February 4, 2003, (SPA-11-15) for an order submitted to the District Court by the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge of the U.S. Bankruptcy Court for the Western District of New York.

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B. David Palmer abandons Dr. Cordero's property and defrauds him of the fees; then fails to answer Dr. Cordero's complaint; yet, the courts deny Dr. Cordero's application for default judgment although for a sum certain, prejudge a happy ending to his property search, and impose on him a Rule 55-extraneous duty to demonstrate loss. 8

C. Bankruptcy and district court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial 9

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IV. Jurisdictional Statement

A. Jurisdiction of the district court

1. Within a bankruptcy case (dkt. no.01-20692), an adversary proceeding was filed in bankruptcy court by a non-party to this appeal. The court ordered Dr. Cordero's cross-claims against Trustee Kenneth Gordon dismissed (SPA-1). Dr. Cordero appealed to the district court (SPA-3) under 28 U.S.C. §158(a) (SPA-85).
2. In that adversary proceeding, Dr. Cordero, as a third party plaintiff, applied to the bankruptcy court for default judgment against Third-party defendant David Palmer (SPA-10). The court ordered the application transmitted to the district court (SPA-11) pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984). It made its recommendation thereon to the district court (SPA-11-15) under 28 U.S.C. §157(c)(1). Dr. Cordero moved in district court on March 2, under Rule 8011(a) F.R.Bkr.P. to enter default judgment and withdraw the adversary proceeding under 28 U.S.C. §157(d) (SPA-85).

B. Basis of appellate jurisdiction

3. This appeal from the two district court's orders of March 27 (SPA-9&19), is founded on 28 U.S.C. §§158(d) and 1291 (SPA-84), both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).*

C. Filing dates and timeliness of the appeal

4. The motions for rehearing in *Cordero v. Gordon* and *Cordero v. Palmer* were both denied by the district court on March 27, 2003 (SPA-9&19). From that date began to run under Rule 6(b)(2)(A) F.R.A.P. (SPA-81) the 30 days provided under Rule 4(a)(1)(A) F.R.A.P. (SPA-80) for filing a notice of appeal to the circuit court. That notice was timely filed on April 25, 2003 (SPA-21).

D. Appeal from final orders

5. The district court's March 27 order in *Cordero v. Gordon* (SPA-9) was final in dismissing Dr. Cordero's notice of appeal and, consequently, his cross-claims against Trustee Gordon.
6. The March 27 order in *Cordero v. Palmer* (SPA-19) was final in denying Dr. Cordero's right to default judgment for a sum certain against Defaulted party Palmer and stating that the bankruptcy court should conduct an inquest in which Dr. Cordero would be required to demonstrate damages as a precondition to his recovery of an uncertain sum.

V. Statement of Issues Presented for Review

A. In Cordero v. Gordon

7. Do the complete-on-mailing and the three-additional-days provisions of Rule 9006(e) and (f) F.R.Bkr.P, respectively (SPA-69), apply to Rule 8002 F.R.Bkr.P.

so that a notice of appeal timely mailed just as a motion to extend time to appeal timely mailed must be considered also timely filed even after the conclusion of the 10-day period or the 30-day period, respectively?

8. Did the court err when before any discovery whatsoever it summarily dismissed the cross-claims against Trustee Gordon of defamation as well as negligence and reckless performance as trustee, whereby the court failed to apply the standards for determining the legal sufficiency of the complaint, which though written by a pro se litigant it did not liberally construe, and went on to pass judgment on the merits while disregarding the genuine issues of material fact raised by the complaint?

B. In *Cordero v. Palmer*

9. Did the district court err in disregarding the objective and outcome determinative fact under Rule 55 F.R.Civ.P. (SPA-76) that the default judgment applied for was for a sum certain and instead imposed on Dr. Cordero the obligation to demonstrate recoverable loss although such obligation is not only nowhere to be found in Rule 55, but also contradicts its clear language of automaticity of entry of default judgment for a sum certain where a defendant has been found in default for failure to appear?

C. As to court officers at the district and the bankruptcy courts

10. Does the participation of bankruptcy and district court officers in a series of events of disregard of facts, procedural rules, and the law that consistently affect Dr. Cordero to his detriment and cannot be explained away as mere coincidences, but instead form a pattern of intentional and coordinated activity, create in the mind of a reasonable person the appearance of bias and prejudice sufficient to raise the justified expectation that Dr. Cordero will likewise not get an impartial and fair trial by those officers in those courts so as to warrant the removal of the case to a neutral court, such as the District Court for the Northern District of New York?

VI. Statement of the Case

11. The bankruptcy case of a moving and storage company spawned an adversary proceeding in bankruptcy court, where Dr. Cordero, a former client of the company, was named, together with the trustee, Kenneth Gordon, Esq., and others, defendant. Appearing pro se, Dr. Cordero cross-claimed to recover damages from Trustee Gordon for defamation as well as negligent and reckless performance as trustee. The Trustee moved to dismiss and the court summarily dismissed the cross-claims before disclosure or discovery had taken place and

although other parties' similar claims were allowed to stand. Dr. Cordero timely mailed his notice of appeal, but on the Trustee's motion, the District Court dismissed it as untimely filed.

12. Dr. Cordero served the Debtor's owner, Mr. David Palmer, with a summons and a third party complaint, but he failed to answer. Dr. Cordero timely applied on December 26, 2002, for default judgment for a sum certain. Only belatedly and upon Dr. Cordero's request to take action, did the bankruptcy court make a recommendation on February 4, 2003, namely, that the district court not enter default judgment because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.' Dr. Cordero moved the district court to enter default judgment despite the bankruptcy court's prejudgment of the case. Making no reference to that motion, the district court accepted the recommendation because Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain." Dr. Cordero moved the district court to correct its mistake since the application did involve a sum certain. The district court summarily denied the motion.

VII. Statement of Facts

A. In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and to avoid a review of his performance and fitness to serve, files false and defamatory statements about Dr. Cordero with the court and his U.S. trustee supervisor

13. A client –here Appellant Dr. Cordero- who resides in NY City, had entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993 and since then paid its storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about it. Mr. Palmer and his attorney assured him that his property was safe and in his warehouse at Jefferson-Henrietta, in Rochester (A-18). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.

14. In search for his property, Dr. Cordero was referred to the Chapter 7 trustee– here Appellee Trustee Gordon– (A-39). The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any

information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him (A-16,17).

15. Eventually Dr. Cordero found out from third parties (A-48,49;109, ftnts-5-8;352) that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but even enjoined Dr. Cordero not to contact him or his office anymore (A-1).

16. Dr. Cordero applied to the bankruptcy judge in charge of the bankruptcy case, the Hon. John C. Ninfo, II, for a review of the Trustee's performance and fitness to serve (A-7). The judge took no action save to refer the application to the Trustee's supervisor, an assistant U.S. Trustee (A-29).

17. Subsequently, in October 2002, Mr. Pfuntner brought an adversary proceeding (A-21,22) against Trustee Gordon, Dr. Cordero, and others. Dr. Cordero, appearing pro se, cross-claimed against the Trustee (A-70,83,88); who moved to dismiss (A-135). Before discovery had even begun or any initial disclosure had been provided by the other parties -Dr. Cordero provided numerous documents with his pleadings (A-11,45,62,90,123,414)- and before any meeting whatsoever, the judge dismissed the cross-claims by order entered on December 30, 2002 and

mailed from Rochester (SPA-1).

18. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003 (SPA-3). It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved to dismiss it as untimely filed (A-156) and the district court dismissed it (SPA-6,9).

B. David Palmer abandons Dr. Cordero's property and defrauds him of the fees; then fails to answer Dr. Cordero's complaint; yet, the courts deny Dr. Cordero's application for default judgment although for a sum certain, prejudge a happy ending to his property search, and impose on him a Rule 55-extraneous duty to demonstrate loss.

19. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees. Mr. Palmer, as Debtor (SPA-25-entry-13,12), was already under the bankruptcy court's jurisdiction, yet failed to answer the complaint of Dr. Cordero, who timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain (SPA-12;A-294). But disregarding Rule 55, never mind the equities between the two parties, both courts denied Dr. Cordero and spared Mr. Palmer default judgment under circumstances that have created the appearance of bias and prejudice, as shown next.

C. Bankruptcy and district court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial

1. The bankruptcy court excused Trustee Gordon's defamatory statements as merely **"part of the Trustee just trying to resolve these issues"**

20. Trustee Gordon submitted statements, some false and others disparaging of Dr. Cordero's character, to the bankruptcy court in his attempt to dissuade it from undertaking the review of his performance and fitness as trustee requested by Dr. Cordero. The latter brought this to the court's attention (A-32,41). Far from showing any concern for the integrity and fairness of proceedings, the court did not even try to ascertain whether Trustee Gordon had made false representations to the court in violation of Rule 9011(b)(3) F.R.Bkr.P.

21. On the contrary, it excused the Trustee in open court when at the hearing of the motion to dismiss it stated that:

> "I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court…it's all part of the Trustee just trying to resolve these issues." (A-274-275)

22. When the court approves of the use of defamation by an officer of the court trying to avoid review, what will it use itself to avoid having its rulings reversed on appeal? How much fairness would an objective observer expect that court to show the appellant?

2. The court disregarded facts and the law concerning genuine issues of material fact when dismissing Dr. Cordero's cross-claims of negligence and recklessness against Trustee Gordon

23. It was Mr. Pfuntner, not Dr. Cordero, who first sued Trustee Gordon claiming that:

> "17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002," (A-24)

24. Does it get any more negligent and reckless than that? While the Trustee denied the allegation, it raised an issue of fact to be determined at trial. So how could the court disregard similar genuine issues of material fact raised by Dr. Cordero's cross-claims of negligence and reckless performance as trustee and before any discovery or meeting whatsoever merely dismiss them, thereby disregarding the legal standard for determining a motion to dismiss?

3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed, and surprisingly finding that it had been untimely filed, denied it

25. After Dr. Cordero timely mailed his notice of appeal and Trustee Gordon moved to dismiss it as untimely filed, Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledge in his brief in apposition that the motion had been timely filed on January 29 (A-235), the judge surprisingly found that it had been untimely filed on January 30. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly make a mistake on such a critical matter. Thus, who changed the filing date and on whose orders?[1] Why did the court disregard the factual discrepancy and rush to deny the motion? Do court officers manipulate the docket to attain their objectives? There is evidence that they do (paras.36 below).

4. The court reporter tries to avoid submitting the transcript

26. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the

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[1] Dr. Cordero stands ready to submit to the Court of Appeals upon its request an affidavit containing more facts and analysis on this issue.

hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript (A-261).

27. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283,286).

28. The confirmation that she was not acting on her own was provided by the fact that the transcript was not sent on March 12, the date on her certificate (A-282). Indeed, it reached Dr. Cordero only on March 28 and was filed only on March 26 (SPA-45, entry 71), a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent.

29. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering

the transcript "to the party or judge" –certainly she did not send it to the party- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.

30. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" spots and it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, would either last long in use? Or was she told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript for vetting by a higher-up court officer before mailing a final version to Dr. Cordero? Do you trust court officers that so handle, or allow such handling of, transcripts? Does this give you the appearance of fairness and impartiality?

5. The bankruptcy court disregarded facts and prejudged issues to deny Dr. Cordero's application for default judgment

31. The bankruptcy court recommended denial of the default judgment application by prejudging that upon inspection Dr. Cordero would find his property in the same condition as he had delivered it for storage 10 years earlier in 1993 (SPA-13). For that bold assumption it not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, as shown in subsection 2 above, Mr. Pfuntner had written that property had been removed without his

authorization and at night from his warehouse premises. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From one who forms anticipatory judgments, would you expect to receive fair treatment or rather rationalizing statements that he was right?

32. Moreover, the court dispensed with even the appearance of impartiality by casting doubt on the recoverability of "moving, storage, and insurance fees …especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property," (SPA-14). How can the court prejudge the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero, since it has never requested disclosure of, let alone held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry? Such a leaning of the mind before considering pertinent evidence is called bias. Would you expect impartiality if appearing as a pro se litigant in Dr. Cordero's shoes before a biased court?

33. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in paragraph "10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers…" (SPA-14). But that suggestion was never made and Dr. Cordero would have had absolutely no motive to accept it if ever made. What else would the court dare say to avoid review on appeal?

6. The Bankruptcy Clerk and the Case Administrator disregarded their obligations in the handling of the default application

34. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added; SPA-76 upon receiving Dr. Cordero's application of December 26, 2002 (SPA-10). Yet, it was only on February 4, 41 later and only at Dr. Cordero's instigation (SPA-15), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay.

35. It is not by coincidence that he entered default on February 4, when the bankruptcy court made its recommendation to the district court. Thereby the recommendation appeared to have been made as soon as default had been

entered.[2] It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.

36. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (SPA-42-entry-51;43-entries-46,49,50,52,53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer.[3] Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it? (25 above).

37. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

7. The district court repeatedly disregarded an outcome-determinative fact and the rules to deny the application for default judgment

38. The district court accepted the recommendation and in its March 11 order denied entry of default judgment on the grounds that it did not involve a sum certain (SPA-16). To do so, it disregarded five papers stating that it did involve a sum certain:

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[2]. See footnote 1.

[3] See footnote 1.

1) the Affidavit of Amount Due (A-294);

2) the Order to Transmit Record and Recommendation (SPA-12);

3) the Attachment to the Recommendation (SPA-14);

4) the March 2 motion to enter default judgment (A-314,327), and

5) the motion for rehearing re implied denial of the earlier motion (A-342,344-para.6).

39. Dr. Cordero moved the district court to enter default judgment notwithstanding such prejudgment of the outcome of a still sine die inspection (A-314). The district court did not acknowledge that motion in any way whatsoever, but instead accepted the bankruptcy court's recommendation. Moreover, it stated that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate…the Bankruptcy Court is the proper forum for conducting [that] inquest," (SPA-16).

40. Dr. Cordero moved the district court for a rehearing (A-342) of his motion, denied by implication, so that it would correct its outcome-determinative error because the matter did involve a sum certain and because when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.

Likewise, a bankruptcy court that showed such prejudgment could not be the "proper forum" to conduct any inquest (A-342). The district court curtly denied the motion "in all respects," (SPA-19). From a district court merely rubberstamps the bankruptcy court's recommendation without paying attention to its facts, let alone reading papers submitted by a pro se litigant who spent countless hours researching, writing, and revising, would you expect the painstaking effort necessary to deliver justice?

8. The bankruptcy court disregarded Mr. Pfuntner's and his attorney's contempt for two orders, reversed its order on their ex-parte approach, showed again no concern for disingenuous submissions to it, but targeted Dr. Cordero for strict discovery orders

41. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfuntner's warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties (A-365,368). Nonetheless, the court never answered it or informed Dr. Cordero of the most convenient date.

42. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed.

43. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P. (A-372). Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.

44. Dr. Cordero raised a motion on April 3 to ascertain this reversal of the court's position and insure that the necessary transportation and inspection measures were taken (A-378). On April 7, the same day of receiving the motion (SPA-46-entries-75,76) and thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing–as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester (A-386).

45. Then Mr. MacKnight raised a motion (A-389). It was so disingenuous that, for example, it was titled "Motion to Discharge Plaintiff from Any

Liability…" and asked for relief under Rule 56 F.R.Civ.P. without ever stating that it wanted summary judgment while pretending that Plaintiff had not brought that motion before "as an accommodation to the parties." Yet, it was Plaintiff who sued parties even without knowing whether they had any property in his warehouse, nothing more than their names on labels (A-364). Dr. Cordero analyzed in detail the motion's mendacity and lack of candor (A-400). Despite its obligations under Rule 56(g) (SPA-78) to sanction a party proceeding in bad faith, the court disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would you expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

46. Nor did the court impose on Plaintiff Pfuntner and Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court order Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

9. The bankruptcy court's determination not to move the case forward

47. Although the adversary proceeding was filed on September 27, 2002, the court has failed to comply with Rule 16(b) F.R.Civ.P., (SPA-75) which provides that it "shall…enter a scheduling order…" When the court disregard its procedural obligations and allows a case to linger for lack of management, would you expect it to care much for your rights as a pro se litigant who lives hundreds of miles away?

VIII. Summary of the Argument

A. Timely mailing and filing of the notice of appeal

48. Dr. Cordero's timely mailed notice of appeal from the dismissal of his cross-claims against Trustee Gordon should be deemed timely filed in bankruptcy court pursuant to the coherent and consistent scheme generated by the plain language of the Bankruptcy Rules for time-limited notices and papers. The scheme provides thus:

    1) under Rule 9006(f), (SPA-69) when a notice sent by mail triggers a period of time in which to respond with a notice or paper, that period is extended by three days in order to compensate for the time lost during the mail transit of the triggering notice or paper so that the responder may have more time to better prepare his response;

2) under Rule 9006(e), (SPA-69), when that notice or paper is mailed, its service is complete; and

3) since these provisions are found in Part IX-General Provision, and consequently are applicable to the whole Bankruptcy Code and Rules, they take precedence over the filing-within-filing-period exception of Rule 8008(a), (SPA-66), which applies narrowly to some papers served on the district court or the bankruptcy appellate panel, not the bankruptcy court, where the notice of appeal must be filed under Rule 8002 (SPA-64).

B. Failure to apply the legal standards for a dismissal motion

49. Dr. Cordero's cross-claims against Trustee Gordon for defamation as well as negligent and reckless liquidation of Debtor Premier were dismissed without the court applying the legal standards for adjudicating a motion under Rule 12(b)(6) F.R.Civ.P., (SPA-90). Thereunder it should have considered only the legal sufficiency of the complaint –and done so liberally since it was submitted by a pro se litigant- taking its allegations as true and examining them in the light most favorable to the non-movant.

50. Far from it and despite the fact that no discovery had occurred, the court conducted a trial on the merits in light of its own experience on the bench, applied its own notions of defamation rather than the standard of what a reasonable

person would consider injurious to the reputation of another person, and disregarded genuine issues of material fact concerning the Trustee's negligent and reckless liquidation raised not only by Dr. Cordero, but also by the Plaintiff. Given such triable issues of fact, the court could not have dismissed the cross-claims as a matter of law under Rule 56 F.R.Civ.P.

C. Default judgment denied after compliance with statutory requirements

51. Dr. Cordero timely applied for default judgment for a sum certain against Mr. Palmer, whose default was entered by the court clerk. Thereby all the requirements under Rule 55 were fulfilled. Nevertheless, the bankruptcy court recommended that the application be denied and that Dr. Cordero be required to demonstrate his loss. That requirement has no basis in law, for it contradicts the Rule's plain language, and negates the purpose of the warning in the summons.
52. Moreover, the equities favored Dr. Cordero, who had been defrauded by Mr. Palmer. By contrast, the latter, as the Debtor's owner, was already under the court's jurisdiction, having invoked his right under the bankruptcy law only to evade his obligation thereunder to answer a complaint. In addition, Mr. Palmer had a remedy at law under Rule 60(b), (SPA-78) to set aside the judgment. Under those circumstances, there was no justification for the court to become its advocate.

53. Nor can a court interpret and apply a legal provision in a way that contradicts its plain language and defeats the reasonable expectations to which it gives rise. That would amount to usurping Congress' legislative role and depriving people of notice of what the law requires in order to be entitled to its rights.

54. The district court based its acceptance of the recommendation on the clearly erroneous fact that the application did not involve a sum certain. In addition, it charged the bankruptcy court with conducting an inquest into damages. In an adversarial system and a default case where the defendant has not appeared by choice rather than by membership in a class to be protected by the courts, no court can conduct an inquest, which would require it to play multiple conflicting roles; least of all a court that has prejudged the outcome of the inquest, for it cannot be the proper forum to conduct it fairly and impartiality.

D. Court officers' pattern of bias requires removal to impartial court

55. :Both the bankruptcy and the district court together with court clerks, court assistants, and the court reporter have participated in such a long series of events of disregard of facts, law, and rules that so consistently work to the detriment of Dr. Cordero, the pro se litigant that lives hundreds of miles away, that such events cannot be explained as mere coincidence. Rather they must form a pattern of intentional and coordinated wrongdoing. Hard evidence is not legally required to

create the appearance of partiality that in the minds of reasonable persons gives rise to the inference of the court officials' bias and prejudice toward Dr. Cordero. That is enough to warrant recusal.

56. However, given the participation of so many court officers and the coordinated nature of their wrongdoing, disqualification must encompass not only the judges, but also the other court officers; otherwise the reasonable fear of unfair and prejudicial administrative treatment could not be eliminated. Thus, this case should be removed to an impartial district court, such as that of the Northern District of New York.

IX. The Argument

A. The notice of appeal from the dismissal of the cross-claims against Trustee Gordon was timely mailed and should have been deemed timely filed

1. The Supreme Court requires the respect of the plain language of a consistent and coherent statutory scheme such as that formed by the rules on notice of appeal

57. The U.S. Supreme Court stated in its landmark case in the area of timely filing under the Bankruptcy Code, that is, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993)*:

> "Rule 9006 is a general rule governing the computation, enlargement, and reduction of periods of time prescribed in other bankruptcy rules."

58. Likewise, the Supreme Court stated the following rule of statutory construction precisely in another bankruptcy case, namely, *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 240, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989),* :

> "[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."

59. There is such a coherent and consistent scheme of Rules for the construction of what a timely notice of appeal is. It is based on the Rules' plain language. To justly construe the periods for mailing and filing, one must read the rules of the F.R.Bkr.P as well as them and those of the F.R.Civ.P. as forming a whole, as a scheme. Dr. Cordero read them so and reasonably relied on their scheme. This is it:

> 2. Service of notice of appeal under Rule 8002(a) is complete on mailing under Rule 9006(e) and timely if timely mailed although filed by the bankruptcy clerk subsequently

60. Part IX of the F.R.Bkr.P. is titled General Provisions and contains rules of general applicability. Thus, they apply to the rules of Part VIII, which is titled Appeals to District Court or Bankruptcy Appellate Panel. Therein included is Rule 8002(a) with its ten-day period for filing a notice of appeal.

61. The Advisory Committee confirms this plain language scope of application in its Note to Rule 9006(a) (SPA-67)

> "This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in cases under the [Bankruptcy] Code and any litigation arising therein."

62. Just as Rule 6 covers all Civil Rules, so does rule 9006 with respect to all Bankruptcy Rules. Hence, not only Part IX, but also specifically Rule 9006 and its computation of time provisions apply to Rule 8002 and its ten-day period to give notice of appeal.

63. One of those provisions is found in 9006(e). It provides that "service of…a notice by mail is complete on mailing," (SPA-69).

64. The bankruptcy court entered its order dismissing Dr. Cordero's cross-claims against Trustee Gordon on December 30, 2002. In turn, Dr. Cordero mailed his notice of appeal on January 9, 2003. Consequently, the service of that notice was complete on that day. It should also be deemed timely filed on that day.

65. To consider a timely mailed notice of appeal also timely filed is consistent and coherent with Rule 8002(a). This is so because it provides "if a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, [their clerks] shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed

filed with the clerk on the date so noted." Hence, a notice can be deemed filed in the bankruptcy court on a date prior to the date of actual filing by the bankruptcy clerk.

3. The three additional days provision of Rule 9006(f) applies to the notice of appeal

66. There is also Rule 9006(f), which provides that 'when there is a right to do an act within a prescribed time and the paper is served by mail, "three days **shall** be added to the prescribed period,"' (emphasis added; SPA-69)

67. The right here in question is that under Rule 8001(a) Appeal as of right. It is to be exercised, pursuant to Rule 8002(a), within 10 days from the entry of the order appealed from.

68. When the order arrived in New York City after the holiday, Dr. Cordero undisputedly mailed his notice timely on Thursday, January 9, 2003. It is submitted that pursuant to the plain language of Rule 9006(e), his mailing of the notice of appeal completed service on that date.

69. What is more, because the dismissal order had been "served by mail," Rule 9006(f) had added three days to the prescribed ten-day period to appeal from it, to January 12. But since that was a Sunday, under Rule 9006(a) 'the act to be done of filing the notice ran until the end of the next day.' Consequently, by operation of that rule too, Dr. Cordero's notice was also timely filed on Monday, January 13.

4. A coherent and consistent construction of R.9006(a) and (f) does not allow their application to time-from-service provisions but not to time-from-entry-of-order ones

70. This result fulfills Rule 9006(f)'s purpose, which flows from its heading "Additional time after service by mail." It is to compensate a party for time lost in transit when a paper is "served by mail" so that a shorter time does not prejudice the party in the exercise of its right "within the prescribed period" by comparison with a party that is served personally.

71. This purpose is consistent with the broadly worded method of Rule 9006(a) for computing "**any** period of time prescribed or allowed", and that regardless of the nature of "the **act, event, or default** from which the designated period of time begins to run," (emphasis added).

72. Hence, the three additional days provision of 9006(f) applies also to periods that begin to run from the entry of an order, for what matters under it is not whether the paper is entered or served, but rather whether it has been mailed and, thus, time has been lost for which the recipient must be compensated.

73. The inclusion of Rule 8002's ten-day period within the scope of application of Rule 9006(a), (e), and (f) is compelled by the fact that it is not expressly excluded. Indeed, when Rule 9006 wanted to exclude totally or partially any Rule, it did so expressly, as in "(b)(2), Enlargement not permitted," "(b)(3), Enlargement limited," and "(c)(2) Reduction not permitted." It should

be noted that both (b)(3) and (c)(2) make express reference to Rule 8002.

74. Therefore, it would be neither coherent nor consistent to restrict the application of Rule 9006 to other Rules, including 8002, when 9006 expressly provides therefor, and even exclude those Rules altogether from subdivisions (e) and (f) when 9006 does not require to do that at all. As the Supreme Court observed:

> "It is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another;" *BFP v. Resolution Trust Corp., 511 U.S. 531, 537, 128 L. Ed. 2d 556, 114 S. Ct. 1757 (1994).*

75. From this analysis flows the conclusion that Rule 9006 applies to every Rule that it does not exclude expressly. This proposition too is consistent with the statement of the Supreme Court in *Pioneer*, footnote 4:

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

5. Rule 8002(a)'s ten-day period benefits from Rule 9006(f)'s three-additional-days to avoid penalizing parties that must prepare their notice of appeal

76. That Rule 8002(a) must be within Rule 9006(f)'s scope flows from their purpose and plain language. Thus, the Advisory Committee Note for Rule 9006 states that:

> "This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in **cases** under the Code and **any** litigation arising therein (emphasis added).

77. In turn, Rule 6 states in its Note for the 1985 Amendment (SPA-74) that parties "should not be penalized" when they cannot file because of factors, such as weather conditions or non-business days, that reduce their time to act within a prescribed period. The extension of time is needed because:

> **"...**parties bringing motions under **rules with 10-day periods** could have as few as 5 working days to prepare their motions. This **hardship** would be **especially acute in** the case of **Rules** 50(b) [Renewing Motion for Judgment After Trial; Alternative Motion for New Trial] and (c)(2) [New Trial Motion], 52(b) [on motion for the court to amend its findings], and 59(b), (d), and (e) [on motions for new trial and to alter or amend judgment], **which may not be enlarged** at the discretion of the court…(emphasis added).

78. Such is Rule 8002(a), whose ten day period for filing the notice of appeal cannot be enlarged. Under it the factor that can cause 'acute hardship' is the one dealt with by Rule 9006(f), to with, that the notice triggering the running of a prescribed period has been served by mail, thereby shortening the party's time within which to prepare to act. To compensate for the lost time, 9006(f) adds

three days.

79. That Advisory Committee Note makes it quite clear how the 8002(a) notice of appeal comes within the purview of the 9006(f) three-additional-days provision, which is intended in particular for 1) rules with ten-day periods; 2) with no possibility of enlargement at the court's discretion; 3) yet subject to being reduced to as few as 5 working days; and 4) concerning appeals for new trial or 5) to alter or amend judgment.

80. Dr. Cordero, a pro se appellant, was filing a notice of appeal for the first time ever. He had less than 5 working days before the 10-day period, triggered by the entry of the dismissal order on December 30 and including the New Year's Day, ran out on Thursday, January 9. But before he could prepare to act, the order had to arrive in the mail from Rochester. No doubt this constituted the kind of acute hardship that Rule 6 intends to prevent and that Rule 9006(f) lessens by adding three days to the prescribed period. How much more of an acute hardship it would have been if Dr. Cordero had had to mail the notice from New York City so that it would arrive back in Rochester by Thursday the 9th?

6. Since the notice of appeal is to be filed in the bankruptcy court, not the district court or BAP, it is deemed filed when mailed so that the 8008(a) filing-within-filing-period exception is not applicable to it

81. Part IX General Provisions does not contain the notion that a notice must be filed

strictly within the period for filing. It comes from a subdivision of Rule 8008

> "Rule 8008(a) Papers required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel** may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing." (emphasis added)

82. Wait a moment! The notice of appeal is not "required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel,**" as follows from the last sentence of Rule 8002(a), which considers it a mistake to do so. The filing-within-filing-period requirement of Rule 8008(a) is an exception!

83. Indeed, if the general rule of the F.R.Bkr.P. were that the timeliness of a filing was determined by whether the clerk received and docketed a notice or paper within the fixed filing time, then it would be superfluous for Rule 8008(a) to restate the obvious, for how else could it be?

84. The limited scope of application of the filing-within-filing-period exception is underscored by the fact that it contains an exception within itself: "except that briefs are deemed filed on the day of mailing." As an exception, it must be construed restrictively and applied only when a Rule expressly calls therefor;

otherwise, the exception would gut one of F.R.Bkr.P. "Part IX-General Provisions," namely "Rule 9006. Time." Hence, its provisions on time computation, complete-on-mailing, and three-additional-days are the ones applicable to a notice of appeal from a bankruptcy court order, which is to be both mailed to and filed in bankruptcy court.

85. This exception is further weakened by scooping out of it another exception. Thus, the Advisory Committee Notes state for Rule 8008 as a whole, rather than just its exception, that, "This rule is an adaptation of F.R.App.P. Rule 25." Appellate Rule 25 further narrows the exception by applying the complete-on-mailing provision to the filing of appendixes. Its Notes for 1967 Adoption provide the rationale that supports the rule of general applicability:

> An exception is made in the case of briefs **and appendices** in order to afford the parties the maximum time for their preparation," (emphasis added).

86. That's the rationale for the provision's limited scope: It reduces the necessary time for adequate research and writing as well as sound decision making. All that for no good reason at all. Hasty filings under the duress of time constraints unjustified by law or practice only produce appeals that are ill considered by both counsel and client and that end up clogging the judicial system. That can certainly not be the intent of the judges that administer that system or the drafters in the

Judicial Conference and Advisory Committee, let alone Congress, which would have to provide more funds to run a system overwhelmed by appeals filed just to beat the clock. Under those circumstances, does it sound fair to brand such appeals "superfluous" and sanction counsel for having filed them?

87. Consequently, the ten-day period for filing the notice of appeal with the bankruptcy court under Rule 8002 is not subject to the filing-within-filing-period exception, which applies only to filing with the district court or bankruptcy appellate panel under Rule 8008(a). Instead, it is subject to and benefits from the complete-on-mailing and three-additional-days provisions of Rule 9006, which the Supreme Court in *Pioneer* recognized to be "a general rule" in the bankruptcy context. Since Dr. Cordero mailed his notice within the 10-day period, its filing thereafter by the bankruptcy clerk should have been deemed timely.

7. On the same grounds as well as on factual and equitable grounds, the motion to extend time to file the notice of appeal should have been found timely

88. This Court of Appeals stated in *In re Bell*, *225 F.3d 203*, *209 (2d Cir. 2000)*, that in an appeal from a district court's review of a bankruptcy court ruling, the Court of Appeals' review of the bankruptcy court is "independent and plenary."

89. Thus, the Court should review the order of the bankruptcy court of February 18, 2003 (SPA-9a,22) denying Dr. Cordero's motion to extend the time to file notice

of appeal under Rule 8002(c)(2).

90. Dr. Cordero raised that motion timely on January 27 (A-214) and in addition in the bankruptcy court, not in the district court, he reasonably applied to it both the complete-on-mailing and the three-additional-days provisions of Rule 9006(e) and (f), respectively. Thus, as a matter of law based on the grounds discussed above for the notice of appeal, it should have been held timely filed too.

91. But also as a matter of fact, for even the opposing party, Trustee Gordon, admitted in his brief in opposition to the extension that Dr. Cordero's motion had been timely filed on January 29 (A-235).

92. Yet, the bankruptcy court surprisingly found it to have been filed on January 30, and thereby untimely by one day (SPA-9a). However, the discrepancy between the Trustee's admission against his legal interest and an unreliable docket,[4] created factual doubt that the court should have resolved on equitable grounds in favor of granting the extension, thereby upholding 1) the courts' policy of adjudicating controversies on the merits, and 2) parties' substantial right in having their day in court rather than dismissing both controversies and parties on procedural considerations.

93. This Court has an additional equitable ground to set aside the finding that the filing occurred on January 30, namely, that as part of the pattern of court officers'

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[4] See footnote 1.

disregard for facts, law, and rules laid out in para.-20 et seq. above, that finding is suspect and must not stand because "refusal to take such action appears to the court inconsistent with substantial justice," as provided under Rule 61 F.R.Civ.P., applicable under Rule 9005 F.R.Bkr.P.

94. Applying that principle is particularly pertinent in the case of pro se litigants because as this Court has stated:

> "A party appearing without counsel is afforded extra leeway in meeting the procedural rules governing litigation, and trial judges must make some effort to protect a party so appearing from waiving a right to be heard because of his or her lack of legal knowledge." *Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 96 (2d Cir. 1993).*
>
> "…pro se litigants are afforded some latitude in meeting the rules governing litigation," *Moates v. Barkley, 147 F. 3d 207, 209 (2d Cir.1998).*

95. This is all the more pertinent in the case of Dr. Cordero because if he "fail[ed] to follow a rule of procedure [it] was a mistake made in good faith" since he relied on the plain language of the Rules and the coherent and consistent scheme that they form and showed respect for the court and the Rules by timely mailing both the notice of appeal and the motion to extend. Hence, the Court should hold that the mistake was made through excusable neglect; otherwise, to

dismiss his notice and deny the motion would frustrate his reasonable expectation, which "would bring about an unfair result;" *Enron Oil, id, at 96*.

B. The court disregarded the standards of law applicable to Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims for defamation as well as negligent and reckless performance as trustee

96. In response to Dr. Cordero cross-claims, Trustee Gordon claimed that even if true, "such claims are not legally sufficient and must be dismissed" (A-137), and the bankruptcy court dismissed them (SPA-1).

97. Whether this dismissal under Rule 12(b)(6) F.R.Civ.P. was improper is reviewed de novo by this Court, *O'Brien v. Alexander, 101 F.3d 1479 (2d Cir. 1996)* and it will affirm it "only if it appears **beyond doubt** that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief" (emphasis added) *Legnani v. Alitalia Linee Aeree Italiane, S.P.A. 274 F.3d 683 (2d Cir. 2001).*

98. Citing *Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)*, the O'Brien Court recognized that the standard for deciding a 12(b)(6) motion is that the factual allegations contained in the complaint are accepted as true and all permissible inferences are drawn in plaintiff's favor.

99. The emphasis added to **"beyond doubt"** is particularly important because it highlights how little the plaintiff is required to show at that early stage of the

proceeding in order to survive a motion to dismiss. Consequently, this Court has stated that a claim must not be dismissed merely because the trial court doubts the plaintiff's allegations or suspects that the pleader will ultimately not prevail at trial, *Leather v. Eyck, 180 F3d. 420, 423, n.5 (2d Cir. 1999)*.

1. The claim of defamation

100. Dismissal in a case of defamation is particularly inappropriate because any alleged privilege against an action in defamation is defeated by a showing of malice and a defamatory motive, which are elements involving state of mind. Without development of the facts through discovery, state-of-mind cases are unsuitable for a 12(b)(6) motion to dismiss, *Pryor v. National Collegiate Athletic Ass'n, 299 F3d. 548, 565 (3d Cir. 2002)*.

101. For the reasons discussed **above** (para**.-30),** Court Reporter Dianetti's transcription of Dr. Cordero's statements at the hearing of the dismissal motion is "unintelligible" (SPA-262). By contrast, her transcription of the court's statements is comprehensible and readily reveal that the court made no effort whatsoever to apply these standards before it opened with its conclusion that "First of all, I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims" (A-274), in bulk fashion, before any analysis.

102. What the court stated in its next breath is even more indefensible, for it constitutes the denial of the fundamental purpose of a system of law:

> First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court.

103. UNBELIEVABLE! A judge that says that because everybody makes defamatory statements, another one does not make any difference so the plaintiff just has to take it and be dismissed. What kind of legal system would we have, not to mention the society we would end up with, if just because everybody commits torts, the courts need not take action to provide redress to a victim?

104. The court's statement is all the more reprehensible because here Trustee Gordon made defamatory statements about…you!, the reader, here in New York City, inquiring about the property that you left in storage hundreds of miles away in Rochester, and for which you have paid fees, including insurance, for almost 10 years, but you are lied to by the people that are supposed to store your property, for it turns out that they do not even know where it is, so they send you to the Trustee, who throws you back at them, and when you find your property through your efforts in another warehouse, the owner will not release it because the Trustee can sue him and he tells you to go get it from the Trustee, except that the Trustee won't even take your calls or answer your letters, and on the third time you call to record a message or ask the secretary, he sends you a letter improper in its tone and unjustified in its content that enjoins you not to call his office any

more and to fend for yourself, so you ask the judge, the one overseeing the Trustee's liquidation of the one who took your money and lost your property, to review the Trustee's performance and fitness as trustee, only to find out that the Trustee writes to the court alleging that you have made more "more than 20 telephone calls" to the Trustee's staff, and you became "very angry" and "belligerent," "became more demanding and demeaning to [the Trustee's] staff" because due to your "poor understanding" you just don't get it that the Trustee has nothing to do with your property, "Accordingly, [the Trustee] do not think that it is necessary for the Court to take any action on [your] application," and the Trustee then sends copies of that description about you to his supervisor at the U.S. Trustee and to other professionals in Rochester.

105. What is your state of mind now? Would you agree with the Court of Appeals that such description of you

> "**may** "induce an evil opinion of [you] in the minds of right-thinking persons," *Dillon v. City of New York, 261 A.D.2d 34, at 38, 704 N.Y.S.2d 1, at 5 (1st Dep't 1999)…*and are therefore **capable** of a defamatory meaning," *Albert v. Loksen, dkt. no. 99-7520 (2d Cir. February 2, 2001)*?, (emphasis added).

106. If you just "may" prove that, then you must survive the dismissal motion given that:

> "the court need only determine that the contested statements "are reasonably susceptible of defamatory connotation." If any defamatory construction is possible, it is a question of fact for the jury whether the statements were understood as defamatory. *Purgess v. Sharrock, 33 F.3d 134, 140 (2d Cir. 1994)," Albert,* id.

107. But the court failed to apply that legal standard…or any acceptable standard since it instead condoned the Trustee's submission to it of defamatory and false statements intended to dissuade it and the his supervisor from reviewing his conduct because "it's all part really of the Trustee just trying to resolve these issues," (A-11,lines-10-12).

2. Negligence and reckless performance as trustee

108. In deciding a 12(b)(6) motion, "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims," *Scheuer v. Rhodes. 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974).*

109. Here it was all the more necessary for the court to allow discovery precisely because the Trustee, who was appointed in December 2001, to liquidate Premier, the moving and storage company, had failed even to identify the contracts between Premier and its clients as income-producing assets of the estate, which

for him to liquidate, he had to inform the clients. Moreover, when the other parties referred Dr. Cordero to the Trustee, the latter provided no information and limited himself to volleying him back to them by his letters of June 10 and September 23, 2002 (A-16,1).

110. Therefore, it was contrary to the facts for the court to state that "the paper work that I read indicated to me he gave you a heads up on that very early on," (A-278,lines-7-8). What paperwork? Is the court referring to the Trustee's letter of June 10 (A-16), sent six months after his appointment and only because Dr. Cordero had called the Trustee, left messages for him, and then wrote asking him to provide the information?

111. Then the court goes on to make an astonishing statement:

> "Here I think you had warning that you need to get real proactive about this, not necessarily from a distance. It would have been nice if you had someone on board here in Rochester for a couple of days really kind of seeing this thing through…" (A-278,lines 18-23).

112. This statement is astonishing because it flies in the face of the facts. Indeed, for all those months during which Mr. Palmer, Premier's owner, and Mr. Dworkin, the manager/owner of the Jefferson-Henrietta warehouse used by Mr. Palmer, lied to Dr. Cordero about his property being safe in that warehouse without ever mentioning that Premier was bankrupt, let alone in liquidation, and once Mr.

Dworkin referred Dr. Cordero to M&T Bank's David Delano and the latter assured Dr. Cordero that he had seen containers with his name in the Jefferson-Henrietta warehouse, what reason was there in the court's mind for Dr. Cordero to go to Rochester? Likewise, after Mr. Dworkin and Mr. Delano referred Dr. Cordero to the Trustee, but the latter would neither take his calls nor answer his letters, what was Dr. Cordero supposed to do in Rochester? And once these characters admitted that they did not know where Dr. Cordero's property was, how did the court expect Dr. Cordero to look for it by going to Rochester?

113. The court's blaming Dr. Cordero for not having gone to Rochester or hire a lawyer there is most astonishing because it knows that the containers labeled with his name were found not even in Rochester, but rather in a close down warehouse in Avon. Its owner is Mr. James Pfuntner, known to the court since…(SPA-26-entry 19)…

114. Does this sound like the discussion of the court's legal standard for deciding a 12(b)(6) motion to dismiss? Of course not!, for the court was instead conducting a trial, one in which Dr. Cordero would not be allowed to engage in discovery or present evidence on issues like:

    1) Why Trustee Gordon failed to perform his duties? Under 11 U.S.C. §704(4), he had to "investigate the financial affairs of the debtor." For its part, the U.S. Trustee Manual, Chapter 7 Case

Administration, §2-2.2.1 requires that "A trustee must also ensure that…records and books are properly turned over to the trustee." One obvious use of those "records and books" is to find out where debtor's assets may be located, such as income-producing contracts. Was the Trustee negligent in not locating them, and if he did, was he reckless in abandoning them to Jefferson-Henrietta Associates (SPA-17,18;34-entry-98), in not liquidating them for the creditors' benefit, and in not contacting Dr. Cordero, a contractual party and "party in interest"?

2) Whether the Trustee discharged his duty under §2-2.1. of the Trustee Manual, which requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case;**" (emphasis added). Was the Trustee negligent or reckless in qualifying Premier as an asset case, only to end up issuing a No Distribution Report? (SPA-31-entries-70-71;34-entries-95,98;36-entry-107;

3) Was Trustee Gordon negligent or reckless in failing to examine Premier's docket (SPA-26-entry-19), which would have led him to discover Premier's use of Mr. Pfuntner's warehouse, and in failing to examine

Premier's records, whereby he would have found out -as did Mr. Carter of Champion (A-48,49;109, ftnts-5-8;352)- that Premier had assets in Mr. Pfuntner's warehouse, including containers covered by storage contracts, such as Dr. Cordero's?

115. In light of these and other genuine issues of material fact, the bankruptcy court could not properly have converted the 12(b)(6) motion into one for summary judgment under Rule 56 F.R.Civ.P., (SPA-90,77) nor did it apply any law whatsoever to justify rendering judgment for the Trustee as a matter of law, *White v. ABCO Engineering Corp., 221 F.3d 293 (2d Cir. 2000)*. Was it for having failed to realize or having tolerated Trustee Gordon's negligence and recklessness that the court dismissed the cross-claims against him, has not required disclosure, and has failed to issue a 16(b) scheduling order, thus leaving the case without management for 10 months?

116. As this Court has stated, in a motion to dismiss, the 'court's clear focus is on the pleadings, not the evidence submitted;'[5] *Manning v. Utilities Mut. Ins, Co., Inc., 254 F.3d 387 (2d Cir. 2001)*. It reviews the dismissal *de novo, Weeks v. New York State (Div. of Parole), 273 F.3d 76 (2d Cir. 2001)*, and not only does it construe the complaint liberally in the light most favorable to the plaintiff, *Connolly v.*

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[5] None in this case since discovery had not even started and till this day the court has issued no scheduling order.

McCall, 254 F.3d 36 (2d Cir. 2001), but in the case of a pro se litigant, as is Dr. Cordero, this Court also 'applies "a more flexible standard to evaluate the complaint's sufficiency than it would when reviewing a complaint submitted by counsel,"' *Lerman v. Board of Elections, 232 F.3d 135, certiorari denied NYS Bd. of Elections v. Lerman, 121 S.Ct. 2520, 533 U.S. 915, 150 L.Ed.2d 692 (2d Cir. 2000*).

117. It is respectfully submitted that Dr. Cordero's complaint would have been found sufficient if the lower court had 'merely assessed it for the "legal feasibility"' of the claim that Trustee Gordon had been negligent and reckless in liquidating Premier, instead of improperly using the occasion "to assay the weight of the evidence which might be offered in support thereof," *Sims v. Artuz, 230 F.3d 14 (2d Cir. 2000)*.

118. The likelihood of establishing the Trustee's negligence and recklessness is all the greater in light of his comment in his memorandum opposing the motion to extend time to appeal (A-238), that, "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00." There it is! Trustee Gordon had no financial incentive to do his job…nor did he have any sense of duty! What does it reveal about the court, which he knows from his prior appearance before it, that he deemed the court would excuse his hack job on Premier if only it were reminded that he would be paid little, even though he

himself qualified Premier as an asset case?

C. Palmer, owner of the bankrupt Debtor in liquidation, was served, but failed to appear, yet the application for default judgment for a sum certain was denied

1. The coherent and consistent scheme for taking default judgment

119. Rules 7004 F.R.Bkr.P. and 4 F.R.Civ.P. (SPA-64,71) provides that the summons must inform the defendant that his "failure to [appear and defend] **will result** in a judgment by default against" him (emphasis added).

120. The summons issued by the bankruptcy court bore this boldface warning across the page:

> **IF YOU FAIL TO RESPOND TO THIS SUMMONS, *YOUR FAILURE WILL BE* DEEMED TO BE *YOUR CONSENT TO* ENTRY OF A *JUDGMENT* BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT** (emphasis added)

121. For their part, Rules 7055 F.R.Bkr.P. and 55 F.R.Civ.P., (SPA-64,76) provide that if a party fails to appear and that fact is established, "the clerk **shall** enter the party's default" (emphasis added). Moreover, "[w]hen the plaintiff's claim against the defendant is for a sum certain…" and the plaintiff submits an "affidavit of the amount due [the clerk] shall enter judgment for that amount."

122. Only "In all other cases," that is, when the amount is not "for a sum

certain or for a sum which can by computation be made certain," or when the defendant has appeared in the action, would the clerk be unable to enter judgment or carry it into effect. For those cases, Rule 55(b)(2) provides that "the **party entitled** to a judgment by default shall apply to the court therefor," (emphasis added).

123. What is in question is not the plaintiff's entitlement to default judgment, but rather the clerk's ability to enter or carry it into effect because he cannot make the sum certain even by computation. But if the fact of defendant's non-appearance is established and the sum of the judgment is certain, the request for default judgment never gets to the court. The clerk has no margin for discretion, for he "shall enter judgment for that amount."

124. If a non-appearing party has been defaulted, only he can reach the court to oppose default judgment. There he can either show good cause for setting aside the entry of default under Rule 55(c) or, if default judgment has already been entered, contest it under Rule 60(b) (SPA-77).

125. A non-appearing party does not automatically become a member of a class, such as that of infants or incompetent persons, requiring the protection of the court against entry of default judgment. Such party knew that his non-appearance "will result in a judgment by default" and 'he is deemed to have consented to its entry.' By contrast, the plaintiff is "the party entitled to [that] judgment"

against him.

126. Congress chose to approve this coherent and consistent scheme in plain language; 28 U.S.C. §§2074(a) and 2075 (SPA-87). Hence in the words of the Supreme Court in Ron Pair Enterprises, para.-58 above, there is "no need for a court to inquire beyond the plain language of the statute."

2. The legal scheme for default judgment does not allow a court to thwart a plaintiff's right to default judgment for a sum certain with the requirement that he demonstrate damages

127. Therefore, once the plaintiff has fulfilled his obligations as expressed by the plain language of the law, he is entitled to the right that the law has promised him. A court has no power to frustrate his reasonable expectation to his entitlement by substituting itself for Congress in order to unfairly surprise him with an additional obligation of which he received no notice. While the law holds that ignorance of the law is no excuse, the converse is that knowledge of the law and compliance with it is sufficient to obtain the benefit of the law. A court cannot require knowledge of jurisprudence too, much less of that which distorts the scheme of the law.

128. Mr. Palmer failed to answer. Dr. Cordero applied for default judgment against him on December 26, 2002, for the sum certain of $24,032.08 (A-294). Bankruptcy Clerk Paul Warren, though belatedly, entered his default on February

4, 2003. Under the plain language of that warning in the summons and the terms of Rule 55, all the requirements for the vesting in Dr. Cordero of his right to default judgment against Mr. Palmer were met.

129. Yet, the bankruptcy court, without citing any legal basis whatsoever, recommended to the district court that it not enter default judgment, but rather,

> "since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Court's opinion, the entry of the Default Judgment would be premature," (SPA-14-para.-9).

130. The District Court accepted the recommendation and compounded the disregard of the law by disregarding the fact that the application was for a sum certain:

> "Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain" (SPA-16).

131. However, this reason for denying default judgment implicitly contains the grounds for its grant: If the matter involved a sum certain, the plaintiff would have established his entitlement to damages. Well, it is for a sum certain! The court's finding is clearly erroneous and prejudicial, for it is outcome determinative. It constitutes a reviewable abuse of discretion under *Sussman v.*

Bank of Israel, 56 F.3d 450, 456 (2d Cir.), cert. denied, 516 U.S. 916 (1995).

132. Moreover, the requirement that Dr. Cordero demonstrate damages is a question of law, which, even if mixed with facts, this Court reviews *de novo, Davis v. NYV Housing Authority, 278 F.3d 64, certiorari denied 122 S.Ct. 2357 (2d Cir. 2002).*

3. The equities are in favor of Dr. Cordero obtaining default judgment against Mr. Palmer

133. In this case there are also equitable grounds for enforcing the plain language of the law in favor of Dr. Cordero. For one thing, Mr. Palmer has dirty hands for not appearing in bankruptcy court, under whose jurisdiction he is since he sought its protection under the Bankruptcy Code (SPA-24-entry-3;25-entries-12-13) and where he was represented by counsel, Raymond Stilwell, Esq. (SPA-23). Mr. Palmer lied to Dr. Cordero about the safety and whereabouts of his property, which he abandoned, although he kept cashing his storage fees and defrauded him of his insurance fees by providing no insurance coverage. He concealed from Dr. Cordero that Premier was bankrupt and, in fact, already in liquidation, thereby depriving him of an opportunity to take care of his property as appropriate; then, he disappeared. Why should the courts spare him default judgment by denying it to Dr. Cordero, who has complied with all legal requirements for it? This Court can reach this question on review because, as it stated in *In re Nextwave Personal Communications, Inc., 200 F.3d 43, 50 (2d Cir. 1999),* "Our review of the

district court's decision affirming the bankruptcy court orders is plenary."

4. There is no legal basis for the district court to require an inquest into damages nor the procedural set up or practical means for the bankruptcy court to conduct it

134. The district court invoked no basis in law for its appointment of the bankruptcy court to conduct an inquest into damages. There can hardly be any. Indeed, ours is an adversarial system of justice and this is a civil proceeding for default judgment in bankruptcy court, where by definition there is no defendant, no prosecutor, and no jury. Nor is there a written statement on how to conduct the inquest or what standard of 'demonstration' Dr. Cordero must meet, which deprives him of his constitutional right to notice of what the government and its officers require of him and those similarly situated.

135. In practice, with what means would Dr. Cordero prove damages? The court has for the ten months of this case failed to require the parties to provide even initial disclosure –Dr. Cordero disclosed numerous documents with his pleadings and motions- and has not issued even a Rule 16(b) scheduling order for discovery (SPA-75), only two oral orders requiring Dr. Cordero to travel to Rochester to inspect storage containers, while allowing Mr. Pfuntner not to comply with them.

136. When examining whatever it is that Dr. Cordero may be required to submit, the bankruptcy court would have but two choices: approve it, that is, if he can lay his

hands on the required evidence; or question it, in which case the court plays simultaneously the roles of opposing counsel, defendant's expert witness, regulator that makes and applies rules and standards as it goes, fact finder, and judge. That is an impossible role for a court to play efficiently, let alone for these two lower courts to perform impartially and fairly in light of the bias and prejudice with which they have so far treated Dr. Cordero (para.-20 above) The legal basis for freeing him from further abuse at their hands is discussed next.

D. The court officers' pattern of intentional and coordinated acts supporting the reasonable inference of bias and prejudice warrants removal to an impartial court, such as the district court for the Northern District of New York

137. Public confidence in those that administer justice is the essence of a system of justice. Thus, this Court has adopted the test of objective appearance of bias and prejudice: Whether "an objective, disinterested observer fully informed of the underlying facts [would] entertain significant doubt that justice would be done absent recusal." *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).

138. If this objective test for judicial disqualification is met, recusal of the judge is mandated under 28 U.S.C. §455(a), which requires disqualification "in any proceeding in which [the judge's] impartiality **might** reasonably be questioned" (emphasis added; SPA-86). It follows that to disqualify a

judge, an opinion based on reason, not certainty based on hard evidence of partiality, is all that is required and what provides the objectivity element of the test. This is so because, as the Supreme Court has put it, "[t]he goal of section 455(a) is to avoid even the appearance of partiality…to a reasonable person…even though no actual partiality exists because the judge…is pure in heart and incorruptible," *Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860 (1988).*

139. The Supreme Court's construction derives from the legislative intent for §455(a), which Congress adopted on the grounds that "Litigants ought not have to face a judge where there is a reasonable question of impartiality," S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355. Thus, Congress provided for recusal when there is ""reasonable fear" that the judge will not be impartial, id.

140. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Whether the judge is aware of his bias or prejudice is immaterial given that "[s]cienter is not an element of a violation of §455(a)," since the "advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not

depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." *Liljeberg,* at 859-60.

141. The facts stated in 20 above are apt to raise the inference of lack of impartiality and fairness, which is at the heart of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes.

142. The sharing here has been in the bias and prejudice shown by the bankruptcy judge, the court reporter, the clerk of court, the district judge, and even the assistant clerks. Indeed, the latter's participation in one event cannot possibly, let alone reasonably, be explained away by coincidence. Judge for yourself:

143. Dr. Cordero knew that to perfect this appeal, he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. (SPA-81) (SPA-81) by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so conveniently prevented him from refilling his notice of

appeal to the district court (para.-23 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted back in January (A-ii;1-152) was back in bankruptcy court; hence, his Redesignation and Statement was supposed to be sent to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

144. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a letter to District Clerk Rodney Early (SPA-61).

145. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of his notice of appeal to this Court, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as *Cordero v. Palmer*. (Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?)

146. Imagine the shock when Dr. Cordero found out on May 24 that the Court of Appeals docket for his appeal, the record of which the district court had transferred to it on May 19, showed no entry for his Redesignation and Statement.

Worse still, he checked the lower courts' dockets and neither had entered it or even the letter to Clerk Early (SPA-47,55)! He scrambled to send a copy to Appeals Court Clerk Roseann MacKechnie (SPA-60). Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or district courts. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28 (SPA-62).

147. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandych, that they just did not know how to handle a Redesignation and Statement, is simply untenable. Dr. Cordero's appeal cannot be the first one ever from those courts to this Court; those officers must know that they are supposed to record every event in their cases by entering each in their dockets; and **'**certify and send the Redesignation and Statement to the circuit clerk,' as required under Rule 6(b)(2)(B) (SPA-81). Actually, it was a ridiculous excuse!

148. No reasonable person can believe that these omissions in both courts were merely coincidental accidents. They furthered the same objective of preventing Dr. Cordero from appealing. The officers must have known that the failure to submit the Redesignation and Statement would have been imputed to Dr. Cordero and

could have caused this Court to strike his appeal.

149. But there is more. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. (SPA-80,82) consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to this court and, if so, whether they were intentional. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding Pfuntner v. Gordon et al did not carry an entry for the district court's March 27 denial "in all respects" of Dr. Cordero's motion for reconsideration in Cordero v. Gordon. By contrast, it carries such an entry for the district court's denial, also of March 27, of Dr. Cordero motion for reconsideration in *Cordero v. Palmer* (SPA-46-entries-69,66). Also on May 19, the district court certified the record on appeal, but did it fail to send copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal's timeliness? The fact is that this Court's docket for this case, no. 03-5023, as of July 7, 2003 (SPA-62), does not have entries for copies of either of the March 27 decisions, although it carries entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero's notice of appeal to this Court (SPA-21) makes clear that the March 27 orders are the principal orders that he is appealing from (SPA-9,19).

150. Is this evidence that the bankruptcy and district court officers enter in their dockets and send to this Court just the notices and papers that they want? Does this show how they could have manipulated the filing date of Dr. Cordero's motion to extend time to file notice of appeal (para.-25 above) and omit entering and sending his Redesignation of Items and Statement of Issues (para.-143 above)? If those court officers dare tamper with the record that they must submit to the Court of Appeals, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? Will you let them get away with it?

X. Relief sought

151. …if not, you may grant what Dr. Cordero respectfully requests of this Court:

1) To open an investigation into these court officers' pattern of coordinated and abusive conduct in order to determine the officers' impact on this case in particular and on their cases in general and then deal with them in a way that will enhance public confidence in those courts and our system of justice;

2) To transfer this case to another court unrelated to the parties in this case, unfamiliar with the officers in these two courts, and at a distance from all of them, such as the District Court for the Northern District of New York;

which can pick up the case at almost its beginning where it has lingered without management since its filing back in September 2002;

3) To vacate the dismissal of Dr. Cordero's cross-claims against Trustee Gordon and of his notice of appeal from that dismissal, and allow those claims to proceed to discovery and trial; otherwise, to vacate the denial of Dr. Cordero's motion to extend time to file notice of appeal and grant it so that the notice may be filed in the court of transfer;
4) To grant Dr. Cordero's application for default judgment against David Palmer;
5) To grant Dr. Cordero any other relief that to the Court may appear just and fair.

XI. Certificate of Compliance with Rule 32(a) F.R.A.P.

A. Type-volume limitation

This brief complies with the type-volume limitation of F.R.A.P. 32(a)(7)(B) because it contains 13,990 words, excluding the parts of the brief exempted by F.R.A.P. 32(a)(7)(B)(iii).

B. Typeface and type style requirements

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 point normal Times New Roman with quotes in 14 point normal Bookman.

Respectfully submitted on July 9, 2003, Dr. Richard Cordero

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March 19, 2004

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

On August 11, 2003, Dr. Richard Cordero filed a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. The wrongful and biased acts included Judge Ninfo's and other court officers' failure to move the case along its procedural stages. The instances of failure were specifically identified with cites to the FRCivP. They have not been cured and the bias has not abated yet (5, infra) [1].

Far from it, those failures have been compounded by the failure of the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, to take action upon the complaint. Indeed, six months after the submission of the complaint, which as requested (11, infra) was reformatted and resubmitted on August 27, 2003 (6, 3, infra), the Chief Judge had still failed to discharge his statutory duty under §351(c)(3) to "**expeditiously**" review the complaint and notify the complainant, Dr. Cordero, "by written order stating his reasons" why he was dismissing it. He had also failed to comply with §351(c)(4), which provides that, in the absence of dismissal, the chief judge "shall **promptly**…(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under the paragraph". (emphasis added)

Consequently, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint (1, infra). To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4 (4, infra). One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty.

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, Pfuntner v. Gordon et al, docket no. 02-

[1] Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, infra), a copy of the document is there and here too.

2230, which was brought and is pending before Judge Ninfo. The facts underlying this evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, infra). The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, infra). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give

him a copy of his written objections.

Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman's conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the territory of the Second Circuit and which they defend by engaging in non-coincidental,

intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there– who would that be?- to find out what "the local practice" is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of "the local practice" so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant's presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he "shall **promptly**…(C) provide written notice to…**the judge** or magistrate whose conduct is the subject of the complaint of the action taken". (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge's failure to act were proved correct, it would establish that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero's February 2 status inquiry letter.

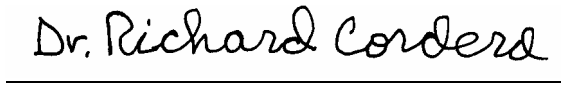
Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

waste of effort[2], time[3], and money[4], and inflicting upon him tremendous emotional distress[5] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[6] and dismiss the facts[7] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[8], Judge Larimer[9], court personnel[10], trustees[11], and local attorneys and their clients[12], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take 'prompt and expeditious action' by taking action belatedly. His failure is a consummated wrong and his 'prejudicial conduct' has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero's experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI's interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.



March 19, 2004

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Dr. Richard Cordero
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[2] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[3] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[4] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[5] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[6] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[7] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[8] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[9] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[10] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[11] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[12] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D. **[Opening Brief=A:1301; Reply Brief=A:1511; Mandamus Brief=A:615]**

APPENDIX: COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER UNDER 28 U.S.C. § 372(c)

INSTRUCTIONS:

(a) All questions on this form must be answered.

(b) A separate complaint form must be filled out for each judicial officer complained against.

(c) Submit the correct number of copies of this form and the statement of facts. For a complaint against:

a court of appeals judge -- original and 3 copies
a district court judge or magistrate judge -- original and 4 copies
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(c)).

(d) Service on the judicial officer will be made by the Clerk's office. (For further information See Rule 3(a)(1)).

(e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, United States Courthouse, 40 Foley Square, New York, New York 10007.

1. Complainant's name: Dr. Richard Cordero

Address: 59 Crescent Street
Brooklyn, NY 11208

Daytime telephone (with area code): ( ) (718) 827-9521

2. Judge or magistrate judge complained about:

Name: Hon. John M. Walker, Jr, Chief Judge

Court: Court of Appeals for the Second Circuit

3. **Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?**

[X] Yes [ ] No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: Court of Appeals for the Second Circuit

Docket number: 03-8547

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

[ ] Yes [X] No

If "yes" give the name, address, and telephone number of your lawyer:

4. **Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?**

[X] Yes [ ] No

If "Yes," give the docket number of each complaint.

docket no. 02-2230 in the U.S. Bankruptcy Court for the Western District of NY

Its appeal to the Court of Appeals for the Second Circuit bears docket no. 03-5023

5. **You should attach a statement of facts on which your complaint is based, see rule 2(b), and**

An original and three copies of my statement of facts, dated March 19, 2004, and addressed to the Circuit Judge eligible to become the next chief judge of the circuit, accompanies this form together with one separate volume of supporting evidentiary documents.

EITHER

(1) **check the box and sign the form. You do not need a notary public if you check this box.**

[X] **I declare under penalty of perjury that:**

(i) **I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and**

(2) **The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.**

Dr. Richard Cordero

(signature)

Executed on March 19, 2004

(date)

OR

(2) **check the box below and sign this form in the presence of a notary public;**

[ ] **I swear (affirm) that--**

(i) **I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and**

TABLE OF DOCUMENTS

SUPPORTING THE COMPLAINT UNDER 28 U.S.C. §351

of March 19, 2004

AGAINST CA2 CHIEF JUDGE JOHN M. WALKER, JR.,

by

Dr. Richard Cordero

CONSISTING OF DOCUMENTS GROUPED IN THREE SETS AND REFERRED TO BY:

plain number
E-number ♣
or A-number

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3. **Chief Judge** Walker's reply of **February 4**, 2004, by Deputy Clerk Allen.....4 [C:109]

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♣E-#=exhibit containing the Statement of Facts supporting Dr. Cordero's original complaint against Judge Ninfo set forth in his letter of August 11, 2003, to CA2 Clerk Roseann MacKechnie (C:1). A-=Appendix supporting Dr. Cordero's opening brief of July 9, 2003, in *In re Premier Van et al.*, no. 03-5023, CA2; as updated to support that complaint it consisted of pages A-1-507. Those pages are found mostly with the same page numbers as the A:# pages in the A files in the A 1-2229 folder on the accompanying CD.

6. Deputy Clerk **Allen**'s letter of August 25, 2003, **acknowledging** Dr. Cordero's judicial conduct **complaint of August 11**, 2003, and requesting resubmission with complaint form and shorter statement of facts .....11 [C:62]

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Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):	Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
DAVID G DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580 AKA: Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	January 27, 2004	077-32-3894 091-36-0517

Individual debtors must provide picture identification and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):	Bankruptcy Trustee (name and address):
CHRISTOPHER K WERNER, ESQ BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM
Location: U.S. Trustees Office, 6080 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004
For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM
Location: U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:	Website: http://www.nywb.uscourts.gov
U.S. Bankruptcy Court 100 State St. Rochester, NY 14614	Clerk of the Bankruptcy Court: PAUL R. WARREN DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

020304.0027.63.00111358.023 0420280.018 .3.021 146

EXPLANATIONS

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specificied amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.

---Refer To Other Side For Important Deadlines and Notices---

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no. 04-20280

Objection to Confirmation of the Chapter 13 Plan of Debt Repayment

---

1. Dr. Richard Cordero, as a party in interest, objects on the following grounds to the confirmation of the proposed plan in the above-captioned bankruptcy case. Consequently, the plan should not be confirmed. Cf. B.C. §§1324 and 1325(b)(1).

I. The bankruptcy of a loan officer with superior knowledge of the risks of being overextended on credit card borrowing warrants strict scrutiny

2. Mr. David DeLano is a loan officer of a major bank who in his professional capacity examines precisely that: loans and borrowers' ability to repay them. Thus, he has imputed superior knowledge of what being overextended or taking an excessive debt burden means and of when a borrower approaches the limit of his ability to pay. Hence, he was aware of the consequences of his own incurring such excessive credit card debt at the very high interest rate that they attract. His conduct may have been so knowingly irresponsible as to be suspicious.
3. This is particularly so since the DeLanos jointly earned in 2002 $91,655, well above the average American household income. What is more, last year their income went up considerably to $108,586. Yet, their cash in hand and in their checking and savings accounts is only $535.50 (Schedule B, items 1-2). What did Loan Officer DeLano do with his earnings?
4. Likewise, of all the money that they borrowed on credit cards and despite the monthly payments that they must have made to them over the years, they still owe 18 credit card issuers $98,092.91. However, they declare their personal property in the form of goods, the only property that could possibly have been bought on credit cards after excluding their pension and profit sharing plans (Schedule B, item 11), to be only $9,945.50. Where did the goods go and what kind of services did they enjoy through credit card charges so that now they should have so little left to show for the $98,092.91 still owing to their 18 credit card issuers?
5. These figures and facts were set forth by Loan Officer DeLano and his wife themselves with the legal assistance of their bankruptcy filing attorney. Their clash is deafening. Consequently, it is reasonable to conclude that their petition to have their debts discharged in bankruptcy must be strictly scrutinized to determine whether it has been made in good faith and free of fraud. Cf. B.C. §1325(a)(3).

II. The plan fails to require the DeLanos' best effort to repay creditors

6. The DeLanos have declared their current expenditures, including monthly charges of $55 for cable TV, $23.95 for Internet access, and $107.50 for recreation, clubs, and magazines. In addition, they indicate $62 per month for cellular phone "req. for work", which is certainly not the same as 'required by employers'. These are expenditures for a comfortable life with all modern conveniences, but they consume income that is "not reasonably necessary to be expended". Cf. B.C. §1325(b)(2). Indeed, the DeLanos intend to go on living unaffected by their bankruptcy and have used the figure of $2,946.50 current expenditures as their living expenses requirements to be deducted from the projected monthly income of $4,886.50 (Schedules J and I).

7. But that is not enough for them.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's current unemployment benefits run out in June (Schedule I)
$3,757.50	net monthly income
-2,946.50	to maintain their comfortable current expenditures (Schedule J)
$811.00	actual disposable income

8. Yet, the Delanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. Is there a reason for this?

9. Without any further explanation, the plan provides that for the last 6 months $960 will be paid monthly. This shows that the current expenditures can be reduced or that the DeLanos can project an increase in income 31 months ahead of time.

10. The bottom line is that all the DeLanos will pay under the plan is $31,335 despite their debt to unsecured creditors of $98,092.91 (Schedule F). However, this does not mean that unsecured creditors will receive roughly 1/3 of their claims and forgo interest, but barely above 1/5, for "unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors" (Chapter 13 Plan 4d(2)).

11. It is fair to say that this plan makes the unsecured creditors bear the brunt of the DeLanos' bankruptcy while they continue living on their comfortable current expenditures. What is more, or rather, less, is that the plan does not make any provision whatsoever to fund Dr. Cordero's contingent claim. If Dr. Cordero should prevail in court against Mr. DeLano, where would the money come from to pay the judgment? Is Mr. DeLano making himself judgment proof?

12. By contrast, the DeLanos make proof of their goodwill toward their son. They made him a loan of $10,000, which he has not begun to pay and which they declare of "uncertain collectibility" (Schedule B, item 15). There is no information as to when the loan was made, whether it was applied to buy an asset or the son has any other assets which the trustee can put a lien on or take possession of, or whether there is any other way to collect it. Nor is there any hint of where the DeLanos, who have in cash and in their bank accounts the whole of $535.50, got

$10,000 to lend to their son. To allow the son not to repay the loan amounts to a preferential transfer. This is all the more so because their son is an insider. Cf. B.C. §101(31)(A)(i). Therefore, the DeLanos' dealings with him must be examined with strict scrutiny for good faith and fairness.

13. It follows that the plan fails to show the DeLanos' willingness to put forth their best effort to repay their creditors, while they spare their comfortable standard of living as well as their son.

III. An accounting is necessary to establish the timeline of debt accumulation and the whereabouts of the goods bought on credit cards in order to determine the good faith and fraudless nature of a bankruptcy petition by Loan Officer DeLano

14. It is reasonable to assume that Mr. DeLano, as a loan officer, have access to the reports of credit reporting bureaus and, more importantly, that he knows how to examine them to determine the risk factor and solvability of a current or potential borrower. Likewise, bank lenders, including the 18 credit card issuers to whom the DeLanos still owe more than $98,000, regularly report to the credit reporting bureaus their cardholders' borrowing balances. They also check their cardholders' reports to assess their total debt burden and repayment patterns in order to determine whether to allow their continued use of their cards or to cancel them.

15. Thus, it is important to find out whether any or all of these 18 credit card issuers requested and examined the DeLanos' credit reports, such as those produced by Equifax, TransUnion, and Experian, and raised any concerns with the DeLanos about their total debt burden. This investigation is warranted because the DeLanos have described 14 credit card claims as "1990 and prior Credit card purchases" (Schedule F). Consequently, there has been ample time for them to have been warned about their total debt burden, not to mention for Loan Officer DeLano to have on his own realized its risks. Otherwise, how does he deal with his Bank's customers in similar situations? These facts beg the question: Is there a history of credit card issuers' announced bankruptcy and of a bankruptcy that the DeLanos were waiting to announce shortly before retirement (bottom of Schedule I)? The answer to this question affects directly the determination of the good faith of the DeLanos' bankruptcy petition.

16. In the same vein, for years the credit card issuers have had the duty and the means to find out, and must have been aware, that the DeLanos' credit card borrowing gave cause for concern. If they took no steps or took only inappropriate ones to secure repayment and even failed to stop the DeLanos from accumulating still more credit card debt, then they must bear some responsibility for this bankruptcy. As parties contributing to the DeLanos' indebtedness, they should be placed in a class of unsecured creditors different from and junior to that of Dr. Cordero, who has nothing whatsoever to do with the DeLanos' bankruptcy. Cf. B.C. §1322(b)(1)-(2). Yet, Dr. Cordero stands the risk of being deprived of any payment at all on a judgment that he may eventually recover against Mr. DeLano for his wrongful conduct precisely as a loan officer. Cf. Pfuntner v. Gordon et al, docket no. 02-2230.

17. In addition to drawing up the DeLanos' timeline of credit card debt accumulation, it is necessary to examine the DeLano's monthly credit card statements for the period in question to establish on what goods and services they spent what amount of money of which more than $98,000 still remains outstanding…plus they carry a mortgage of $77,084.49 on a house in

which their equity is only $21,415.51. (Schedule A) This is particularly justified since the DeLanos claim that they have barely anything of any value, a mere $9,945.50 worth of goods. (Schedule B). Where did all that borrowed money go?!

18. The timeline and nature of the DeLanos' credit card use will make it possible to figure out whether there must be other assets and the repayment plan is not in the best interest of creditors so that consideration must be given to:

    a. a conversion of the case to one under Chapter 7; Cf. B.C. §§1307(c) and 1325(a)(4);
    b. an extension of the plan from three to five years; Cf. B.C. §§1322(d); or
    c. dismissal for substantial abuse and bad faith under the equitable powers of the court to consider the motives of debtors in filing their petitions; Cf. B.C. §§1307(c) and 1325(a)(3).

IV. Trustee's duty to investigate debtor's financial affairs and provide requested information to a party in interest

19. Under B.C. §§1302(b)(1) and 704(4), the Trustee has the duty "to investigate the financial affairs of the debtor". Additionally, B.C. §§1302(b)(1) and 704(7) require him to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". To discharge these duties so that the interested parties may be able to make an informed decision as to what is in the best interest of creditors and the estate, the Trustee should investigate the matters discussed above, which in brief include the following:

20. Conduct an accounting based on the DeLanos' monthly credit card statements covering the period of debt accumulation. Find out how, when, and who became aware of the DeLanos' risky indebtedness and alerted them to it and with what results.

21. Determine the items and value of the DeLanos' personal property and the whereabouts and value of the goods purchased on credit cards.

22. Find out whether the DeLanos applied to M&T Bank or any other bank for a consolidation loan; if so, what was the response and, if not, why?

23. Determine what expenses are not reasonably necessary to maintain or support the DeLanos. Cf. B.C. §§1325(b)(2) and 584(d)(3).

24. State whether the DeLanos commenced making payments within 30 days of filing the plan. Cf. B.C. §§1302(b)(5) and 1326(a)(1).

25. Establish the circumstances of the DeLanos' $10,000 loan to their son and its alleged uncertain collectibility.

V. Provisions that any modified plan should contain

26. The DeLanos have shown that they do not know how to manage money in spite of the fact that Mr. Delano is a bank loan office. Therefore, their current and future income should not be allowed to be paid to them. Rather, the plan should provide for its submission to the trustee's supervision and control for his handling as is necessary for the execution of the plan. Cf. B.C. §1322(a). Whether under the plan or the order confirming it, the trustee should be the one who makes plan payments to creditors. Cf. B.C. §1326(c). Consequently, the DeLanos' current and

future employers and any entity that pays income to them should be ordered to pay all of it to the trustee. Cf. B.C. §1325(c).

27. All the DeLanos' disposable income should be applied to make payments under the plan. Cf. B.C. §1325(b)(1)(B). All income not reasonably necessary to be expended should be recovered from the DeLano's current expenditures and made available for payment to the creditors. Cf. B.C. §1325(b)(2).

28. The plan should provide for the payment of Dr. Cordero's claim. Cf. B.C. §1325(b)(1)(A).

VI. Notice of claim and request to be informed

29. Dr. Cordero gives notice of his claim to compensation for all the time, effort, and money that the Delanos have through their bankruptcy petition forced him to spend in order to protect his claim, and all the more so if it should be determined that the DeLanos did not incur that debt or file their petition in good faith and free of fraud.

30. Dr. Cordero requests that notice be given to him of every act undertaken in this case.

March 4, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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CERTIFICATE OF SERVICE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

OUTLINE
of the oral argument delivered by

Dr. RICHARD CORDERO
Appellant pro se

on December 11, 2003

I. One issue determines all the others

1. Whether **the integrity of the judicial process** was injured when the district and bankruptcy judges and their staff of administrative officers so **repeatedly disregarded the law, rules, and facts** pertaining to this case as to reveal their participation in a **pattern of** non-coincidental, intentional, and coordinated **acts of wrongdoing**.

2. Those acts are **all to Dr. Cordero's detriment**, the only non-local and pro se party, and to the benefit of the local parties, whose attorneys and trustees are well known to the judges and their staffs.

3. Those acts of wrongdoing have **materialized in decisions on appeal** here. Because of the courts' and their staffs' **disregard of legality,** their decisions are **unlawful** as a matter of law**.** Because they are **tainted by bias and prejudice,** they are **contrary to due process.**

4. The decisions should be **rescinded** and the case should be **remanded** to a court unfamiliar with the case for an impartial **trial by jury**.

II. The appealed decisions resulted from such unlawfulness and bias

A. Timeliness of appeal from dismissal of cross-claims against Trs. Gordon:

1. his **negligent and recklessness** liquidation of Premier, the storage company

2. his **defamatory and false statements** about Dr. Cordero

B. Denial of Dr. Cordero's application for **default judgment** against Palmer

III. Summary statement of facts

1. Dr. Cordero **paid** storage and insurance **fees** since 1993

2. Defendants lied to him about his property's location and safety

3. Dr. Cordero applied to J. Ninfo for review of Trustee Gordon's performance

4. The Trustee defamed Dr. Cordero to dissuade Judge from review

5. Pfuntner refused to release property, sued for administrative & storage fees

IV. Injury to the integrity of the judicial system & this Court as its steward

A. Judicial officers & parties **carved fiefdom out** of circuit's territory

1. they apply the **law of the locals**, not based on cases or law, but on

a) personal relations and b) fear of retaliation

B. Circumstances for close **personal relations** to emerge and rule

1. **proximity & frequent contacts** a. only three judges in NYWBkr b. same lawyers appear frequently c. Pacer: Trs Gordon's 3,000+ cases d. AUST's office in court building, and Trs. Gordon has mail box there e. floor above J. Ninfo is J. Larimer f. friendship replaces law 1) no need for disclosure/discovery 2) no legal basis for motions/decisions 3) if case cited, no textual analysis	2. **fear of retaliation** in next case a. in 9 hearings other parties never raised objection b. take without challenge what judge assigns to preserve his goodwill c. interdependency breeds wrongdoing 3. Fiefdom doesn't take seriously CA2: trump card in their pocket: they will prevail if case remains in their court with no jury

V. Indicia of wrongdoing should prompt this Court to investigate

C. Where are the accounts of Premier's assets and professionals?

1. Trustee Gordon: in docket 01-20692 [A-565]

a. **listed assets** on July 23, 2002 [entry 94]

b. **declared Asset Case** July 24 [entry 95]

c. moved August 28 to appoint Roy **Teitsworth as auctioneer** [entry 96]

d. **notice** of September 26 [entry 98] to **abandon** known **and newly discovered assets…Why!?**

2. Whatever Trustee Gordon did with **storage containers:**

a. **affected their contents** belonging to Premier's clients

b. if **containers removed**, the contents' **whereabouts** became **indeterminate**

c. altered storage conditions could **void insurance contracts**

d. he had duty **to give notice** to clients but failed to: Why?

1) was any gain to be derived & shared with others?

2) does he **care only for** profitable cases in his huge pool? [A-238-9]

3) was he reckless and negligent? All issues of fact preventing dismissal.

3. Storage **contracts with monthly fees** were assets of Premier estate

a. who valued their stream of future income and how?

b. what did M&T Bank do with proceeds of storage containers auction?

4. Why did J. Ninfo **refuse** to **default** David Palmer **but discharge** his company?

D. CA2 needs to investigate to uncover & eliminate wrongdoing

3. scope of suspect activity exceeds what litigant can investigate or discover;

4. benefits for judicial system & public at large from investigation:

a. respect for legality in court and decisions and for ethical behavior

b. integrity of judicial proceedings dispensing justice, not pursing own gain

c. clients represented by lawyers zealously advocating their interests

d. just and fair trials that earn the **public's confidence** in the courts

E. Joint investigation with FBI guided by *Follow the money!*

1. CA2 **can't** merely ask judges for report and **expect** them to send **mea culpa**

2. should review hearings transcripts checked against their **stenographic tapes**

3. conduct statistical comparison of outcome of cases in fiefdom and inter-districts

4. interrogate judges, clerks, accountants, auctioneers & buyers, creditors, etc.

5. obtain accounts they were supposed to submit and do **forensic accounting**

6. CA2 needs **experience** & resources of **FBI** to undertake this investigation & **follow the money** from estate assets to financial institutions and elsewhere

VI. Relief

A. In light of the participation by officers of the court in

1. a **pattern of** non-coincidental, intentional, and coordinated acts of **disregard of laws**, rules, and facts, and

2. their **bias and prejudice** toward Dr. Cordero,

it **cannot reasonably be expected** that Dr. Cordero will receive **a fair trial** at the hands of **Judges Ninfo and Larimer** with the assistance of their staffs and the support of their friendly trustees and lawyers.

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

1. rescind all decisions taken by them& disqualify Judge Ninfo;

2. remove this case in the interest of justice under 28 USC §1412 to a court

a. unfamiliar with the case, unrelated to the parties, and roughly equidistant from all the parties, which can be

b. expected to conduct a fair and impartial **jury trial**, such as

c. the federal court for the **Northern District** of New York in **Albany**;

3. that **this Court with** the assistance of the **FBI launch** a full **investigation** of the members of the **fiefdom** of Rochester to

follow the money to the source of the motive that led these parties into wrongdoing and bring them **back into the fold of legality** so as to restore the integrity of the judicial system under this Court's stewardship;

4. that for all the painstaking work of **legal research and writing** that Dr. Cordero, a non-practicing lawyer, has done for well over a year he **be awarded attorney's fees**, for it should offend justice that those who lost his property, took him for a fool, wasted his time, effort, and money and showed so little respect in what they submitted to this Court or by submitting nothing should also take his tremendous amount of conscientious legal work for free as their ultimate mocking windfall. The equities in this case should not allow that to happen.

Respectfully submitted under penalty of perjury,

on December 11, 2003

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Main Papers in *In re Premier Van Lines*, dkt. no. 03-5023, with the numbers of the pages where they appear in the Appendix [A:#]						
	Dr. Cordero's **Cross-claims** against Trustee Gordon, November 20, 2002		Dr. Cordero's Motion to **Extend time** to file notice of appeal, January 27, 2003		Dr. Cordero's Application for **Default Judgment** against David Palmer, Dec. 26, 2003	
1.	Dr. Cordero	70, 83, 88	Dr. Cordero	214	Dr. Cordero	290
2.	Trustee Gordon	Motion to Dismiss 135	Trustee Gordon	Memo in opposition to extend time, 234	Dr. Cordero	Letters to J. Ninfo, 299, 302
3.	Dr. Cordero	Brief in Opposition, 143	J. Ninfo	Decision denying motion to extend, 240	Clerk of Court Warren	Entry of default, 303
4.	J. Ninfo	Dismissal Decision, 151	Dr. Cordero	Motion for relief of denial, 246	J. Ninfo	Recommendation denying default, 304
5.	Dr. Cordero	Notice of Appeal 153	Trustee Gordon	Referral to previous submission, 257	Dr. Cordero	Letter and motion to enter default, 311, 314
6.	Trustee Gordon	Motion to Dismiss appeal, 156	J. Ninfo	Decision denying motion for relief, 259	J. Larimer	Decision denying entry of default, 339
7.	Dr. Cordero	Opposition to dismissal of notice 158	Dr. Cordero	Notice of Appeal to CA2, 429	Dr. Cordero	Motion for rehearing of denial, 342
8.	Trustee Gordon	Submitting in Dis. Ct. memo opposing motion to extend in Bkr. Ct., 199			J. Larimer	Decision denying rehearing motion, 350
9.	J. Larimer	Decision dismissing appeal, 200			Dr. Cordero	Notice of Appeal to CA2, 429
10.	Dr. Cordero	Brief for rehearing 205				
11.	Trustee Gordon	Letter relying on previous submission, 210				
12.	J. Larimer	Decision denying rehearing motion, 211				
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Court of Appeals
for the Second Circuit

EVIDENTIARY DOCUMENTS
supporting 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

submitted on
March 19, 2004
by

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

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

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc

Statement of relief sought:

1. Given Chief Judge Walker's failure to comply with his statutory and regulatory duty, under both 28 U.S.C. §351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers, respectively, to take any required action at all, let alone 'promptly and expeditiously', in the more than seven months since Dr. Cordero submitted a complaint about Bankruptcy Judge John C. Ninfo, II, for having "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" by disregarding the law, rules, and facts when issuing orders now on appeal in this Court, in particular, and in handling the case, in general,
2. the Chief Judge himself has engaged in such prejudicial conduct and has in effect condoned such disregard of legality so that he cannot reasonably be expected to have due regard for law and rules when considering the pending petition for panel rehearing and hearing en banc or when otherwise dealing with this case.
3. Consequently, Chief Judge Walker should recuse himself from any such consideration.

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

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: March 22, 2004

ORDER

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

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

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION FOR CHIEF JUDGE JOHN M. WALKER, JR.,
TO RECUSE HIMSELF FROM *IN RE PREMIER VAN et al.*
AND THE PENDING PETITION FOR
PANEL REHEARING AND HEARING EN BANC

In re PREMIER VAN et al. case no. 03-5023

RICHARD CORDERO
Third party plaintiff-appellant
v.
KENNETH W. GORDON, Esq.
Trustee appellee
DAVID PALMER,
Third party defendant-appellee

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. On August 11, 2003, Dr. Cordero filed with the Clerk of this Court a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. Those wrongful and biased acts included Judge Ninfo's failure to move the case along its procedural stages, the

instances of which were identified with cites to the FRCivP. To no avail, for there has been a grave failure to act upon that complaint.

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I. The Chief Judge's failure to comply with duties imposed on him by law and rules shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts, such as deciding the petition for panel rehearing and hearing en banc

A. The Chief Judge has a duty under law and rules to handle the complaint 'promptly and expeditiously'

2. Those failures have not been cured yet and the bias has not abated either. Hence, Judge Ninfo has engaged and continues to engage "in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Such conduct provides the basis for a complaint under 28 U.S.C. §372.

3. Dr. Cordero's complaint about Judge Ninfo relied thereupon. After being reformatted and resubmitted on August 27, 2003, it invoked the similar provisions found now at 28 U.S.C. §351.

4. Subsection (c)(1) thereof 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). The statute requires 'prompt and expeditious' handling of such a complaint and even imposes the obligation so to act specifically on the chief judge of the circuit.

5. Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 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 of the Second Circuit is

that action will be taken expeditiously. The Circuit's chief judge is not only required to enforce those Rules, but as its foremost officer, he is also expected to do so in order to set the most visible example of conduct in accordance with the rule of law.

B. The Chief Judge has failed to take action in more than seven months and would not even keep, let alone answer, a complaint status inquiry

6. Nevertheless, over seventh months have gone by since Dr. Cordero submitted his complaint about Judge Ninfo, but the Chief Judge of the Second Circuit, the Hon. John M. Walker, Jr., has failed to take the action required of him by statute and rules in connection therewith, let alone notify Dr. Cordero of any action taken by him 'promptly and expeditiously'.

7. Far from it! Thus, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4. One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt

with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

C. The Chief Judge failed to appoint a special committee

8. Likewise, there is evidence that Chief Judge Walker has failed to comply with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to members of the judicial council concerning this matter. The replies of those that have been kind enough to write back show that they did not know anything about this complaint, much less have knowledge of the Chief Judge appointing any special committee or of any committee recommendations made to them.

D. The Chief Judge is member of the panel that failed even to discuss the pattern of wrongdoing

9. There is still more. The pattern of wrongdoing and bias at the bankruptcy and district courts has materialized in more than 10 decisions adopted by either Judge Ninfo or his colleague upstairs in the same federal building, the Hon. David G. Larimer, U.S. District Judge. Dr. Cordero challenged those orders in an appeal in

this Court bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted the decisions with bias and prejudice against Dr. Cordero and denied him due process. Yet, the order of January 26, 2004, dismissing the appeal was adopted by a panel including the Chief Judge. It does not even discuss that pattern, not to mention determine how wrongdoing may have impaired the lawfulness of the orders on appeal.

10. If a judge can be disqualified for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60 (1988), then the appearance of one of the worst forms of impropriety, that is, perverting judicial judgment through partiality, must be sufficient to at the very least be recognized and considered in any decision. Disregarding bias and prejudice in the process of judicial decision-making that vitiate any alleged substantive grounds for the resulting decision allows the process to become a farce. The Chief Judge, in addition to his responsibility as the chief steward of the integrity of that process in this Circuit, had a statutory duty to act upon a complaint that the process that issued the appealed orders was perverted through a pattern of disregard of legality and of commission of wrongdoing. Yet, the Chief Judge too disregarded the complaint.

E. The Chief Judge failed to bear his heavier responsibility arising from his superior knowledge of judicial wrongdoing and its consequences on a person, and from his role as chief steward of the integrity of the courts

11. In so disregarding his duty, the Chief Judge bears a particularly heavy responsibility, for he knows particularly through a complaint transmitted under statute and rule to him for his consideration, as well as generally through all the papers filed by Dr. Cordero and transmitted to the panel, that Judge Ninfo's and others' targeted misconduct and systemic wrongdoing have inflicted upon Dr. Cordero irreparable harm for a year and a half by causing him enormous expenditure of time, effort, and money in, among other things, legal research and writing as well as traveling, aggravated by tremendous emotional distress. Yet, the Chief Judge has knowingly allowed the case to be remanded and thereby permitted Dr. Cordero to be the target of further abuse. Worse still, such abuse is likely to be rendered harsher by a retaliatory motive and more flagrant by the Chief Judge's failure to take any action on the complaint, let alone condemn the complained-about abuse, which may be construed as his condonation of it…

12. by the Circuit's Chief Judge!, the one reasonably expected to ensure that the foremost business of Circuit courts must be the dispensation of justice through fair and just process. But instead of doing justice and being seeing doing justice, the Chief Justice is seen to be not only blind to the commission of injustice

through the disregard of laws and rules at the root of justice by those whom he is supposed to supervise, but also to be insensitive to its injurious consequences on a party…no! no! on Dr. Cordero, a person, a human being whose life has being disrupted in very practical terms by such injustice while his dignity has been trampled underfoot by so much disrespect and abuse.

13. However, if the person suffering those consequences is of no importance, for the human 'element' is not a part of the machinery of appellate decision making, where only the mechanics of judicial process matters and justice is but a by-product of it, not its paramount objective, then one is entitled to insist that at least the rules of that process be 'observed', that is, that they be applied and be seen to be applied. Chief Judge Walker has failed to apply the rules.

II. By disregarding law and rules just as have done the judges that issued the appealed orders, the Chief Judge has an interest in not condemning the prejudicial conduct that he has engaged in too, whereby he has a self-interest in the disposition of the petition that reasonably calls into question his objectivity and impartiality

14. Chief Judge Walker has failed to comply in over seven months with the duty to take specific action imposed upon him by law and rule, and that despite the insistent requirement that he act 'promptly and expeditiously'. Moreover, since he is deemed to know what the law and rules require of him, it must be conclusively stated that he has intentionally failed to comply. Thereby the Chief

Judge himself "has [knowingly] engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Worse still, he has caused that prejudice by engaging in the same conduct complained about Judge Ninfo, who has acted in his judicial capacity with disregard for the law, rules, and facts. Since both the Chief Judge and Judge Ninfo would hold themselves, and their positions require that they be held, to be reasonable persons, who are deemed to intend the reasonable consequences of their acts and omissions, then both of them must be deemed to have intended to inflict on Dr. Cordero the irreparable harm that would reasonably be expected to result from their failure to comply with their duties under law and rule.

15. Their having engaged in similar conduct has grave implications for the disposition of the pending motion for panel rehearing and hearing en banc as well as any further handling of this case. This is so because Dr. Cordero's petition is predicated, among other grounds, on the unlawfulness of the appealed orders due to Judge Ninfo's and Judge Larimer's participation in a pattern of disregard of the rule of law and the facts in evidence. Therefore, the Chief Judge can reasonably be expected to base his decision, not on law and rules, which he has shown to be capable of disregarding even when they charge him with specific duties, but rather on the extra-judicial consideration of not condemning his own conduct. That constitutes a self interest that compromises

his objectivity. Consequently, the Chief Judge cannot be reasonably expected to be qualified to examine impartially, let alone zealously, and eventually find fault with, conduct that he himself has engaged in.

III. Relief requested

16. Therefore, Dr. Cordero respectfully requests that the Chief Judge, the Hon. John M. Walker, Jr., recuse himself from any direct or indirect participation in any current or future disposition of In re Premier Van Lines, docket no. 03-5023, beginning with the pending petition for panel rehearing and hearing en banc.

Respectfully submitted on,

March 22, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Petitioner Pro Se
tel. (718) 827-9521

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

March 24, 2004

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

Re: *Judicial Conduct Complaint*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your complaint.

Please use the Official Complaint Forms enclosed. 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 no more than five pages (five sides). The Statement of Facts must be on the same sized paper as the Official Complaint Form.

Please do not a table of contents to the Statement of Facts.

The exhibits must be mentioned in the Statement of Facts. Rule 2(d) states that "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."

The exhibits should clearly be marked exhibits.

Please keep in mind that non-compliance with the rules will delay the filing and processing of your submission.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

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

Enclosures

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

March 24, 2004

Judge Dennis Jacobs
Circuit Judge at the U.S. Court of Appeals, 2d Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Judge Jacobs,

Last Monday, March 22, I 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 by this Circuit's Rules Governing Complaints under 28 U.S.C. §351. What happened thereafter is worth bringing to your attention, for this incident should be taken into account in deciding how to deal with that complaint and in determining whether the incident and all the similar ones that have occurred in *this* Court are only a reflection of the degree of care and capacity of the clerks or rather part of a pattern of wrongful acts. [C:271]

Indeed, at the In-Take Room 1803, I showed the deputy clerk behind the counter four copies of a complaint like the one following this page as well as a separate volume of "Evidentiary Documents". I asked to speak with Ms. Patricia C. Allen, who is the only deputy clerk in the whole of this Court to handle such a filing. So if she is on vacation –as she was last August 11, 2003, when I submitted the initial complaint- or on medical absence –as she will be this Thursday 25 and Friday 26- nobody else can examine for conformity or process a complaint. Hence, it is left untouched until her return, never mind that §351 and the Governing Rules require that such complaints be handled 'expeditiously and promptly' given that judicial misconduct impairs the integrity of the courts' just and fair process of dispensing justice. I was told that Ms. Allen was unavailable. I filed the complaint. I also tendered to the clerk for filing five individually bound copies of a motion for something else in my appeal, docket no. 03-5023, each with the required Information Sheet on top. [C:302; cf. C:324]]

Today, Wednesday 24, two days later, that docket still did not show that the motion had been entered. That got me concerned about the complaint too, although I know that complaints are not entered on the same docket. So I called Ms. Allen to find out whether she had inspected and approved the complaint…but not even its transmission to her had occurred! At my request, she called the In-takers at Room 1803. However, none of them knew anything about my complaint. I asked that she have them search for it while I waited on the phone. Eventually, everything that I had filed on Monday was found on another floor and brought to her. Everything had been sent to the case manager on the claim that the Statement of Facts and the Evidentiary Documents belonged to the motion. This means that not only did the clerks ignore my conversation with them about they being a complaint for Ms. Allen, but they failed to read the *second* line of the heading:…**Setting forth a COMPLAINT** UNDER 28 U.S.C. §351…", never mind that in bold letters it states "…**addressed** under… **to the Circuit Judge eligible to become…**".Was this an oversight or was their sight on a different target? [C:302]

Ms. 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. As to the cover page of the Evidentiary Documents…forget'a 'bout it! I had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint; (see a copy of that cover page at 26, infra). She found so objectionable that I had not titled it Exhibits that she said that she would return it to me for correction. Eventually I managed to persuade her to just write in that word and keep it. But Ms. Allen found the complaint so incurably unacceptable that she refused to transmit it to you and will instead return to me the four copies for me to reformat and resubmit them. Her objections are the following:

1. The misconduct form is not on top, 'so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?' My suggestion that one might read the heading got me nowhere.
2. The complaint form was the wrong one, for its title refers to §372 rather that §351. I said that was the form that I received in connection the first complaint back in August; 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 clear. It was all to no avail. [C:276, 321]
3. My complaint has a table of documents, but complaints have no such thing. [C:279]
4. A major issue was that I put documents with the Statement of Facts as well as in the separate bound volume, 'What for?! You can't do that!' I explained that those are documents created since my first complaint back in August and are clearly distinguished by a plain page number, while documents accompanying my August complaint were referred to as E-page number (E as in Exhibit) or A-page number (A as in Appendix). All that was of no significance. [C:279§§I & II]
5. An obvious defect was that I had bound the complaint, but a complaint must not be bound; rather, it must be stapled or clipped. I indicated that Rule 2 of the Rules Governing Complaints does not prohibit binding. Moreover, I pointed out that 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, my reasoning by analogy was lost on Ms. Allen. So I went for the practical and said that I 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'.

These are the unacceptable features on account of which Ms. Allen refused to send the complaint on to you. Instead, she will return the four Statements for me to redo them and resubmit them to her for inspection. So on Monday I will have to go to the Court to bring her the reformatted copies, for if when I personally took the complaint there last Monday its copies ended up lost until I asked that the clerks searched for them two days later, can you imagine where they could end up if I mailed them, no to mention how much longer it would take to reach you after being "processed"? It is of no concern the extra time, effort, and money that Ms. Allen causes me to waste, let alone the aggravation, to comply with the written rules and 'the way things are done with complaints', which I must find out the hard way.

Therefore, I respectfully submit to you these questions:

1. Did Ms. Allen violate FRAP Rule 25(4), which provides that "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)
2. Did Ms. Allen handle my complaint as she normally does any other or as part of a pattern of coordinated acts targeted on me? In this context, the following should be considered:
    a. The docket of my appeal no. 03-5023, stated and still states even today, that it was the district court's decisions that were dismissed, thus giving me the misleading or false impression that I had prevailed and did not have to start preparing my petition for rehearing. [A:1009]
    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, the order of January 26 was not mailed to me on that date of entry, so that on January 30, I had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to me. It was postmarked February 2; as a result, it was a week after entry when I could read that in reality it was my appeal that had been dismissed, not the district court decisions appealed from. [A:876; cf. A:507];
    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 I did not receive it until March 1, so that I ended up having the same little amount of time in which to scramble to prepare the petition by the new deadline of March 10. [A:879, 881, 1010]
    d. The petition for panel rehearing and hearing en banc that I filed on March 10 was not docketed until I 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 me to file the petition? [A:885]
    e. Cf. Opening Brief: 11.3; 11.4; 15.6; [A:1301]]
    f. Cf. Petition for Writ of Mandamus: 25.K and 26.L; [A:615]
    g. Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge; next in this file. [C:271]

How many elements are needed to assess the care and capacity of the clerks of the Court or to detect a pattern of wrongful acts? What degree of solidarity or coordination is there between the clerks of this Court and those of the bankruptcy and district courts in Rochester?

Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

March 25, 2004

The Hon. Robert D. Sack
Circuit Judge at the U.S. Court of Appeals, 2d Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Judge Sack,

On August 11, 2003, I submitted to the Court of Appeals for the Second Circuit a complaint based on detailed evidence of judicial misconduct on the part of U.S. Bankruptcy Judge John C. Ninfo and other court officers in the Bankruptcy and District Courts for the Western District of New York. The specific instances of disregard of the law, rules, and facts were so numerous, so protective of the local parties and injurious to me alone, the only non-local and pro se party, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Receipt of the complaint was acknowledged on September 2; it was assigned docket no. 03-8547. Although the provisions of law governing such complaints, that is, 28 U.S.C. §§372 and 351, and the implementing rules of this Circuit require 'prompt and expeditious' action on the part of the chief judge and its notification to the complainant, it is the seventh month since submission but I have yet to be informed of what action, if any, has been taken.

What is more, on February 2, I wrote to the Hon. Chief Judge John M. Walker, Jr., to inquire about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To my astonishment, the original and all the copies that I submitted were returned to me immediately on February 4. One can hardly fathom the reason for the inapplicability to a judicial misconduct complaint already in its seventh month after submission of the basic principles of our legal system of the right to petition and the obligation to update information, which is incorporated in the federal rules of procedure. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

There is still more. The pattern of wrongdoing has materialized in more than 10 decisions adopted by the bankruptcy and district courts, which I challenged in an appeal bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted those decisions with bias and prejudice against me and denied me due process. Yet, the order dismissing my appeal, adopted by a panel including the Chief Judge, does not even discuss that pattern, let alone protect me on remand from further targeted misconduct and systemic wrongdoing that have already caused me enormous expenditure of time, effort, and money as well as unbearable aggravation. Where the procedural mechanics of jurisdiction are allowed to defeat the courts' reason for existence, namely, to dispense justice through fair and impartial process, then there is every justification for escalating the misconduct complaint to the next body authorized to entertain it. It is not reasonable to expect that a complainant should wait sine die just to find out the status of his complaint despite the evidence that it is not being dealt with and that he is being left to fend for himself at the wrongful hands of those that treat him with disregard for law, rules, and facts.

Therefore, I am respectfully addressing myself to you, as a member of the Judicial Council of this Circuit, and to Justice Ginsburg, as the justice with supervisory responsibilities for this Circuit, to request that you consider the documents attached hereto and bring my complaint and its handling so far to the attention of the Council so that it may launch an investigation of the judges complained-about and I be notified thereof. Meantime, I look forward to hearing from you and remain,

sincerely yours,

Dr. Richard Cordero

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

March 29, 2004

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

Re: *Judicial Conduct Complaint*

Dear Mr. Cordero:

Your letter of March 25, 2004, addressed to Judge Robert D. Sack, relating to Judicial Conduct Complaint 03-8547 has been forwarded to this office.

Please be advised that the matter is under consideration. You will be notified as soon as a decision is made.

Very truly yours,

Roseann B. MacKechnie

Roseann B. MacKechnie

cc: Honorable Robert D. Sack

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

COMPLAINT AGAINST JUDICIAL OFFICER
UNDER 28 U.S.C. § 351 et. seq.

INSTRUCTIONS:

(a) **All questions on this form must be answered.**

(b) **A separate complaint form must be filled out for each judicial officer complained against.**

(c) **Submit the correct number of copies of this form and the statement of facts. For a complaint against:**

a court of appeals judge -- original and 3 copies
a district court judge or magistrate judge -- original and 4 copies
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

(d) **Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).**

(e) **Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.**

1. **Complainant's Name:** Dr. Richard Cordero

Address: 59 Crescent Street
Brooklyn, NY 11208-1515

Daytime Telephone No. (include area code): (718) 827-9521

2. **Judge or magistrate judge complained about:**

Name: Hon. John M. Walker, Jr., Chief Judge

Court: Court of Appeals for the Second Circuit

3. **Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?**

[X] **Yes** [ ] **No**

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: Court of Appeals for the Second Circuit

Docket number: 03-8547

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

[ ] **Yes** [X] **No**

If "yes" give the name, address, and telephone number of your lawyer:

4. **Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?**

[X] **Yes** [ ] **No**

If "Yes," give the docket number of each complaint.

docket no. 02-2230 in the U.S. Bankruptcy Court for the Western District of NY

Its appeal to the Court of Appeals for the Second Circuit bears docket no. 03-5023

5. **You should attach a statement of facts on which your complaint is based, see rule 2(b), and**

An original and three copies of my statement of facts, dated March 19, 2004,

EITHER and addressed to the Circuit Judge eligible to become the next chief judge of the circuit, accompanies this form together with one separate volume of exhibits.

(1) **check the box and sign the form. You do not need a notary public if you check this box.**

[X] I declare under penalty of perjury that:

(i) **I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of dicial Misconduct or Disability, and**

(2) **The statements made in this complaint and attached statement facts are true and correct to the best of my knowledge.**

Dr. Richard Cordero

signature)

on March 19, 2004, on the section 372 form

(date)

and on March 28, 2004, on the section 351 form

OR

(2) check the box below and sign this form in the presence of a notary public;

[ ] I swear (affirm) that--

(i) **I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and**

Court of Appeals
for the Second Circuit

EXHIBITS

Evidentiary documents supporting 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

submitted on
March 19, 2004
by

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

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

March 29, 2004

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

Re: *Judicial Conduct Complaint*

Dear Mr. Cordero:

I am 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. , . . . ").

Please note that your newest Complaint will be filed as expeditiously as possible. When we file the complaint, we will send you a letter of confirmation which will include the docket number assigned to that case.

Very truly yours,

Roseann B. MacKechnie

Enclosures

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

March 30, 2004

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

Re: *Judicial Conduct Complaint*, 04-8510

Dear Mr. Cordero:

We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351.*

You will be notified by letter once a decision has been filed.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

C:326 Clerk Allen's acknowledgment of 3/29/4 of Dr. Cordero's complaint v CJ Walker & notice of filing it as 04-8510

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[C:327-336 reserved]

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

Docket Number(s): 03-5023 **In re Premier Van et al.**

Motion for: Leave to Update the Motion For the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case With Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal

Statement of relief sought: Dr. Cordero respectfully requests that:

I. Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing and hearing en banc or any future proceeding in this case;

II. the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

III. the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:
1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
2. caused him to waste his time, effort, and money, and inflicted on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

IV. 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;

V. order that the TOC and pages 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.

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: Bankruptcy J. Ninfo, District J. Larimer, and Chief J. Walker

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: N/A

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: April 18, 2004

ORDER

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

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

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. case no. 03-5023

MOTION FOR Leave to Update the Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case with recent evidence of a tolerated pattern of disregard for law and rules further calling into question the Chief Judge's objectivity and impartiality to judge similar conduct on appeal

---

1. "The bucket stops with me" is short for taking responsibility for what subordinates do. Herein is evidence of how clerks all the way to the top have made so many mistakes and repeatedly disregarded the law and rules with the consistent effect of hindering the submission of a complaint about the Hon. John M. Walker, Chief Judge. Their conduct forms a pattern of non-coincidental, intentional, and coordinated wrongful activity that is being engaged in under the Chief Judge's stewardship of this Court. He must take responsibility for having at the very least tolerated the formation of such pattern and its injurious effect on the Court's business and claim on public trust. Disregard for legality and facts by the lower courts is precisely the attitude that has determined their orders on appeal. Thus, by his own tolerance of disregard for legality among his subordinates, the Chief Judge can reasonably be expected to lack objectivity and impartiality to assess the facts and eventually find and condemn the same conduct that the lower courts have tolerated, encouraged, and participated in. Hence, he should recuse himself.

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****

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 receiving clerk in In-Take Room 1803 a misconduct complaint about Chief Judge Walker under 28 U.S.C. §351 and this Circuit's Rules Governing Complaints thereunder (referred to hereinafter as Rule #); (i-25, below; see the Table of Contents, M-22, below). He also submitted a separate volume titled "Evidentiary Documents" (26, below). He asked to speak

with Deputy Clerk Patricia Chin Allen. After the clerk phoned her, she told him 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 com-plaint 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 wrong-doing? 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:

a) Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing

and hearing en banc or any future proceeding in this case;

b) the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

c) the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:

   1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
   2. caused Dr. Cordero to waste his time, effort, and money, and inflicted 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 18, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

Table of Exhibits

of the Motion of April 18, 2004
for Leave to Update the Motion of March 22, 2004
for C.J. Walker to Recuse Himself from *In re Premier Van et al.*
by
Dr. Richard Cordero

1. Motion Information Sheet ..... 119 [C:337]

2. Motion of April 18, 2004 ..... 120 [C:338]

3. This Table of Exhibits ..... 140 [C:358]

4. Complaint Form accompanying the judicial misconduct complaint of March 19, 2004, indicating its basis as §372(c), and removed as required by Clerk Allen (cf. entry 8.b, below) ..... M-23 [C:276]

5. Letter of Clerk Patricia Chin Allen of March 24, 2004, to Dr. Cordero ..... M-26 [C:315]

6. Letter of Clerk of Court Roseann B. MacKechnie of March 29, 2004, to Dr. Cordero ..... M-27 [C:325]

7. Letter of Clerk Patricia Chin Allen of March 30, 2004, to Dr. Cordero ..... M-28 [C:326]

8. Judicial misconduct complaint about the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, of March 19, 2004

   a. Statement of Facts ..... i [C:271]

   b. Complaint Form indicating its basis as §351 (cf. entry 4, above) ..... v-a [C:321]

   c. Table of Documents ..... vi [C:279]

   d. 1-25 pages of documents created since the original complaint about the Hon. John C. Ninfo, II, of August 11, 2003 ..... 1 [C:279§I]

   e. Cover page of the separate volume of documents accompanying the March complaint and titled "Evidentiary Documents" ..... 26 [C:302]

   f. Reformatted cover page containing the word "Exhibits" as required by Clerk Allen ..... 27 [C:324]

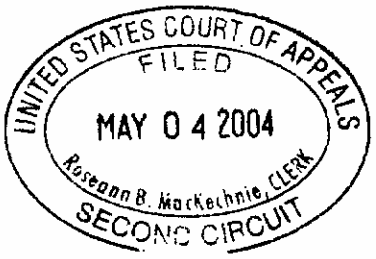
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc

Docket No. 03-5023

In re: Premier Van Lines



Movant:
Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	/___/	/___/
Consent obtained from adversary (ies)?	/___/	/___/
Is oral argument desired?	/___/	/___/

ORDER

Before: Hon. John M. Walker, Jr., *Chief Judge*, Hon. James L. Oakes,
Hon. Richard C. Wesley, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

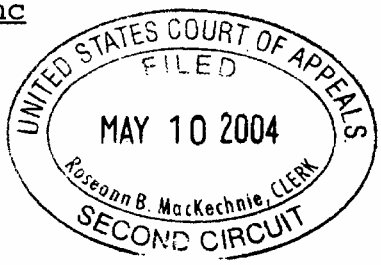
MAY - 4 2004
Date

Arthur M. Heller
Motions Staff Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc



AMENDED ORDER

In re: Premier Van Lines

Docket No. 03-5023

Movant:
Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	/___/	/___/
Consent obtained from adversary (ies)?	/___/	/___/
Is oral argument desired?	/___/	/___/

ORDER

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

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

MAY 10 2004
Date

Arthur M. Heller
Motions Staff Attorney

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

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

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

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: May 31, 2004

ORDER

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

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

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re PREMIER VAN et al. case no. 03-5023

Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

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

1. Last March 22 and subsequently on April 18, Dr. Cordero filed two related motions, namely:

    1. Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc (21, infra)

    2. Motion for leave to Update the motion for the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case with Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules further Calling into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal (33, infra)

2. These motions were predicated on 28 U.S.C. §455(a) and laid forth reasons based on facts and law why the Hon. John M. Walker, Jr., Chief Judge of this

Court, should recuse himself from the pending rehearing and hearing an banc and from considering any other matter therein.

3. Nevertheless, on May 4, an order captioned "Recusal of Chief Judge Walker from petition for rehearing and petition for rehearing en banc", signed by Motions Staff Attorney Arthur M. Heller, and amended on May 10, stated merely that "It is hereby ordered that the motion be and it hereby is denied". (55 and 56, infra).

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****

I. Why the Chief Judge has a duty either to disqualify himself upon the reasonable questioning of his impartiality or to state his arguments why the questioning is not reasonable so that the self-disqualification obligation has not attached

4. Section 455(a) provides that a federal judge "**shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (emphasis added). Thus, the law lays on judges a statutory obligation to disqualify themselves if the stated condition is met.

5. That condition is that "his impartiality might **reasonably** be questioned." (emphasis added). Hence, it suffices that reasons –not evidence, let alone proof- questioning the judge's impartiality be presented for the self-disqualification obligation to attach.

6. This means that §455(a) relies on a rule of reason. The standard by which that rule is to be applied is implicit in the section's language, for it requires only the possibility that the judge's impartiality "**might** reason-ably be questioned". The verb "might" lies, of course, at the bottom of the modal continuum of might>may>could>can>must>ought to. This grammatical choice of the §455(a) legislators conveys their choice of the legal standard by which the sufficiency of the reasons is to be assessed: as it were, by a preponderance of persuasiveness.

7. Applying the rule of reason under this standard, the questioning is "evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its

appearance", *Liteky v. United States,* 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994); not how it appears from the subjective standpoint of the judge internally assessing his feelings toward a litigant or her legal position, but rather "from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances" enabling her to conduct an 'objective inquiry', *In re Drexel Burnham Lambert, Inc.,* 861 F.2d 1307, 1309 (2d Cir. 1988).

8. "Objective" here means that what matters in the impartiality inquiry is how the judge, as its object, appears to the reasonable observer, rather than how the judge, as a subject, assesses it personally. This follows from the Supreme Court's statement that, "The goal of 28 USC §455(a)…is to avoid even the appearance of partiality…created even though no actual partiality exists because the judge (1) does not recall the facts, (2) actually has no interest in the case, or (3) is pure in heart and incorruptible." *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847; 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988).
9. Hence, the rule of reason is applied to a §455(a) questioning to preserve the appearance of the judge's impartiality, rather than to ascertain the reality of his lack of it. Since the section's purpose calls for a low threshold for the rule's application, it follows that the questioning is reasonable when it is more likely than not to persuade of the judge's lack of impartiality. Hence, the section's

language and purpose support the correctness of the standard of preponderance of persuasiveness to assess the sufficiency of the reasons for questioning the judge's impartiality. It is a standard easy to satisfy that cuts in favor of the reasonableness of the questioning.

10. Section 455(a) is so phrased as to allow the questioning to be done by the judge himself to begin with. This Court recognized that in *United States v. Wolfson,* 558 F.2d 59; 1977 U.S. App. LEXIS 13096 (2d Cir. 1977), note 11, where it stated that "Section 455 is a self-enforcing provision that is directed towards the judge, but may be raised by a party." The judge's foremost obligation is no longer a "duty to sit" on an assignment, *In Re: International Business Machines,* 618 F.2d 923, at 929 (2d Cir. 1980); rather, it is to preserve even the appearance of impartiality for the "purpose of promoting public confidence in the integrity of the judicial system"; id. *Liljeberg*.
11. If by a preponderance of persuasiveness the facts and circumstances available to the judge yield reasons that persuaded him of the possibility that his impartiality "**might** reasonably be questioned", the consequence is inescapable: he "shall disqualify himself", for the self-disqualification obligation has attached.
12. Once that obligation attaches, the judge must not wait until a litigant or another person actually questions his impartiality. If he has reasons that persuade him that it might be, then, even though his impartiality has not yet been questioned

by another person, the judge has the obligation to disqualify himself sua sponte.

13. It follows that the self-disqualification obligation attaches with even more strength when an observer is the person who questions the judge's impartiality, for the questioning has evidently proceeded from a possibility that might occur to a fact that has occurred. Consequently, once an observer has questioned the judge's impartiality, the only concern left is whether the questioning might persuade a reasonable person of the judge's likely lack of impartiality. If no inquiry is conducted or no determination is made, the easily meet standard of preponderance of persuasiveness weighs in favor of a reasonable questioning that attaches the self-disqualification obligation. The judge has no discretion but he "**shall** disqualify himself" and "his failure to disqualify himself [is] a plain violation of § 455(a)", id. *Liljeberg*.

14. The only way for the judge not to find himself under such obligation is for him to argue that the questioning of his impartiality is not reasonable and that, as a result, the self-disqualification obligation has not attached. That he can only do, of course, by stating his arguments therefor.

15. The obligation to state those arguments is all the more evident the more prominent the judge is whose impartiality has been questioned, lest he claim that the higher the judge's visibility or station in the judicial hierarchy, the higher above the law he is so that not even a statute can place on him the obligation to

disqualify himself despite his impartiality having in fact been questioned. A judge that shows such contempt for the law as to put below his feet an obligation that the law places on him, despite the obligation being unambiguous and critically important for the judicial systems that he serves and the public that must trust it and him, breaches his oath of office to "administer justice without respect to persons…and…faithfully and impartially **discharge** and perform **all duties** incumbent upon me as [judge] **under the** Constitution and **laws** of the United States", 28 U.S.C. §453, (emphasis added). He thereby forfeits his right to apply the law just as he loses any right to require others to show respect for the law and him.

II. The reasons presented in the motions to question the Chief Judge's impartiality satisfied the standard of preponderance of persuasiveness and caused the self-disqualification obligation to attach

16. Among the reasons on which the motions of March 22 and April 18 (21 and 33, infra) urged the Chief Judge to disqualify himself are these:

a) On August 11, 2003, a judicial misconduct complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, as well as District Judge David Larimer and their administrative staff in their courts in Rochester, was filed with Chief Judge Walker under 28 U.S.C. §351 et seq. and this Circuit's Rules Governing such complaints. (57 and 62, infra) Those law and rules impose on the chief

judge of the circuit the obligation to handle the complaint "promptly" and "expeditiously". (63, infra) The promptness obligation is all the more categorical and non-discretionary because both §351 and the Governing Rules state that the gravamen of the complaint is that the complained-about judge "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". (emphasis added) That statement unequivocally makes expeditious action an essential obligation of the conduct of judges as well as a key element of the application of the law. For its part, the promptness obligation is justified by the need both to protect the complainant from a judge's misconduct and to safeguard the trust of the public at large in the integrity of the judicial system. But disregarding their welfare and general interest, to date, ten months later!, Chief Judge Walker has still not dealt with the complaint at all. Not even additional grounds for complaint arising in the meantime and expectedly brought to his attention have made him aware of the urgency of the situation enough to cause him to comply with his statutory and regulatory obligations. (67-69, infra) The Chief Judge's failure to discharge them shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts. Thus, his conduct provides the basis for the well-grounded fear that in his participation in deciding the pending petition in this case for panel rehearing and hearing en banc the Chief Judge

can likewise disregard legality so as to apply extrajudicial considerations, including personal interests, and, given his preeminent position not only in this Court, but also in the Circuit, influence others to do the same.

b) Through such disregard of his obligations under §351 and the Rules, and by at least tolerating his own administrative staff to engage in a pattern of non-coincidental, intentional, and coordinated disregard of law and rules (33, infra), the Chief Judge engaged in the same conduct, namely, a pattern of non-coincidental, intentional, and coordinated disregard of law, rules, and facts that Judges Ninfo and Larimer together with their administrative staff engaged in. Thereby the Chief Judge condoned their conduct and called into question his impartiality to condemn the very disregard for legality in which he engaged. Such questioning is all the more reasonable in light of the fact that the Chief Judge is a member of the panel that dismissed the appeal from those judges' orders without even discussing how their pattern of disregard for legality and bias for the local parties and against Dr. Cordero, the only non-local, tainted their orders and rendered them null and void.

c) By disregarding the precise statutory and regulatory obligation to deal with the misconduct complaint "promptly" and "expeditiously", the Chief Judge intentionality subjected the complainant to the reasonable consequences of his acts, that is, to suffering at the hands of the complained-about judges and

administrative staff further loss of effort, time, and money, as well as additional emotional distress (cf. 69-70, infra) and deprivation of his constitutional right to due process before an unbiased judge. (Cf. *William Bracy v. Richard B. Gramley, Warden*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (noting that due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case). In order to avoid providing a basis for his own liability, the Chief Judge now has a personal interest in neither condemning their prejudicial conduct nor referring the case to the FBI. Such referral has been requested for the FBI to investigate, among other things, how bankruptcy fees in *thousands of open cases per trustee*, including cases obviously undeserving of relief under the Bankruptcy Code, may be driving the pattern of wrongdoing among judges and their administrative staff. (70 and 71, infra) Evidence obtained by the FBI could reveal the motive for bias and support the claim of its resulting harm. Consequently, Chief Judge Walker's self-interest in the disposition of every aspect of this case reasonably calls into question his objectivity and impartiality and causes his self-disqualification obligation to attach.

17. Applying the standard of preponderance of persuasiveness to the above-stated reasons upon which Chief Judge Walker's impartiality 'might be questioned',

those reasons appear persuasive enough to cause "an objective, disinterested observer fully informed of the[se] underlying facts [to] entertain significant doubt that justice would be done absent recusal", *United States v. Lovaglia,* 954 F.2d 811, 815 (2d Cir. 1992). Hence, the self-disqualification obligation has attached upon the Chief Judge.

18. These impartiality-questioning reasons and the obligation deriving from the "shall disqualify himself" command would spur a judge respectful of the law to disqualify himself or state his arguments why the obligation has not attached. But the Chief Judge slapped this reasonable questioning away with the hand of a staffer penning a mere "denied". It cannot honestly be said that by merely doing that, the Chief Judge was paying respect in action to the principle that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done"; *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923).

19. The only thing that such "denied" undoubtedly did and may have been intended to do was slap Dr. Cordero's face. Indeed, he complained in his appeal precisely that District Judge Larimer, in his first two orders, made gross and numerous mistakes of fact and disregarded his obligation to provide a legal basis for the onerous requirements that he imposed on Dr. Cordero without making even a passing reference to the latter's legal and factual arguments for the relief requested, whereby Judge Larimer showed that he had not even read Dr.

Cordero's motions and thus, had responded ex parte to Judge Ninfo's recommendations. Then in his subsequent two orders, Judge Larimer disregarded his obligation as a judge to be seen doing justice through the application and explanation of the law and instead gave two offhand and lazy strokes of the pen to write a mere "The motion is in all respects denied", for which he did not have to even see the motions…though at least he signed his own orders. (cf. paras. 9-11, Rehearing petition of March 10, 2004)

20. The Chief Judge did not do even that, limiting himself contemptuously to a mere "denied" penned by a staffer to slap away the reasons for his disqualification presented in two motions that he did not even have to see. That the only error corrected by the amended denial order was precisely in the name of one of the judges is not reassuring as to who saw, read, and decided what. (55 and 56, infra) Such slap does no justice where arguments for not abiding by the "shall disqualify himself" command are required. That mere "denied" also slaps in the face the Supreme Court's principle of "preserving both the appearance and reality of fairness," which "'generat[es] the feeling, so important to a popular government, that justice has been done'"; *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980).

III. The Court must disqualify the Chief Judge upon his failure to disqualify himself or state his arguments that the obligation to do so has not attached

21. A reasonably prudent and disinterested person faced with the criticism of lacking impartiality would naturally want to dispel it by providing reasons why it is unfounded. The urge to do so would be greater if the person is a judge charged with lack of impartiality, for then what is at stake is not only his fairness, but also his professional integrity and effectiveness. Section 455(a) still raises the stakes because it automatically attaches on the judge the obligation that he "**shall** disqualify himself" upon his impartiality being reasonably questioned. The section does not accord him any margin of discretion to determine any other appropriate reaction. The judge can only argue the non-attachment of the obligation because the questioning is so unreasonable that it does not meet even the low threshold of the preponderance of persuasiveness standard.

22. The above-stated reasonable questioning of Chief Judge Walker's impartiality caused that obligation to attach to him. Therefore, for the Chief Judge to slap away that obligation without bothering to provide any arguments demonstrates that the he has neither factual nor legal grounds to rebut such questioning, but instead puts himself above the law to escape that obligation.

23. However, if the Chief Judge did have such arguments, he could not skip stating them just to save his effort and time or out of contempt for a pro se movant or

one who dared question his impartiality. By the preponderance of persuasiveness standard the questioning was reasonable and the self-disqualification obligation attached. The Chief Judge could not merely have the motions "denied": He had to argue against the obligation ever attaching. He owed to the law, to the Movant, and to the public at large a statement of arguments why he would stay on the case, not despite the self-disqualification obligation, but because of its absence; otherwise, he had to disqualify himself, for "Quite simply and quite universally, recusal [i]s required whenever 'impartiality might reasonably be questioned'", id, *Liteky,* 510 U.S. 540.

24. The Chief Judge also owed those arguments to the Supreme Court so as to enable it to assess on appeal the legal basis and analysis that he relied upon in deciding not to recuse himself. From nothing but a "denied" slapped by a staffer, how are the Justices to determine whether Chief Judge Walker meant that the he did not want to read the motions, had no time to waste writing a memorandum, has a cavalier attitude toward his statutory obligations, treated dismissively a mere pro se litigant, or clearly abused his discretion by failing to recognize that a fiat does not rise above the level of arbitrariness to appear as an act of justice until it ascends from a controversy on a stable platform of precedent and sound reasoning?

A. Justice Scalia's law-abiding reactions to motions for his recusal

25. In this context, it is illustrative to contrast the Chief Judge's slapped denial and Justice Scalia's two examples of respect for the law and his duty as a judge to promote public confidence in both his integrity and the judicial process. In one instance, Justice Scalia was confronted with a motion filed by Sierra Club for his self-disqualification because the Justice had spent several days duck hunting with Vice President Cheney, who was a named party in a case asking the Supreme Court whether broad discovery is authorized under the Federal Advisory Committee Act (FACA), 5 U. S. C. App. 1, §§1 *et seq*., so as to determine whether the Vice President, as the head of the Task Force gathering information to advise the President on the formulation of a national energy policy, was responsible for the involvement of energy industry executives in the Task Force's operations. Justice Scalia denied the motion, but only after stating his arguments in detail in a memorandum; *Cheney v. U.S. District Court for the District of Columbia,* 541 U.S. ___ (2004).

26. Justice Scalia showed equal respect for his obligation to avoid even the appearance of lack of impartiality in another case, which challenged the "one nation under God" phrase in the Pledge of Allegiance as a violation of the Establishment Clause of the 1st Amendment. There Appellant Michael Newdow moved for the Justice to recuse himself because his impartiality might

reasonably be questioned after the Justice commented at a Religious Freedom Day event, before reading the briefs and knowing the facts in a case that he would likely hear, that the Ninth Circuit's decision finding a violation was based on a flawed reading of the Establishment Clause; *Newdow v. United States*, App. No. 03-7 in the Supreme Court, September 5, 2003. In that case, Justice Scalia, before writing any argument concerning the questioning of his impartiality, immediately announced his self-disqualification; *Elk Grove Unified School District v. Newdow,* 540 U. S. ___ (cert. granted, Oct. 14, 2003).

27. When the Chief Judge of this Circuit, the preeminent judicial officer herein, has his impartiality questioned, he too has the obligation either to put forth his arguments why the questioning thereof is not reasonable or to disqualify himself. If he fails to acquit himself of either obligation, those judges of this Court who still hold sufficient respect for the law not to put themselves above it or allow anybody else to do so, regardless of his station in the judiciary or in society at large, must enforce the obligation that has attached to the Chief Judge by disqualifying him from the case. Only by taking such action can those judges attest to their belief that "Justice must satisfy the appearance of justice", *Offutt v. United States,* 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954), and that having a mere "denied" slapped on two reasonable disqualification motions satisfies neither justice nor them. Either they believe in those words and act to

fulfill their lofty mission as judges dispensing justice according to law or they must admit that they simply administer another system for disposing of vested interests, theirs and others, where justice and respect for the law do not just appear, but rather are mere shams.

IV. Relief requested

28. Therefore, Dr. Cordero respectfully requests that:

a) Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;

b) in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;

c) this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

Respectfully submitted on,

May 31, 2004

Dr. Richard Cordero

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Brooklyn, NY 11208

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V. Table of Exhibits

accompanying the motion of May 31, 2004,
for Chief Judge Walker either to state his arguments for denying
the motions that he disqualify himself from considering
the pending petition for panel rehearing and hearing en banc
or disqualify himself
and failing that for the Court of Appeals to disqualify him therefrom
by
Dr. Richard Cordero

1. Dr. **Cordero**'s **motion** of **March 22**, 2004, for the Hon. Chief Judge John M. **Walker**, Jr., to **recuse** himself from this case and from considering the pending petition for panel rehearing and hearing en banc .....19 [C:303]
2. Dr. **Cordero**'s **motion** of **April 18**, 2004, for leave to **update** the motion for Chief Judge **Walker** to **recuse** himself from *In re Premier Van Lines*, no. 03-5023, with recent **evidence** of a tolerated **pattern of disregard** for law and rules further calling into question the Chief Judge's objectivity and impartiality to judge similar conduct on appeal .....33 [C:337]
3. CA2's **order** of **May 4**, 2004, **denying** the motion for **recusal** of Chief Judge **Walker** from petition for rehearing and petition for rehearing en banc .....55 [C:359]
4. CA2's **amended order** of **May 10**, 2004, **denying** the motion for **recusal** of Chief Judge Walker from petition for rehearing and petition for rehearing en banc .....56 [C:360]
5. Dr. **Cordero**'s Statement of Facts of **August 11**, 2003, in support of a **complaint** under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit 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 .....57 [C:63]
6. **Letter** of Clerk Patricia Chin **Allen** of **September 2**, 2003, acknowledging receipt and **filing** of Dr. Cordero's **complaint** about Judge **Ninfo**, under docket no. 03-8547 .....62 [C:73]
7. Dr. **Cordero**'s **letter** of **February 2**, 2004, **to** Chief Judge **Walker inquiring** about the **status** of the **complaint** and updating its supporting evidence .....63 [C:105]

a) **CA2 order** of **November 13**, 2003, **granting** Dr. **Cordero's motion** of October 31, 2003, for leave **to introduce** in the record of his appeal in *Premier Van et al.*, no. 03-5023, CA2, an **updating supplement** on the issue of Judge **Ninfo's bias** .....65 [C:108]

8. Dr. **Cordero**'s Statement of Facts of **March 19,** 2004, setting forth a **complaint** under 28 U.S.C. §351 against Chief Judge **Walker** 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.....66 [C:271]

9. **Excerpt** from the **Request** that the **FBI** open an **investigation** into the link between the **pattern** of non-coincidental, i**ntentional, and coordinated disregard** for the **law**, rules, and facts in the U.S. **Bankruptcy and District Courts** for the Western District of New York and the **money generated by** the concentration **in** the hands of individual trustees of **thousands** of open **cases**, including cases patently undeserving of relief under the Bankruptcy Code .....71 [C:382]

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by USPS on the following parties copies of my motion for a statement of arguments from the Chief Judge of the Court of Appeals for the Second Circuit or for his disqualification from the case.

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Excerpt from the Request that the FBI open an investigation into the link between the pattern of non-coincidental, intentional, and coordinated disregard for the law, rules, and facts in the U.S. Bankruptcy and District Courts for the Western District of New York and the money generated by the concentration in the hands of individual trustees of thousands of open cases, including cases patently undeserving of relief under the Bankruptcy Code

May 31, 2004

by **Dr. Richard Cordero**

IX. A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith

1. Pacer is the federal courts' electronic document retrieval service. The information that it provides sheds light on why trustees may be quite unwilling and unable to spend any time investigating the bankruptcy petitions submitted to them by debtors to establish the reliability of their figures and statements. When queried with the name George Reiber, Trustee, -the standing Chapter 13 trustee in the Western District of New York- it returns this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, Pacer comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end thus:

Table 1. Illustrative row of Pacer's presentation of Trustee George Reiber's 3,909 *open* cases in the Bankruptcy Court

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

2. Trustee Reiber has 3,909 *open* cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink in the left cell that can call that case to step up to the screen for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added; §2-2.1. of the Trustee Manual). By the way, JCN after the case number in the left cell stands for John C. Ninfo, the judge before whom the case has been brought.
3. Trustee Reiber is the trustee for the DeLano case (section X, infra). For him "meaningful distribution" under the DeLanos' debt repayment plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).
4. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. However, increasing the base would require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life, such as a golden pot retirement. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2)). "Mmm…not good!"
5. The obvious alternative is "never investigate anything, not even patently suspicious cases. Just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover." Of necessity, such a scheme redounds to the creditors' detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor only to get what was owed them to begin with.
6. Have U.S. Trustees contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty "to investigate the financial affairs of the debtor" (11 U.S.C. §§1302(b)(1) and §704(4)) and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (§704(7))?

7. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate debtors' financial affairs, ever more debtors with ever less deserving cases for relief under the Bank-ruptcy Code go ahead and file their petitions. What is worse, as people with no debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed with the required fee…or perhaps 'fees'?

X. A case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for approval by the bankruptcy court

8. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (case 04-20280; 28, infra). The figures in its schedules and the surrounding circumstances should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber (section 0, supra) and Attorney James Weidman (11-12, supra) were about to submit its repayment plan to the court for approval when Dr. Richard Cordero, a creditor, objected in a five page analysis of the figures in the schedules. Even so, the Trustee and his attorney vouched for the petition's good faith. Let's list the salient figures and circumstances:
9. The DeLanos incurred scores of thousands of dollars in credit card debt,
10. at the average interest rate of 16% or the delinquent interest rate of over 23%,
11. carried it for over 10 years by making only the minimum payments,
12. have ended up owing $98,092 to 18 credit card issuers listed in Schedule F,
13. owe also a mortgage of $77,084,
14. have near the end of their work life an equity in their house of only $21,415,
15. declared earnings in 2002 of $91,655 and in 2003 of $108,586,
16. yet claim that after a lifetime of work their tangible personal property is only $9,945,
17. claim as exempt $59,000 in a retirement account,
18. claim another $96,111.07 as a 401-k exemption,
19. make a $10,000 loan to their son and declare it uncollectible,
20. but offer to repay only 22 cents on the dollar without interest for just 3 years,
21. argue against having to provide a single credit card statement covering any length of

time ‘because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies’, even though the DeLanos must still receive every month the **monthly** credit card statement from each of the issuers of the 18 credit cards and as recently as last January they must have consulted such statements to provide in Schedule F their account number with, and address of, each of those 18 issuers, and

22. pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is *a 15 year bank officer!*, or rather more precisely, a bank **loan** officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay over the loan’s life, and who is still employed that capacity by a major bank, namely, Manufacturers and Traders Trust Bank. He had to know better!

23. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his “experience in banking”, from which he should have learned his obligation to keep financial documents for a certain number of years, pretend that he does not have them to back up his petition? Those are self-evident questions that have a direct bearing on the petition’s good faith. Did Trustee Reiber and Attorney Weidman ever ask them? How did they ascertain the timeline of debt accumulation and its nature if they did not check those credit card statements before approving the petition and getting it ready for submission to the court?

24. Until the DeLanos provide financial documents supporting their petition, including credit card statements, let’s assume arguendo that when Mr. DeLano lost his job at a financial institution and took a lower paying job at another in 1989, the combine income of his and his wife, a Xerox technician, was $50,000. Last year, 15 years later, it was over $108,000. Let’s assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and a home equity of merely $21,415!, and this does not begin to take into account what they already owned before 1989, let alone all their credit card borrowing. Where did the money go? Or where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?

25. Did Trustee Reiber and Attorney Weidman ever get the hint that the figures and circumstances of this petition just did not make sense or were they too busy with their other 3,908 cases and the in-take of new ones to ask any questions and request any supporting financial documents? How many of their other cases did they also accept under the motto “don’t ask, don’t check, cash in”? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?

26. For his part, Trustee Reiber is being allowed to hold on to the DeLanos' case to belatedly "investigate" it, which he is doing only because of Dr. Cordero's assertion of his right to be furnished with financial information about the DeLanos (para. 6, supra). Yet, not to replace the Trustee –as requested by Dr. Cordero- but rather to allow him to be the one to investigate the DeLanos now, disregards the Trustee's obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, who approved it for submission to the court, thereby rendering himself liable as his principal and casting doubt on his own proper handling of his other thousands of cases.

27. Indeed, if an egregious case as the DeLano's passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably give rise to the question of what kind of supervision the Trustee and his attorney have been receiving from the assistant and the regional U.S. trustees. From there the next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

28. What were they all thinking!? Whatever it was, from their perspective it is evident that the best self-protection is not to set in motion an investigative process that can escape their control and end up crushing them. This proves the old-axiom that a person, just as an institution, cannot investigate himself zealously, objectively, and reassuringly. A third independent party, unfamiliar with the case and unrelated to its players, must be entrusted with and carry out the investigation and then tender its uncompromising report to all those with an interest in the case.

XI. Another trustee with *3,092 cases* was upon a perform-ance and fitness to serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to him and a party and to uncritically writing their comments in an opinion that the Trustee for Region 2 would not investigate

29. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary

bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.

30. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge Ninfo did not investigate whether the Trustee had submitted to him false statement, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and in its depth to uncritically accepting at face value what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.

31. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.

32. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has *thousands* of cases. The statistics on Pacer as of November 3, 2003, showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases!

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court
compared with the number of cases of bankruptcy attorneys appearing there
https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

NAME	# OF CASES AND CAPACITY IN WHICH APPEARING SINCE					
	since	trustee	since	attorney	since	party
Trustee Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Trustee Kathleen D.Schmitt	09/30/02	9				
Attorney David D. MacKnight			04/07/82	479	05/20/91	6
Attorney Michael J. Beyma			01/30/91	13	12/27/02	1
Attorney Karl S. Essler			04/08/91	6		
Attorney Raymond C. Stilwell			12/29/88	248		

33. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section 0, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed, in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct?

34. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (1-5 and 11-12, supra). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.

35. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times on a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the following entries:

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

36. When locals must pay such respect to the judge, there develops among them a vassal-lord relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the Fiefdom of Rochester. Therein the law of close personal relationships rules.

37. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local who dared assert his rights against them under a foreign law, that is, the laws of Congress.

38. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came through to protect his vassal. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 33, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.

39. Are the local assistant U.S. trustee with her supervisory power and Trustee Gordon with his 3,092 cases and the money in a vassal-lord relationship to each other? Does the Region 2 Trustee know that a non-local has no chance whatsoever of turning the trustee into the subject of a "thorough inquiry" by the local U.S. trustee? Consequently, should she have investigated Trustee Gordon? What homage do local and regional U.S. trustees receive and what fief do they grant?

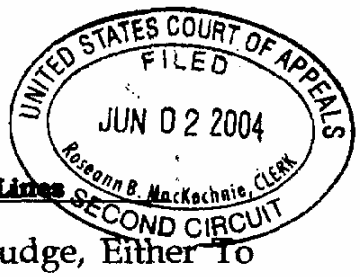
May 31, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

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



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

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

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

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr Richard Cordero

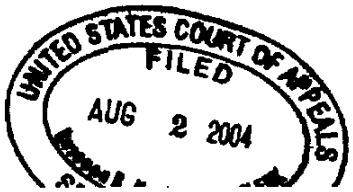
Has service been effected? Yes; proof is attached

ORDER

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

IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004
Date



FOR THE COURT:
Roseann B. MacKechnie, Clerk
by
Arthur M. Heller
Motions Staff Attorney.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 28, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed September 24, 2004, dismissing your judicial conduct complaint.

Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351, you have the right to petition the judicial council for review of this decision.

A petition for review should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . . "

The petition for review must be received in the Clerk's Office **no later than October 29, 2004.**

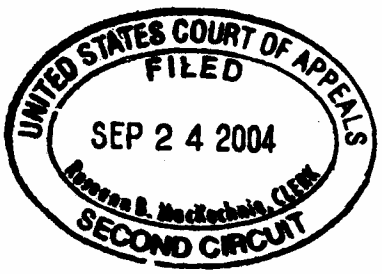
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



----------X

In re **Docket No. 04-8510**
CHARGE OF JUDICIAL MISCONDUCT

----------X

DENNIS JACOBS, Acting Chief Judge:

On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a circuit court judge of this Circuit ("the Judge") with misconduct.

Background and Allegations:

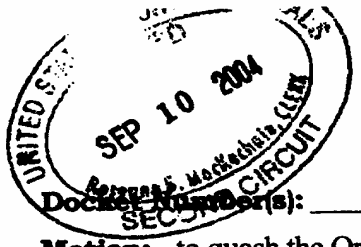
The Complainant alleges that in August 2003, he filed a judicial misconduct complaint against a United States bankruptcy court judge, alleging that the bankruptcy court judge was biased against him and had failed to "move [his] case along its procedural stages." The Complainant alleges that the Judge has failed to take any action on his judicial misconduct complaint.

Disposition:

The Complainant's judicial misconduct complaint was dismissed by order entered June 9, 2004. The instant complaint is therefore dismissed as moot. See 28 U.S.C. § 352(b)(2) (judicial misconduct proceeding may be concluded if "appropriate corrective action has been taken" or "action on the [judicial misconduct] complaint is no longer necessary because of intervening events"). The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004



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

ORIGINAL

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

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

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

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

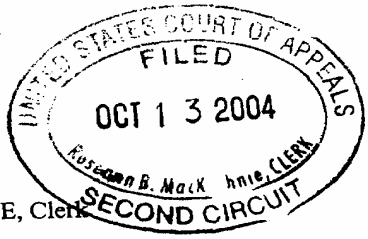
Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004



ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges**

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by
Arthur M. Heller, Motions Staff Attorney

OCT 13 2004

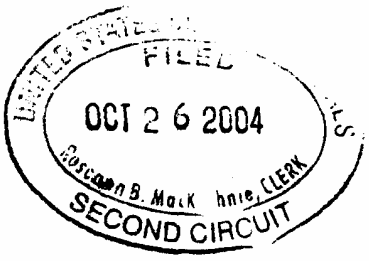
* Hon. John M. Walker, Jr., Chief Judge, has recused himself from further consideration of this case. In accordance with Local Rule 0.14(b), the instant motion has been decided by the two remaining panel members.

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

Roseann B. MacKechnie
CLERK

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

IN RE: PREMIER VAN LINES, INC. 03-5023



A petition for a panel rehearing and a petition for rehearing en banc having been filed herein by the cross and third party appellant Richard Cordero.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Roseann B. MacKechnie, Clerk
By:
Motion Staff Attorney

OCT 26 2004

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

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion: To stay the mandate following denial of the motion for panel rehearing and pending the filing of a petition for a writ of certiorari in the Supreme Court

Statement of relief sought: That this Court:

1. stay the mandate;

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

OPPOSSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 2, 2004

ORDER

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

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

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

MOTION
to stay the mandate
following denial of the motion for panel rehearing
and pending the filing of a petition
for a writ of certiorari in the Supreme Court

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

1. The Court in its order of October 26, 2004, denied Dr. Cordero's motion of March 10, 2004, for panel rehearing and hearing en banc of the dismissal of his appeal by the Court's order of January 26, 2004. Dr. Cordero intends to file a petition for a writ of certiorari in the Supreme Court.

I. Substantial questions that the certiorari petition would present

2. Where evidence has accumulated for more than two years that judges and other court staffers and attorneys in a U.S. bankruptcy and a U.S. district court have participated in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the detriment of one party, the sole non-local one, who resides in New York City and is also the sole pro se party, and to the benefit of the local parties, who are resident in Rochester, NY, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias[1] against that one party, here the Appellant[2], who duly raised the issue on appeal and in subsequent motions, where he provided further evidence of intervening events linking such wrongdoing to a bankruptcy fraud scheme[3]:

   a) Does it violate the Appellant's right to due process of law under the Fifth Amendment of

---

[1] *Liteky v. United States*, 510 U.S. 540, 551, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) (defining bias as a favorable or unfavorable predisposition so extreme as to display clear inability to render fair judgment).

[2] See pages 9 et seq. infra.

[3] See pages 27 et seq. and 47 et seq., infra.

the Constitution[4] and the right to equal protection of the laws[5] included in the due process clause[6] for the Court of Appeals not to have even addressed the issue in either its dismissal of the appeal –contained in a non-publishable summary order with no precedential value- or the denial of the motion for panel rehearing and hearing en banc –with a mere "DENIED" in an order without opinion- whereby the Court not only denies the appearance of justice[7], but thereby also knowingly subjects the Appellant on remand to further proceedings at the hands of those judges and others, who will with all reasonable certainty continue[8] to inflict upon Appellant further unjust and unfair treatment[9] in a mockery of process and cause him even more substantial harm to his wellbeing and enormous loss of money, effort, and time, all of which will be irreparable and unjustified?

b) Has the Court by not even taking cognizance of the mounting evidence of wrongdoing that would have led a reasonable and prudent person[10] to question the impartiality of the

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[4] *Johnson v. Mississippi*, 403 U.S. 212, at 216; 91 S. Ct. 1778, at 1780; 29 L. Ed. 2d 423; at 427, 1971 U.S. LEXIS 35 (1971) (trial before "an unbiased judge" is essential to due process). In re Murchison, 349 U.S. 133, 136 (1955) (the right to trial by an impartial judge is constitutionally mandated under the Due Process Clause).

[5] *Griffin v. Illinois*, 351 U.S. 12 at 19 (1956) (individuals have a fundamental right to a fair judicial process and to demand "equal justice").

[6] *In Hirabayashi v. United States*, 320 U.S. 81 (1943), Chief Justice Stone first cited Fourteenth Amendment equal protection decisions in a Fifth Amendment case. The discussion of the limitations on the states imposed by the equal protection clause of the Fourteenth Amendment led the Court in *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954), to deduct that "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." In *Washington v. Davis*, 426 U.S. 229, 239 (1976), it recognized that the Fifth Amendment has an equal protection component. Then the Court stated in *City of Cleburne, Texas v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985), that the equal protection doctrine requires "is essentially a direction that all persons similarly situated should be treated alike," a statement that is also applicable to Fifth Amendment analysis; see the cases cited therein showing that the discussion of the equal protection clause of the Fourteenth Amendment has gradually led to a germane Fifth Amendment equal protection doctrine.

[7] *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). In re Parr, 13 B.R. 1010, 1019 (E.D.N.Y. 1981) ("The Fifth Amendment's Due Process Clause will bar a trial where the appearance of justice is not satisfied.")

[8] *Liteky v. United States*, 510 U.S. 540, 548, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) ("what matters is not the reality of bias or prejudice but its appearance").

[9] *United States v. Schmeltzer*, 20 F.3d 610, 612 (5th Cir.) (a litigant "has a right to appeal free from fear of judicial retaliation for exercise of that right"), cert. denied, 513 U.S. 1041 (1994).

[10] *State v. Garner* (M0 App) 760 SW2d 893, appeal after remand (Mo App) 799 SW2d 950 (Where a judge's freedom from bias or his prejudgment of an issue is called into question, the inquiry is no longer whether he actually is prejudiced; the inquiry is whether an onlooker might on the basis of objective facts reasonably question whether he is so.) Cf. H.R. REP. NO. 1453, 93d Cong., 2d Sess. 1, 5, reprinted in 1975 U.S.C.C.A.N. 6351, 6351, 6355, reporting on the general

complained-about judges[11]; by not conducting an investigation of the judges and others participating in such wrongdoing; and even failing to fulfill its duty under 18 U.S.C. §3057(a) to report the case to the United States attorney, so that it has taken no action[12] to insure the integrity of the judicial and bankruptcy systems and officers in question, engaged in denial of justice to Appellant and thereby failed in its fundamental function under Article III within the framework of the Constitution of dispensing justice according to law?

II. Reasons why the Supreme Court may issue the writ of certiorari

3. Given recent statements of concern about judicial misconduct going unchecked and the concrete action taken to find its extent and effect, it is reasonable to contemplate that the Supreme Court may issue the writ of certiorari to take this case as a test case. Indeed, none other than Supreme Court Chief Justice William Rehnquist has appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act [28 U.S.C. §351 et seq.] Study Committee. Congress too has taken notice. The Chairman of the House of Representatives Committee on the Judiciary, F. James Sensenbrenner, Jr., welcomed the appointment of Justice Breyer and recognized the need for the study saying that "Since [the 1980s], however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."
4. Such perfunctory dismissals have compromised, as Justice Breyer's Committee put it in its news release after its first meeting last June 10, "The public's confidence in the integrity of the judicial branch [which] depends not only upon the Constitution's assurance of judicial independence [but] also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability". If the Justice and his colleagues put an effective complaint procedure at a par with the judiciary's constitutionally ensured independence, why then have chief judges and judicial councils treated

---

judicial disqualification provision at 28 U.S.C. § 455 (1988) that the fundamental purpose behind the section's amendment in 1974 (Act of Dec. 5, 1974, Pub. L. No. 93-512, § 1, 88 Stat. 1609) was to "broaden and clarify the grounds for judicial disqualification" in order "to promote public confidence in the impartiality of the judicial process."

[11] *Aetna Life Insurance Co. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986) ("to perform its high function in the best way, 'justice must satisfy the appearance of justice.'").

[12] 28 U.S.C. Appendix (2004) Code of Conduct for United States Judges, Canon 3A(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer....(5) A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

complaints with so much contempt? Are they dispensing protection to each other in their peer system at the expense of those for whose benefit they took an oath to dispense justice?

III. Good cause for a stay of the mandate

5. If the mandate were to issue, it would expose Dr. Cordero to the resumption by Bankruptcy Judge John C. Ninfo, II, of the case and to suffering the concomitant wrongdoing and bias. No subsequent appeal would compensate Dr. Cordero for the further injustice, material loss, and tremendous aggravation that would thereby be inflicted upon him, who as a pro se litigant has already had his life disrupted by having to struggle for more than two years in this baffling Kafkian process conducted through disregard for legality and arbitrariness prompted by bias.
6. If after final judgment in the bankruptcy court and an appeal to the district court on the floor above in the same federal building in Rochester where the same group of officers participating in the same wrongdoing will determine a final judgment, Dr. Cordero still has the strength and the means to appeal to this Court and it reverses the lower court and removes the case to an impartial court to begin proceedings all over again, who will compensate Dr. Cordero for having to endure such travesty of justice? Nobody! The harm inflicted upon him by those with a vested interest in not allowing him to pierce the cover of the bankruptcy fraud scheme that provides the motive for wrongdoing and bias would be irreparable.
7. And how could he possibly find the emotional and material resources and the time to begin all over again in the removal court? By wearing him down justice will have been denied to him.

IV. Delay in notifying the denial of rehearing limited the time to respond

8. FRAP Rule 36(b) provides thus:

> On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion –or the judgment is no opinion was written, and a notice of the date when the judgment was entered.

9. Although the Court's order denying Dr. Cordero's motion for panel rehearing was entered on October 26, it was not mailed for days and consequently, it was not received until even later. As a result, Dr. Cordero had to scramble on Monday, November 1, and Tuesday, November 2, to prepare this motion to stay the mandate.
10. When Dr. Cordero called the Court on Monday, November 1, to bring this fact to its attention, Motion Attorney Arthur Heller and Supervisor Lucile Carr told him that the Court receives

many cases, that it is very busy, and that while it strives to proceed as required, it not always has the personnel to do so. If the Court fails to abide by its own rules, can it in all fairness hold litigants to the deadlines imposed on them? Can Dr. Cordero or for that matter any other litigant simply claim that he had too many other cases and was too busy to meet the deadlines and thereby get the Court to excuse his noncompliance and grant a time extension? Respect for rules can be demanded by a court of justice when it complies itself with those rules imposing obligations on it.

11. But this is by no means the first the time that this has happened. Indeed, in the same conversations with Mr. Heller and Ms. Carr on Monday, November 1, Dr. Cordero brought to their attention that the letter that upon authorization by Mr. Heller Dr. Cordero faxed to him on September 27, 2004, and of which he acknowledged receipt had not yet been docketed; just as the paper dated October 12, 2004, that Dr. Cordero personally filed in the In-Take Room 1803 on October 19, had not been filed yet. What is more, on Wednesday, October 27, Dr. Cordero brought to Mr. Heller's attention the matter of the non-docketing of the October 12 paper. Mr. Heller transferred Dr. Cordero to Mr. Andino, to whom he further explained this matter. Mr. Andino put Dr. Cordero on hold and after a few minutes Mr. Andino told him that his October 12 paper had been located and would be filed. But it was not. As of today, November 2, despite the conversation yesterday with Ms. Carr, neither of those two papers has been filed.
12. What is more, these instances of late notice and non-filing are by no means the first ones. On August 10, 2004, Dr. Cordero called Mr. Heller and recorded on his voice mail a message stating that he had signed on Monday, August 2, the Court's decisions on two motions, namely, for Chief Judge Walker to explain his denial of the motion to recuse himself or to recuse himself, and 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. However, those decisions were mailed to Dr. Cordero only, on August 9, a whole week after being issued. Dr. Cordero stated that this was not the first time that such late notification had happened.
13. Indeed, it had happened with the notification of the dismissal of the notice of appeal of January 26, 2004, which caused Dr. Cordero to request and extension to file the motion for panel rehearing. The motion was granted but it too was notified late! so that Dr. Cordero derived very little benefit from it.
14. In fact, since the beginning of the proceedings in this Court, Dr. Cordero has had to endure these

procedural failures on the part of the Court. For proof, read:

a. Dr. Cordero's letter of May 24, *2003*, to Clerk of Court Roseann MacKechnie concerning the all important Redesignation of Items in the Record and Statement of Issues on Appeal of May 5, 2003; the Court's failure to file which could have led to the dismissal of Dr. Cordero's appeal;
b. Dr. Cordero's letter of July 17, *2003*, to Deputy Clerk Robert Rodriguez; on other occasions, Dr. Cordero has discussed on the phone similar docketing and noticing problems with Mr. Rodriguez;
c. 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;
d. Dr. Cordero's letter of June 19 2004, to the Hon. John M. Walker, Jr., Chief Judge, by failure to make publicly available the judicial misconduct orders in violation of Rule 17(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers;
e. Dr. Cordero's letter of June 30, 2004, to Chief Walker upon learning from Deputy Clerk of Court Fernando Galindo that the judicial misconduct orders and related materials, all but those of the last three years, had been shipped to the National Archives in Missouri!;
f. Dr. Cordero's letter of July 1, 2004, to Mr. Galindo to complain about Mrs. Harris, precisely the Head of the In-Take Room 1803, who when Dr. Cordero nodded as he tried to concentrate in the noisy reading room while reading the available misconduct orders warned him that 'if he fell asleep again, she would call the marshals on him'! Would you feel as an affront and a humiliation if the marshals came for you in public for threatening everybody in the reading and filing rooms with nodding!?

15. Given these acts of disregard for procedural rules by the Court and contempt for basic rules of civility and common sense, is it reasonable for Dr. Cordero to be very concerned that this motion may not be filed timely even after he scrambles to take it to the In-Take Room? Are these acts a reflection of the climate created by a Court that has not even taken cognizance of evidence of a pattern of wrongdoing by judges and others?

V. Relief sought

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

a. stay the mandate under FRAP Rule 41(d)(2)(A) pending the petition for a writ of certiorari;

b. take a position on the matter discussed in section IV above.

Respectfully submitted on

November 2, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero, Movant Pro Se
tel. (718) 827-9521

VI. Table of Exhibits

1. Dr. Richard **Cordero**'s motion of **August 14**, 2004, **in *DeLano*, 04-20280, WBNY,** for docketing and issue of order, removal, referral, examination, and other relief, noticed for August 23 and 25, 2004 .....9 [C:752]

2. Dr. **Cordero**'s motion to of **September 9**, 2004, for **CA2** to **quash** the **Order** of Judge John C. **Ninfo**, II, WBNY, **of August 30**, 2004.....27 [C:719]

3. Judge **Ninfo**'s Interlocutory **Order** of **August 30**, 2004, **requiring** Dr. **Cordero** to **take discovery** of his claim against Debtor DeLano arising from the *Pfuntner v. Gordon et al.* case **on appeal in CA2**.....47 [C:744]

Proof of Service

I, Dr. Richard Cordero, hereby certify that I served by United States Postal Service on the following parties copies of my motion to stay the mandate following denial of the motion for panel rehearing and pending the filing of a writ of certiorari in the Supreme Court:

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Mr. David Palmer
1829 Middle Road
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion: For the Court to state the names of the panel members that reviewed the motion for panel rehearing and hearing en banc

Statement of relief sought: That this Court:

1. state the names of the judges who denied the motion for panel rehearing given that the Court's Order of October 26 denying it states that it was denied "Upon consideration by the panel that decided the appeal". However, Dr. Cordero's motion of September 9 to quash an order of Judge Ninfo was denied by an Order of this Court of October 13, 2004, which states that "Hon. John M. Walker, Jr. Chief Judge, has recused himself from further consideration of this case". The Chief Judge was a member of the panel who denied the appeal as stated in the Court's Order of January 26, 2004;
2. state whether Chief Judge Walker participated in any way in the decision to deny the motion for panel rehearing and hearing en banc.

MOVING PARTY: Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	**OPPOSSING PARTY:** See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 3, 2004

ORDER

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

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

Date: _____ By: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion: For the Court to report this case to the U.S. Attorney General under 18 U.S.C. §3057(a) for investigation

Statement of relief sought: That this Court:

1. Report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:

a) *Premier Van et al.*, dkt. no. 03-5023, in this Court;
b) Mr. Palmer's *Premier Van Lines* case, dkt. no. 01-20692, WBNY;
c) *Pfuntner v. Trustee Gordon et al.*, dkt. no. 02-2230, WBNY; and
d) *In re David and Mary Ann DeLano*, dkt. no. 04-20280, WBNY;

2. Address the report to U.S. Attorney General John Ashcroft with the recommendation that he appoint investigators who are unrelated to and unacquainted with any of the parties and who can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way;

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

MOVING PARTY: Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	**OPPOSSING PARTY:** See no. 1, above.

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 8, 2004

ORDER

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

FOR THE COURT:
Roseann B. MacKechnie, Clerk of Court

Date: _____ **By:** _____

C:404 Dr. Cordero's mtn of 11/8/4 for CA2 to report *Premier* to Att Gen under 18USC§3057(a) for investigation

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

MOTION
for the Court to report this case to the U.S. Attorney General under 18 U.S.C. §3057(a) for investigation

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

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I. Judges' obligation to act on their reasonably grounded belief that an investigation should be had

1. Every United States judge is under an obligation to contribute to the integrity of the judicial system. This obligation flows, among others, from 18 U.S.C. §3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the

> United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…[emphasis added]

2. Judges remain under this obligation regardless of their disposition of an appeal or motion, and thus, regardless of whether they had jurisdiction over the appeal or a non-final order was the subject of the motion. It follows that they must fulfill that obligation independently of their attitude toward the particular appellant or movant before them, for the obligation is not so conditioned and, in any event, the benefit of fulfilling it inures to the general public. Indeed, judges enhance the public's trust in the importance of and respect for the rule of law when they care to act on their reasonable belief that a violation of federal law has been committed and report their grounds for such belief to the U.S. Attorney or his assistants for investigation.
3. In the case at hand there are reasonable grounds for such belief…and that is all the law requires a judge to have in order for him to make such report: not incontrovertible evidence of the commission of a crime; actually, no evidence at all is required, much less that each individual fact or circumstance of the case constitute a violation of the law. Indeed, §3057(a) does not require any violation of the law to be set out, but it is satisfied if the judge simply have "reasonable grounds for believing…that an investigation should be had". Certainly, the section does not demand the objectivity necessary to meet the standard of probable cause, but merely a subjective belief that rests on grounds that are reasonable.
4. That little is what the law requires of judges for a §3057(a) report to the U.S. Attorney, although given their legal training and experience, they could have been used as filters to assess the sufficiency of evidence to support an indictment and asked that they report only evidence that would survive at arraignment. What is more, judges have both authority to compel a person before them to answer questions and power to compel a litigant and even others to produce evidence and witnesses. Nevertheless, §3057(a) only requires judges to have a reasonably grounded belief in order to report that an investigation should be had. If that is all the law requires of judges, why should they impose any other requirement on a litigant, such as that his claims meet criminal evidence sufficiency standards, let alone that he submit concrete evidence that a crime was committed, before they would even consider granting a litigant's request for a §3057(a) report?

5. It would be all the more incomprehensible and unwarranted to impose a higher than the §3057(a) requirement on Dr. Cordero, for he has complained from the beginning –in the statement of issues on appeal of May 5, 2003, and the appeal brief of July 9, 2003- and since then in many of his papers submitted to this Court –as in his recent motion to quash of September 9, 2004, an order of Judge Ninfo- that the judges, trustees, parties, and debtors in this case have unjustifiably denied him the discovery and documentary evidence that he is entitled to. Nevertheless, Dr. Cordero has submitted to this Court detailed descriptions, supported by any documents available, of the many instances in which those people have disregarded legality, concealed or misrepresented the facts, and shown bias against him, the only pro se party and a non-local one to boot.
6. The low threshold set by §3057(a) to trigger a judge's obligation to report his belief in the need for an investigation is not an exception for the benefit of the judges to a normally higher requirement imposed on others. Rather, it is a means for the benefit of the public to satisfy the requirement that justice not only must be done, but must also be seen to be done. Hence, when judges do not have all the evidence to do justice, but have reason to belief that injustice may have been done by somebody's offense or violation of the law, they must ask for an investigation that may gather the necessary evidence for justice to be seen to be done.
7. When judges fail to acquit themselves of their §3057(a) reporting obligation and in so doing give even as little as the appearance of partiality, whether toward their peers or against a litigant, then they trigger another obligation: that of disqualifying themselves so as to make room for another judge that will do justice and be seen to do justice.
8. By contrast, for judges that want to acquit themselves of their §3057(a) reporting obligation, this case presents enough grounds from which their belief can reasonably arise that it should be investigated by the U.S. Attorney General. To that end, it should be sufficient for those judges to look in the most favorable light at the following statement of those grounds in order to see how the totality of circumstances support the belief that at least one offense, or even more offenses, may have been committed and warrant investigation. Where §3057(a) only requires judges to ask for an investigation, judges should not ask a private citizen to submit the results of an investigation.

II. The reasonable grounds for the belief that an investigation should be had

9. Such grounds have accumulated for over two years. They are contained or described in a file that now has more than 1,500 pages. Dr. Cordero's briefs, motions, and mandamus petition show how Judge Ninfo[1], Judge Larimer[2], court personnel[3], trustees[4], and local attorneys and their clients[5], have disregarded legality[6] and dismissed the facts[7] in order to protect the local parties and advance their self-interests. In the process, they have caused Dr. Cordero an enormous waste of effort[8], time[9], and money[10], and inflicted upon him tremendous emotional distress[11]. Of necessity, only some grounds can be mentioned here and then only as briefly as possible so as to maximize the chances that the judges will read this motion. Nevertheless, only a brief mention of those grounds should be needed, for the objective is not that the grounds establish a crime, let alone that each of them do so, but that all of them let judges of sound and impartial judgment use their common sense and knowledge of how the world goes to form the belief that something is wrong with these people and that an investigation should be had. Although these grounds are intertwined -just as are the activities of these people in the small federal building in which they work in Rochester- they can be grouped in a few categories:

   A. U.S. Bankruptcy Judge John C. Ninfo, II, and other court staff and officers in the Bankruptcy and District courts in Rochester have disregarded the law, the rules, and the facts so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party as well as a pro se one, and to the benefit of the local parties as to have engaged in a

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[1] **Judge Ninfo**: Opening Brief=OpBr-11.3; Appendix to OpBr=A-771.I; A-786.III.

[2] **Judge Larimer**: OpBr-16.7; Reply Brief-19.1; Mandamus Brief-10.D and 53.D; A-687.C.

[3] **court personnel**: OpBr-11.4; 15.6; 54.D; MandBr-14.1; 25.K-26.L; 69.F; A-703.F.

[4] **trustees**: OpBr-9.1; 38.B.; A-679.A

[5] **local attorneys and clients**: OpBr-18.8; 48.C; MandBr-53.3; 57.D; 65.3; A-691.D.

[6] **disregard for legality**: OpBr-9.2; 21.9 Mandamus Brief=MandBr-7.B; 25.A; MandBr-12.E; 17.G-23.J; A-684.B, 775.B; 6.I.

[7] **disregard for facts**: OpBr-10.2; 13.5; MandBr-51.2; 53.4; 65.4.

[8] **effort**: MandBr-55.2; 59.5; A-694.6.

[9] **time**: MandBr-60.6; 68.6; A-695.E.

[10] **money**: MandBr-8.C; A-695.E.

[11] **emotional distress**: MandBr-56.3; 61.E; A-690.3, 695.7.

[Opening Brief=A:1301; Appendix to OpBr≈A:# pages; Reply Brief=A:1511; Mandamus Brief=A:615]

pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias, including the new evidence of protecting from discovery debtors suspected of bankruptcy fraud, to the detriment not only of Dr. Cordero, but also of 20 other creditors.

B. David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents.

C. Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, held on March 8, 2004, and Trustee Reiber has since continued to fail his duty to investigate the DeLanos, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

D. The totality of circumstances afford reasonable grounds for the belief that these events coalesce into a bankruptcy fraud scheme, with the DeLano case as the proverbial tip of the iceberg, that is, a test case through which insight can be gained into the scheme's operation, extent, and participants.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing

10. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery in *Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al*, WBNY dkt. no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

11. By that time Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court.

a) Indeed, the statistics on PACER as of November 3, 2003[12], showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[13] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

b) Could you handle competently such an overwhelming number of cases, increasing at the rate of 1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or having tolerated Trustee Gordon's negligence and recklessness in this case…and in how many other of the Trustee's *thousands* of cases? There is a need to investigate whatever is going on between those two…and the others, for there are more.

12. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been removed or stolen!

a) Judge Ninfo would not compel Mr. Palmer to appear to answer Dr. Cordero's claims even

[12] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

[13] Id.

though Mr. Palmer's address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did Judge Ninfo need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? Their relation needs to be investigated…and the Judge's relation to other similarly situated debtors too.

13. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct the inspection, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both orders of discovery, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. Mac-Knight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero?
14. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides invaluable insight into what drives such bias and shapes the activity of the biased actors into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud

15. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004. That petition is available electronically at http://www.nywb.uscourts.gov/, going to PACER and typing its docket no. 04-20280. The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. Just consider the following salient values and circumstances:

a) Mr. DeLano has been a bank officer for 15 years!, or rather more precisely, a bank *loan* officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

b) The DeLanos incurred scores of thousands of dollars in credit card debt;

c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;

d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

f) owe also a mortgage of $77,084;

g) but have near the end of their work lives equity in their house of only $21,415;

h) in their 1040 IRS forms declared these earnings in just the last three fiscal years:

2001	2002	2003	total
$91,229	91,655	108,586	$291,470

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) their cash in hand or on account declared in their petition was only $535;

k) the rest of their tangible personal property is just two cars worth a total of $6,500;

l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

m) make to their son a $10,000 loan, which they failed to date but declare uncollectible …which may be a voidable preferential transfer;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest;

o) refused for months to submit any credit card statement covering any length of time to the point that Trustee Reiber moved on June 15 for dismissal for "unreasonable delay".

16. A comparison between the few documents that they first produced thereafter, that is, some credit card statements and Equifax reports with missing pages, with their bankruptcy petition and the court-developed claims register and creditors matrix called into question the petition's good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.
17. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, opposing Trustee Reiber's motion to dismiss. The DeLanos' response was swift: On July 19, they moved to disallow Dr. Cordero's claim. What an extraordinary move! given that:
    a) The DeLanos had treated Dr. Cordero as a creditor for six months;
    b) They were the ones who listed Dr. Cordero's claim in Schedule F, and for good reason, since;
    c) Mr. DeLano has known of Dr. Cordero's claim against him since November 200*2*, when Dr. Cordero brought him into the Pfuntner case as a third-party defendant because Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his moving and storage company, Premier Van Lines, which then went bankrupt!
18. Extraordinary indeed, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It forces up the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable?
19. Extraordinary but even more revealing is Judge Ninfo's reaction. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's objection is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 plan and that is relentlessly insisting on their production of financial documents that can show the bad faith of their petition and their concealment of assets, among other things.
20. But not Judge Ninfo. By his Order of August 30, 2004, he has suspended all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. That could take years!, as shown by the appeal from the Pfuntner case. Meantime and without any justification, the other 20 creditors of the DeLanos are injured because they cannot begin to receive payments under the debt repayment plan. But their interest is just as of little consequence to Judge Ninfo as is the general interest in determining whether Lending Industry Insider Mr. DeLano and Technically-oriented Mrs. DeLano have engaged in

bankruptcy fraud. Nevertheless, to determine whether these debtors submitted their petition "by any means forbidden by law" is the Judge's duty under 11 U.S.C. §1325(a)(3). Why Judge Ninfo disregarded his duty under the Bankruptcy Coder and to the general public in order to protect the DeLanos needs to be investigated.

21. By contrast, Judge Ninfo denied Dr. Cordero the protection to which he is entitled under the Code. Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow to happen, for if he allowed the DeLanos' case to go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because if the DeLanos were left unprotected and decided to talk, they could incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. To afford protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! The stakes must be very high indeed.
22. And not only for Judge Ninfo. Trustee Reiber too has from the beginning been protecting the DeLanos from incriminating themselves and others.

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

23. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004. Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, a trustee with 3,909[14] *open* cases, cannot be all the time where he should be.
24. This raises an important question for the investigators: Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney's Office and

[14] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the initial bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamping petitions? Something is not right here.

25. Actually, nothing is right here. Thus, at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the honesty of the DeLanos, and stated that their petition had been submitted in good faith.
26. But those were just words, for Trustee Reiber had not asked for any supporting document from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos, and only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time on, April 20, 2004, ask the DeLanos to submit documents.
27. A pro forma request, to be sure, for Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for having in hand and on account only $535 despite having earned in just the 2001-03 years $291,470!
28. What this shows is not appalling lack of understanding of how credit card fraud works, but rather Trustee Reiber's unwillingness to uncover evidence of bankruptcy fraud. The evidence shows that the Trustee has refused to hold an adjourned meeting of creditors for the DeLanos. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to

disallow Dr. Cordero's claim has been finally determined.

29. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot forbid to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo.
30. Trustee George Reiber moved on June 15 to dismiss the DeLanos petition "for unreasonable delay" in producing documents. In so doing, he is motivated by self-preservation, for if he were to investigate the DeLanos effectively, he would uncover evidence of fraud that would also incriminate him for his approval in the first place of a patently suspicious petition. That could lead to his being investigated to determine how many other cases among his 3,909 cases are also meritless or even fraudulent. But his concern is even more immediate, for if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini, he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate or have countenanced his failure to investigate needs to be investigated.

D. Reasonable grounds for believing that there is a bankruptcy fraud scheme

31. Taking the totality of circumstances from the above statement of facts –supported as need be by the detailed legal arguments presented by Dr. Cordero in his papers to this Court- there emerge reasonable grounds to suspect that these people are acting, not separately, but rather in a coordinated fashion in violation of the law. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many cases along the years that they have developed a modus operandi which disregards legality as well as the interests of those whom they deem not to be willing from a cost-effective viewpoint or able in terms of financial means and knowledge to defend their rights and oppose their abuse. They could not possibly have imagined that Dr. Cordero, a pro se, non-local, and non-institutional party, would not behave as their model predicted. Instead, Dr. Cordero has turned out to be a litigant who will not quit defending his rights and who in the process threatens to expose non-coincidental,

intentional, and coordinated wrongdoing: a bankruptcy fraud scheme.

32. The way in which such a scheme works here remains to be determined by investigators. But the incentive to engage in bankruptcy fraud is typically provided by money, that is, the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtors. That leaves a lot of money to play with, for it is not necessarily the case that the debtors do not have money.

33. As for a standing trustee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, after the trustee receives a petition, she is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that the debtor deserves bankruptcy relief from his debts, the trustee approves his debt repayment plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make them to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

34. If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed. Cf. 11 U.S.C. §326(b).

35. The trustee would be compensated for his investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he had no money and were bankrupt.

36. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004 according to PACER;
    b) approved the DeLanos' petition without ever requesting a single supporting document;
    c) chose to dismiss the case rather than subpoena the documents;
    d) has refused to trace the substantial earnings of the DeLanos'; and
    e) refuses to hold an adjourned meeting of creditors, where the DeLanos would be examined under oath, including by Dr. Cordero.
37. Moreover, there is something fundamentally suspicious when:
    a) a bankruptcy judge protects bankruptcy petitioners from having to account for $291,470;
    b) allows them to disobey his document production order with impunity, such as that of July 26, 2004, despite its being a watered down version of what Dr. Cordero had requested in his papers of July 9 and 19, 2004;
    c) before any discovery has taken place, prejudges in the DeLanos' favor in his order of August 30, 2004, that their July 19 motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case, although he is the only creditor that threatens to expose their bankruptcy fraud; and
    d) yet shields them from further process.
38. These facts and circumstances provide reasonable grounds for believing that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of the judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had.
39. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes all those that not only are their friends, but also those that are their acquaintances either because they work in the same building or live in the same small community. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation…starting by

subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a bankruptcy fraud scheme!

III. Relief requested

40. Therefore, Dr. Cordero respectfully requests that this Court:
    a) Report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:
        1) *Premier Van et al.*, dkt. no. 03-5023, in this Court;
        2) Mr. Palmer's *Premier Van Lines* case, dkt. no. 01-20692, WBNY;
        3) *Pfuntner v. Trustee Gordon et al.*, dkt. no. 02-2230, WBNY; and
        4) *In re David and Mary Ann DeLano*, dkt. no. 04-20280, WBNY;
    b) address the report to U.S. Attorney General John Ashcroft with the recommendation that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties and who can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way;
    c) disqualify Judge Ninfo from these cases;
    d) remove these cases to an impartial court for trial by jury before a judge unrelated to and unacquainted with any of the parties, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;
    e) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on,

November 8, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

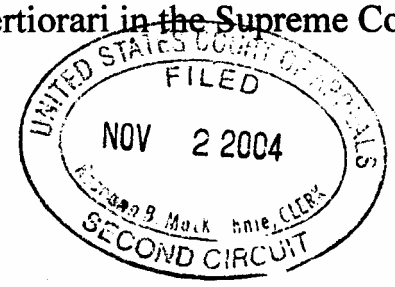
Dr. Richard Cordero
tel. (718) 827-9521

Nov 10,04

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

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

Motion: To stay the mandate following denial of the motion for panel rehearing and pending the filing of a petition for a writ of certiorari in the Supreme Court



Statement of relief sought: That this Court:

1. stay the mandate;

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

OPPOSSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 2, 2004

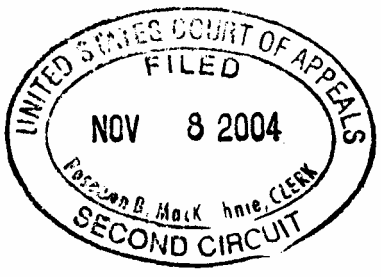
ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

NOV - 8 2004
Date



Arthur M. Heller
Motions Staff Attorney

C:420 CA2 order of 11/8/4 denying Dr. Cordero's motion to stay mandate after denial of his panel rehearing petition

Nov 10, 04

WDNY (Rochester)
03-CV-6031
CARIMER

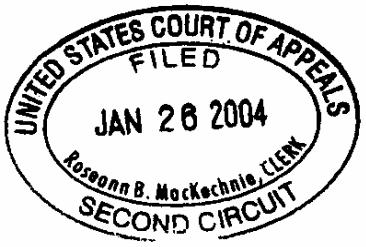
MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

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



PRESENT:

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

----------X

IN RE: PREMIER VAN LINES, INC.,
Debtor.

----------X

RICHARD CORDERO,
Third-Party-Plaintiff-Appellant,

v.

No. 03-5023

KENNETH W. GORDON, ESQ.,
Trustee-Appellee,

DAVID PALMER,
Third-Party-Defendant-Appellee.

----------X

APPEARING FOR APPELLANT: Richard Cordero, Brooklyn, NY

APPEARING FOR APPELLEES: Kenneth W. Gordon, Esq., Gordon & Schaal, LLP, Rochester, New York

ISSUED AS MANDATE: 11-8-04

CA2 mandate in *In re Premier Van et al.*, 03-5023 after denying Dr. Cordero's motion to stay the mandate C:421

General Docket

US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

INDIV

CLOSED

Court of Appeals Docket #:03-5023-bk

Nsuit: 3422 STATUTES-Bkrup Appeals 801
In Re: Premier Van v. Palmer
Filed: 5/2/03

Appeal from: WDNY (ROCHESTER)

Case type information:
Bankruptcy
District Court

None

Lower court information:
District: 03-cv-6021

Trial Judge David G. Larimer
MagJudge:
Date Filed: 01/15/03

Date order/judgement: 3/27/2003
Date NOA filed: 4/25/2003

Fee status:Paid
Panel Assignment:

Panel: JLO JMW RAK 40 Foley Sq.
Date of decision 1/26/04

Prior cases: NONE

Current cases: NONE

Docket as of May 05, 2005 7:06 pm

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Official Caption 1/

Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party-Plaintiff - Appellant

v.

INDIV

CLOSED

KENNETH W. GORDON, Esq.,

Trustee - Appellee,

DAVID PALMER

Third-Party-Defendant - Appellee.

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Clerk,Bank Ct,RONY None	Clerk,Bank Ct,RONY n/a 68 Court St. U.S. Courthouse Buffalo , NY , 14202 716-846-4130
David Palmer Defendant-Appellee	David Palmer n/a 1829 Middle Rd. Rush , NY , 14543
Kenneth W. Gordon Trustee-Appellee	Kenneth W. Gordon n/a Gordon & Schaal LLP 100 Meridian Centre Blvd. Rochester , NY , 14618 585-244-1070

Richard Cordero
Third-Party-Plaintiff-App

Richard Cordero
n/a

59 Crescent St.
Brooklyn , NY , 11208
718-827-9521

Docket as of May 05, 2005 7:06 pm

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5/2/03 Note: This appeal was PRO SE when filed.

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G . Larimer, United States District Judge, RECEIVED. [03-5023]

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023]

5/2/03 Copy of notice of appeal and district court docket entries on behalf of Appellant Richard Cordero filed. [03-5023] "FeePaid #64514".

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023]

5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume.

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received.

Docket as of May 05, 2005 7:06 pm

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CLOSED

5/28/03 Scheduling order #1 filed. Record on appeal due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03 . Argument as early as week of 9/22/03.

5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03.

5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received.

6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received.

6/5/03 Record on appeal received in records room from team.

6/5/03 1st supplemental index on appeal filed.

6/13/03 Record on appeal received in records room from team.

7/14/03 Appellant Richard Cordero brief FILED with proof of service.

7/14/03 Appellant Richard Cordero appendix filed w/pfs. Number of volumes; 1.

8/11/03 Notice of appearance form on behalf of Kenneth W. Gordon, Esq., filed. (Orig in acco , copy to Calendar)

8/11/03 Appellee Kenneth W. Gordon MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due.

INDIV

CLOSED

8/19/03 Proposed for argument the week of 10/27/03.

8/25/03 Appellant Richard Cordero reply brief filed with proof of service.

9/16/03 Argument as early as week of 9/22/03.

9/30/03 Proposed for argument the week of 12/8/03.

10/20/03 Set for argument on 12/11/03 . [03-5023]

11/4/03 Appellant Richard Cordero motion to allow leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in it's order of October 23, 2003, denyig Dr. Cordero's request for a jury trial , which Dr. Cordero submitted to and is under consideration by this Court of Appeals FILED (w/pfs). [2471688-1]

11/6/03 Notice of Hearing Date from Appellant Richard Cordero received.

11/13/03 Order FILED GRANTING motion to allow"leave to introduce an updating supplement on the issue of the Bankrupt Court's bias against petition's evidenced in it's order of 10/23/03" [2471688-1] by Appellant Richard Cordero, endorsed on motion form dated 11/4/03(FOR THE COURT-AV).

11/13/03 Letter dated 11-5-03 from Kenneth W. Gordon, Esq. requestingpermission from the Court to waive oral argument. received

11/13/03 Notice to counsel re:order dated 12/11/03.

INDIV

CLOSED

11/24/03 Copy of Bankruptcy Court order dated 10-23-03 scheduling order in connection with the remaining claims of the plaintiff, James Pfunter, and the cross-claims, counter-claims and third-party claims of the third-party plaintiff, which has attached to it the following additional orders: 1) an October 16 , 2003 order denying and recusal and removal motions and objection of Richard Cordero to proceeding with any hearings and trial on 10-16-03; 2) An October 16, 2003 order disposing of cause of action; and an October 23, 2003 decision & order finding a waiver of a trial by jury from Hon. John C. Ninfo, II, Chief U.S. U.S. Bankruptcy Judge. received.

12/11/03 Case heard before WALKER, CH.J; OAKES, KATZMANN, C.JJ . (TAPE: CD date: 12/11/03)

12/11/03 Outline of the oral argument from Appellant

Richard Cordero received.

12/29/03 Appellant Richard Cordero motion to allow leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal, FILED (w/pfs). [2509028-1]

1/26/04 Order FILED GRANTING motion to allow by endorsed on motion dated 12/29/2003. "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". Before Hon. JMW, JLO, RAK, CJS. Endorsed by Arthur M. Heller, Motions Staff Attorney.

1/26/04 Notice to counsel and pro se re: order dated 01/26/04 Granting motion for leave to file a brief on issue raised at oral argument.

1/26/04 Judgment filed; judgment of the district

court is Dismissed by detailed order of the court without opinion filed. (JMW)

1/26/04 Notice to counsel and pro se re: summary order dated 1/26/04.

2/9/04 Appellant Richard Cordero motion for extended time to file a petition for rehearing, filed with proof of service.

2/9/04 Appellant Richard Cordero motion for stay of mandate, filed with proof of service.

2/13/04 Order FILED REFERRING motion for extended time by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for extension of time to file petition for rehearing to Hon. JMW, JLO, RAK.

2/13/04 Order FILED REFERRING motion for stay by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for stay mandate to Hon. JMW, JLO, RAK.

2/23/04 IT IS HEREBY ORDERED that the motion for an extension of time to file a petitionn for

rehearing and to stay the mandate is GRANTED. The petition shall be filed by March 10, 2004 . Before Hon. JMW, JLO, RAK, CJ. Endorsed by Arthur M. Heller, Motions Staff Attorney.

2/26/04 Notice to counsel and pro se re: order dated 02/23/04.

3/10/04 Appellant Richard Cordero motion for leave to attach some entries of the Appendix to the petition for panel rehearing and hearing en banc, filed with proof of service.

INDIV

CLOSED

3/10/04 APPELLANT Richard Cordero, petition for rehearing and rehearing en banc, received.

3/11/04 Appellant Richard Cordero Petition for rehearing and petition for rehearing en banc filed with proof of service.

3/22/04 Appellant Richard Cordero motion for the Hon . Chief Judge Walker to recuse himself from this case and from considering the pending petition for panel rehearing and rehearing en banc, filed with proof of service.

3/22/04 Papers (Booklet) of Evidentiary Documents supporting a complaint from APPELLANT Richard Cordero, received.

3/23/04 Order FILED GRANTING motion for leave to file by Appellant Richard Cordero, endorsed on motion dated 3/10/2004. IT IS HEREBY ORDERED that the motion be and it hereby is GRANTED. Before Hon. Walker, Oakes, Katzmann. Endorsed by Arthur M. Heller, Motions Staff Attorney.

3/24/04 Notice to counsel and pro se re: order dated 03/23/04.

4/19/04 Appellant Richard Cordero -leave to update the motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case with recent evidence.....filed with proof of service.

5/4/04 Order FILED DENYING motion to recuse by Appellant Richard Cordero, endorsed on

motion dated 3/22/2004. "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED." Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Richard C. Wesley, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

INDIV

CLOSED

5/4/04 Notice to counsel and pro se re: order dated 05/04/04.

5/10/04 AMENDED order stating "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED," filed. Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Robert A. Katzmann, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

5/10/04 Notice to counsel and pro se re: amended order dated 05/10/04.

5/17/04 Appellant Richard Cordero 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, filed with proof of service.

6/2/04 Appellant Richard Cordero motion to allow for the Hon. John M. Walker, Jr., Chief Judge , Either to state his arguments for denying the motions that he disqualify himself from considering the pending petition for panel rehearing and hearing en banc; and from having anything else to do with this case or disqualify himself and failing that for this court to disqualify the chief judge therefrom , filed with proof of service.

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion is DENIED, endorsed on motion dated 6/2/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW, Chief Judge, JLO, RAK, C.J.J.)

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion for declaratory judgment is denied, endorsed on motion dated 5/17/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW

, Jr. Chief Judge, JLO, RAK, C.J.J.)

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04.

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04 re: declaratory judgment.

9/10/04 Appellant Richard Cordero motion allow /to quash the Order of August 30, 2004 of WBNY J. John C. Ninfo, II, to sever claim from this case, filed with proof of service.

10/5/04 Copy of the letter dated 9-29-04 to Christopher K. Werner, Esq. from APPELLANT Richard Cordero, received.

10/13/04 Order FILED DENYING motion to quash order of August 30, 2004 of WBNY J.John C. Ninfo, II, to sever claim from this case by Appellant Richard Cordero, (JLO,RAK)

10/14/04 Notice to counsel (order dated 10-13-04)

10/18/04 Letter dated 10-12-04 from appellant pro se Cordero to George M. Reiber, Esq. received (copy to the Court)

10/26/04 Order FILED DENYING motion petition for rehearing and petition for rehearing en banc by Appellant Richard Cordero, (ah)

10/27/04 Notice to counsel (order dated 10-26-04)

11/2/04 Appellant Richard Cordero motion stay the mandate filed with proof of service.

11/2/04 Letter dated 10-20-04 from P. Finucane,

Deputy Clerk , U.S. Bankruptcy Court George M . Reiber, Esq. received (copy submitted by appellant pro se Cordero)

11/2/04 Letter dated 10-21-04 from appellant pro se Cordero to Kathleen Dunivin Schmitt, Esq. received (copy to the Court)

11/8/04 Order FILED DENYING motion stay the mandate by Appellant Richard Cordero, endorsed on motion dated 11/2/2004, (JLO,RAK)

11/8/04 Notice to counsel (order dated 11-8-04)

11/8/04 Judgment MANDATE ISSUED. CLOSED

11/9/04 Letter dated 10-27-04 from APPELLANT Richard Cordero, to Christopher K. Werner, Esq. Re: David and Mary Ann DeLano, Bkr. dkt no. 04-20280 received.

11/9/04 Copy of the Notice of Motion to enforced Judge Ninfo's order of 8-30,2004 submitted the the US Bankruptcy Court WDNY from APPELLANT Richard Cordero, received.

11/22/04 Acco received in records room from team. Number of Volumes: 2

11/30/04 Mandate receipt returned from the district court.

2/1/05 Notice of filing petition for APPELLANT Richard Cordero, dated January 27, 2005, filed. Supreme Court #: 04-8371.

4/4/05 Writ of Certiorari DENIED

INDIV

CLOSED

4/11/05 Record on appeal RETURNED to lower court. 2 vols.)

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

UNITED STATES COURT OF APPEALS
FILED
FEB 09 2004
Roseann B. MacKechnie, CLERK
SECOND CIRCUIT

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

Motion: For extension of time to file a petition for rehearing and for stay of mandate

1. FRAP Rule 40(a)(1) allows the extension of time to file a petition for rehearing. Likewise, Rule 26(b) provides that "For good cause shown, the court may extend the time prescribed by these rules…to perform any act". There is good cause for such extension:
2. The case docket states that it was the district court's decisions that were dismissed, thereby giving Dr. Cordero the mistaken or false impression that he had prevailed and did not have to take any action;
3. Despite Rule 26(b), the decision was not mailed to Dr. Cordero on the date of issuance, January 26, so that on January 30 Dr. Cordero had to call his case manager and her supervisor to request that it be mailed to him; it was postmarked February 2; as a result, it was a week after issuance when he could read the tenor of the decision;
4. Since in cases involving the United States, its officers or agencies, the United States, despite its armies of lawyers, is allowed 45 days in which to seek rehearing. it is within reason that a pro se party who has never sought it before should have more time to do so;
5. Indeed, Dr. Cordero is a pro se appellant and cannot perform in just a week the legal research and writing necessary to determine conscientiously whether he has meritorious grounds for a rehearing petition before considering a petition for a writ of certiorari;
6. While this motion is being determined, the mandate should be stayed under Rule 41(d)

Statement of relief sought: That the time for petitioning for a rehearing be extended by 30 days and that the mandate be stayed until disposition of this motion and according to it.

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

OPPOSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Has service been effected? Yes, proof is attached

UNITED STATES COURT OF APPEALS
FILED
FEB 23 2004
Roseann B. MacKechnie, CLERK
SECOND CIRCUIT

ORDER

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

IT IS HEREBY ORDERED that the motion for an extension of time to file a petition for rehearing and to stay the mandate is GRANTED. The petition shall be filed by March 10, 2004.

FOR THE COURT
Roseann B. MacKechnie, Clerk
by

Date

Arthur M. Heller, Motions Staff Attorney

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

Docket Number(s): 04-8510 **Misconduct complaint about Chief Judge J. Walker**

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

Statement of relief sought: That this Court:

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

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

III. declare whether it can be inferred from their handling of Dr. Cordero's complaints of March 19, 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 under 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;

IV. 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;

V. order that the Table of Contents 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.

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: Officers of the Court of Appeals for the Second Circuit

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: N/A

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: April 11, 2004

ORDER

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

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

Date: _____ **By:** _____

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 Cir-cuit'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.

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****

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 dif-ference, 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 com-plaint and are clearly distinguished by a plain page number, while docu-ments accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accom-panying 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 wrong-doing? 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.

Dr. Richard Cordero, Movant Pro Se
(718) 827-9521

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

April 11, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero, Movant Pro Se
tel. (718) 827-9521

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in the Court of Appeals for the Second Circuit
of April 11, 2004
by
Dr. Richard Cordero

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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
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April 11, 2004

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

[also to: 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

Dear Chief Judge Walker,

Please find herewith my motion for declaratory judgment and for the launch of an investigation that I have filed in this Court and am serving on you for your information.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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April 12, 2004

Ms. Karen Greve Milton [tel. (212) 857-8700 fax (212) 857-8680]
Circuit Executive
Second Judicial Circuit of the United States
United States Courthouse
40 Foley Square-Room 2904
New York, NY 10007

CONFIDENTIAL

Dear Ms. Milton,

Thank you for your letter of last March 30, concerning my judicial misconduct complaint 03-8547.

Please find herewith a copy of my motion of April 11, 2004, for declaratory judgment and the launch of an investigation, which I have filed with the Court of Appeals for the Second Circuit as well as a copy of a pertinent memorandum. They provide the informational context of my request to you as Circuit Executive. A brief background to it is the following:

On August 11, 2003, I submitted the judicial misconduct complaint above-mentioned to the Hon. John M. Walker, Chief Judge of the Court of Appeals. It concerns the Hon. John C. Ninfo, II, Bankruptcy Judge, and other judicial and administrative officers of the United States Bankruptcy and District Courts in Rochester, who have disregarded the law, rules, and facts so repeatedly and so consistently to my detriment as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

For seven months Chief Judge Walker disregarded his legal duty under 28 U.S.C. §351 as well as under the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers. These instruments require chief judges to deal "promptly" and "expeditiously" with judicial misconduct complaints. The failure of Chief Judge Walker to act on my complaint has had dire consequences on me because for all those seven months I have had to endure even more abuse and bias on the part of Judge Ninfo and other officers in Rochester. Their latest act of blatant disregard of law, rules, and fact occurred as recently as March 8 and has been described in detail in the complaint about Chief Judge Walker.

Indeed, on March 22, I submitted to the Court of Appeals' next eligible chief judge a judicial misconduct complaint about Chief Judge Walker for having disregarded his statutory and regulatory duty to deal "promptly" and "expeditiously" with my complaint about Judge Ninfo (i, below, see Table of Contents, M-22, below). The submission of that complaint triggered more acts of disregard of law and rules by clerks and their superiors at the Court of Appeals.

The fact is that numerous acts of disregard of law and rules have already taken place in the Court. They have consistently had a negative impact on me by hindering me in submitting that complaint; cutting down the time available for me to timely file a petition for panel rehearing and hearing en banc; and making more difficult for me to meet the requirements for the

initial appeal (docket no. 03-5023) from orders of the bankruptcy court in an adversary proceeding (docket no. 2-2230). Those acts cannot be explained as normal occurrences, for in that case they would reasonably be expected to have an effect on me that only half of the time was negative while the other half was neutral or positive. Randomness is antithetical to a self-reinforcing stream of events working toward the same objective. Most recently, that objective has been to hinder the submission of my complaints about the misconduct of judges and administrative personnel.

By the same token, these acts cannot be explained away as mere innocent mistakes made in the handling of my complaint. Are so many "mistakes" made in the handling of every other complaint? If so, what would that say of the level of competence of the officers directly involved and the standards of performance tolerated by their supervisors? If these "mistakes" are in line with the average, the Council does have a training and efficiency problem to remedy.

Therefore, the consistent negative effect on me that the acts of these officers have had and the blatant disregard of law and rules that they have shown, provide objective foundation for the assertion that they have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing.

The emergence of the same pattern in both the Court of Appeals and the courts in Rochester give rise to the troubling question whether out of solidarity or reciprocal indebtedness, administrative and judicial officers in those courts have coordinated their acts. If so, my motion in the Court of Appeals will not be sufficient to get to the bottom of the problem. The reason for this is in the axiom that an institution cannot investigate itself objectively and zealously. A third party, capable of conducting an independent investigation is necessary to look into the matter without inhibitions due to personal loyalties or fear of retaliation.

The need to bring in such a third party, or rather to refer this matter to a third party is all the greater because the origin of these acts of wrongdoing lies deeper than a mere clash between court personnel and a litigant, me. The origin is found, to put it cautiously, in a deficiency of integrity in the way the trustee program is run in Rochester, that is, who files for bankruptcy, who approves the plan of debt repayment, and how money and assets circulate among the parties to the detriment of the creditors. The strongest evidence of this "deficiency of integrity" came to light last March 8 at a meeting of creditors and at a hearing before Judge Ninfo. You will find a detailed statement of facts and analysis of those events in a memo that I wrote for the parties and that I have attached hereto.

While you may have the means to press for an investigation by Judicial Council members, they are most unlikely to have the resources to carry out an effective investigation. No doubt those members can deal with problems in legal ethics and judicial impartiality: However, the problem here is the flow of money. That calls for an investigation guided by the principle *Follow the money!* This requires forensic accounting, the valuation of estates, and the means to trace assets from debtors to wherever they are placed and whomever they end up with. Judges are not qualified to undertake such investigation. But the FBI is.

Therefore, I respectfully request that you transmit this package of information contained in the motion and the memorandum to the head of the FBI here in New York City (not to the FBI office in Rochester, which sits in the same building as the bankruptcy and district courts and the Office of the U.S. Trustee) and that you set up a meeting with that officer where we can discuss

confidentially aspects of this matter that are not yet ripe to be put in writing.

However, if you decide not to refer this matter to the FBI, I respectfully request that you, as the Circuit Executive, cause the Council to launch an investigation to determine the following:

Whether Clerk of Court Roseann B. MacKechnie, Deputy Clerk Patricia Chin Allen, and other administrative and judicial officers of the Court of Appeals for the Second Circuit:

1. through the way they handled my judicial misconduct complaints of March 2004, about the Hon. John M. Walker, Chief Judge (docket no. 04-8510) and of August 11, 2003, about the Hon. John C. Ninfo, II, (docket no. 03-8547), caused and, given the foreseeability of the consequences of their actions, intended to cause,

   a) a delay in Dr. Cordero's submission of those complaints to dissuade him from resubmitting them and thereby hindered the exercise of his right under 11 U.S.C. §351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers to complain about those judicial officers;

   b) the waste of Dr. Cordero's time, effort, and money, and the infliction on him of emotional distress.

2. have disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero as to have engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

3. have entered into a wrongful coordination of their acts with officers in the Bankruptcy and Districts Courts in Rochester in order to wear down and dissuade Dr. Cordero from pursuing his judicial misconduct complaints as well as the adversary proceeding and appeal and thereby afford themselves and their superiors protection from legal liability to him and from prosecution.

If you want to consult any documents listed in the Table of Contents (vi, below) or obtain a copy of the exhibits, please let me know. As for me, I kindly request that you provide me with the name, address, and phone number of the Director of the Administrative Office of the United States Courts.

I also request that you restrict the circulation of this letter to people that are not in a position to retaliate against me. I trust that you will find this request justified after you have read section II.A. on page 18 below. It will give you an idea of the enormous amount of effort, time, and money that I have been forced to invest in this matter and the tremendous amount of emotional distress that I have had to endure since the beginning of January 2002 when I just wanted to find my property in storage in Rochester. In light of the facts, how do you think these people would react if they knew that not only have I asked for an FBI investigation, but that one was actually under way? Would you like to be in my position?

I kindly request the opportunity to meet with you to discuss this matter. Thus, I look forward to hearing from you and remain,

Sincerely yours,

Dr. Richard Cordero

Dr. Richard Cordero

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

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March 30, 2004

Re: The facts, implications, and requests concerning the DeLanos' chapter 13 bankruptcy petition, docket no. 04-20280 WDNY

To: U.S. Trustee for Region 2 Deirdre A. Martini
Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq.
Chapter 13 Trustee George M. Reiber
James Weidman, Esq., attorney for the Chapter 13 Trustee
Christopher K. Werner, Esq., attorney for the Debtors

From: Dr. Richard Cordero, creditor

On March 8, 2004, the meeting of creditors concerning the Chapter 13 bankruptcy petition filed by David G. DeLano and Mary Ann DeLano took place in Rochester, NY. It was followed by the hearing on confirmation of plans. I traveled from New York City to Rochester and attended both. This memorandum contains a statement of facts describing what occurred at those two events, their legal implications, and the requests that I am making based on them.

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I. The meeting of creditors and the hearing on confirmation of plans on March 8 in Rochester

A. Attorney Weidman adjourned the meeting of creditors unlawfully, arbitrarily, and suspiciously

1. After being named a defendant in James Pfuntner v. Trustee Kenneth Gordon et al., filed in the U.S. Bankruptcy Court for the Western District of New York –docket no. 02-2230-, Dr. Richard Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held to have acquired and possess superior knowledge about how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank. What did a veteran loan officer still on the job, and as such an expert in good standing with his employer, do with all that income so that now he claims to have so little to show for it as to warrant a discharge of his debts in bankruptcy? Both these circumstances and figures beg examination under strict scrutiny.

2. Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341. The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, Esq., took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

3. Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. The attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Trustee Gordon case, Michael Beyma, Esq., remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor in the audience. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as copies to him and Mr. Werner of his Objection of March 4, 2004, to Confirmation of the Chapter 13 Plan of Debt Repayment (hereinafter referred to as his written objections). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud; rather, he was interested in establishing the good faith of a bankruptcy petition by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he

had worked in that capacity. He said 15 years.

4. In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy petition by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing on confirmation of plans before the Hon. John C. Ninfo, II, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos and had traveled to Rochester from New York City for that sole purpose. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

5. After going to the Office of the U.S. Trustee (para. 32, below), Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give him a copy of his written objections.

B. At the hearing, Mr. Weidman showed that he had made up his mind about the DeLanos' good faith without regard for the objections of Dr. Cordero, who asked for his recusal

6. Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as a creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

7. Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

8. Dr. Cordero protested because he had the right to rely on the law and the notice of the

meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

9. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney.

10. Dr. Cordero added that Mr. Weidman's conduct raised questions because Mr. Weidman kept asking him what evidence he had that the DeLanos had committed fraud despite his having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

11. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied the law too strictly and ignored the local practice.

II. Mr. Weidman has become the target of an investigation and rendered himself liable to Dr. Cordero

12. Mr. Weidman cut off Dr. Cordero after the latter had asked only two questions of Mr. DeLano and none of Ms. DeLano. Thereby Mr. Weidman frustrated the very purpose for which the Code provides for a meeting of creditors, which is the examination of the debtor by the creditors. Thus, he acted unlawfully as contrary to the law. Since he neither invoked nor had any legal rule or principle as justification for his conduct, he acted arbitrarily. Likewise, by putting an end to the meeting right after cutting off Dr. Cordero even though there was no other creditor and thus, nobody else was asking for time to examine the DeLanos so that there was no need to allocate time among creditors, but instead there was ample time for the meeting to continue, Mr. Weidman acted capriciously for there was no need in practice for his conduct.

13. Mr. Weidman knew that the adverse impact of his conduct on Dr. Cordero was all the more severe because Dr. Cordero made him aware at the meeting that he had come all the way to Rochester from New York City to participate in the examination of the DeLanos pursuant to the official notice of meeting of creditors that Dr. Cordero had received. Therefore, Mr. Weidman knowingly wasted Dr. Cordero's effort, time, and money. Now he must compensate Dr. Cordero therefor.

14. Moreover, since Mr. Weidman asked Dr. Cordero to state his objections and adjourned the meeting after the latter had answered and provided him and the DeLanos with copies of his written objections, he caused Dr. Cordero the irretrievable loss of the opportunity to obtain from the DeLanos spontaneous answers before knowing his objections and having time to prepare their statements and take other measures in light of the objections. By so doing, Mr. Weidman has caused Dr. Cordero irreparable harm, for which he is now liable to Dr. Cordero.

15. By the same token, Mr. Weidman has rendered the task of obtaining candid and truthful information all the more difficult because now other steps are required to compensate for the lack of spontaneity in the DeLanos' answers at any future examination. Dr. Cordero holds Mr. Weidman liable to compensate him for his extra work in taking those steps.

16. Mr. Weidman is the attorney for the trustee and one who vetted the DeLano's petition. As such, he is knowledgeable about the purpose of a meeting of creditors under the Bankruptcy Code and about the petition's details and merits. He should have known that he could not so flagrant-ly impede the examination of the DeLanos and get away with it without raising suspicion.

17. To be sure, he has raised suspicion. Why was he so insistent in finding out how much Dr. Cordero already knew about the DeLanos having committed fraud in submitting their bankruptcy petition? Why did he not believe Dr. Cordero's answer that he, Dr. Cordero, was not accusing the DeLanos of any fraud, but rather assume that Dr. Cordero nevertheless knew something about fraud committed by the DeLanos which he, Mr. Weidman, needed to know before allowing the DeLanos to answer Dr. Cordero's questions? Whom was Mr. Weidman protecting, the DeLanos or himself, from what and why?

18. Having raised suspicion, Mr. Weidman must now be investigated. Only thus can the integ-rity of the U.S. Trustee Program be safeguarded and any doubts about the legality and truthfulness of any future proceeding or information provided in this case be put to rest.

III. Trustee Reiber's vested interest in his attorney being found blameless requires his recusal from this case

19. Mr. Weidman works for Trustee Reiber as his attorney. But he is not just outside counsel retained by the Trustee to assist him only in the specific case of the DeLanos. Rather, Mr. Weidman's name appears on the Trustee's letterhead and in a subordinate position. This indicates an organic and continuous relationship between them as members of the same office and in a principal-agent relation. What one knows is imputed to the other. By the same token, access by one to the files of the other is presumed, for why would there be any need for secrecy between members of the same office, especially where their relation is protected by attorney-client privilege? Moreover, Mr. Weidman is Trustee Reiber's supervisee whenever he substitutes for the Trustee, as when he replaces the latter as the presiding officer at a meeting of creditors.

20. Therefore, Trustee Reiber has a vested interest in Mr. Weidman not being found to have

engaged in any unlawful, arbitrary, and capricious conduct or to have entered into an improper relation with the DeLanos. Indeed, if Mr. Weidman were to be found at fault, it would have a negative impact on Trustee Reiber, for they are in a principal-agent relation. Worse still, it could call into question any case in which both have worked together. That could put Trustee Reiber's continued standing in the Trustee Program in jeopardy. (cf. 11 U.S.C. §324(b))

21. The fact is that on March 8 Trustee Reiber jumped to Mr. Weidman's defense, saying, without first having investigated his conduct, that Mr. Weidman had acted properly in putting an end to the meeting of creditors as he did. Yet, Mr. Weidman cutting off a creditor after the latter had asked his second question and then adjourning the meeting altogether upon the objectively untenable allegation of lack of time constituted prima facie evidence that something was amiss. It should have given Trustee Reiber pause, even cause for concern, and yes, the urge to investigate. Dr. Cordero protested and Trustee Reiber responded that he knew Mr. Weidman and trusted him.

22. That is precisely a disqualifying response because it means that Trustee Reiber implicitly trusts his attorney. Any investigation that he may conduct would start off with the assumption that Mr. Weidman did nothing wrong and competently reviewed and handled the DeLanos' petition. Thus, from the beginning, the Trustee would be investigating his attorney while having a preconceived idea of his conclusion at the end of the investigation. What is more, the assumption could in the Trustee's eyes render the investigation of Mr. Weidman so pointless, for what is there to investigate if one already knows what happened?, as to dissuade the Trustee from conducting any investigation at all.

23. Thus, to avoid investigating his attorney-supervisee or to investigate him without repercussions, Trustee Reiber would be more likely than not to confirm the statement that Mr. Weidman made in open court during the hearing on confirmation of plans, to wit, that he, Mr. Weidman, had spoken with the DeLanos and their attorney and had found that they had filed their petition in good faith. Dr. Cordero protested immediately in open court by pointing out that Mr. Weidman -who neither mentioned Dr. Cordero nor the written objections that he had tendered to Mr. Weidman earlier at the meeting of creditors- had already reached a conclusion precisely on what in any petition constitutes a key issue, which had been put in controversy by the objections: Whether the petition had been submitted in good faith. (cf. 11 U.S.C. §1325(a)(3))

24. Could Trustee Reiber now conclude that the DeLanos did not act in good faith without thereby indicting his attorney-supervisee's rush to judgment and his competency in vetting the debtors' petition? No, he could not. Consequently, the Trustee has a vested interest in not finding fault with his attorney so as to avoid calling into question their relation and making himself a target of an investigation. This will compromise his objectivity, prevent him from being thorough, and impair the validity of his conclusions and process of investigation of both Mr. Weidman and the DeLanos, that is, if the Trustee investigates any of them at all.

25. If the DeLano's attorney works for the DeLanos, and Mr. Weidman protects the

DeLanos, and Trustee Reiber defends Mr. Weidman, and both dismiss out of hand a creditor's objections, and the U.S. Trustee keeps in place her trustee even though linked to suspicious circumstances, who looks after the creditor as the representative of the estate (cf. 11 U.S.C. §323(a))?

26. Just as Dr. Cordero called for Mr. Weidman to recuse himself for jumping to a conclusion in favor of the DeLanos, he calls for Trustee Reiber to recuse himself for jumping to a conclusion in favor of his attorney-supervisee.

A. Trustee Reiber's legal duty to come forward with any information about bankruptcy fraud or abuse and the risk of failing to do so

27. If Trustee Reiber refuses to recuse himself and is allowed to remain in the case, Dr. Cordero gives notice that he may challenge the Trustee's every act and omission at any step of the way.

28. In this context, Trustee Reiber must consider that he is a lawyer and a trustee in the U.S. Trustee Program and, as such, an officer of the court and a federal appointee. He has a duty to report bankruptcy fraud or abuse to, among others, the FBI; and he himself said in his introduction at the March 8 meeting of creditors that he does report it, whereby he intended to create a reliance interest in his honesty. Every time he appears in court, files a paper in the case, or conducts business as usual with a party in interest, he is representing that he is acting truthfully and conducting the case in good faith and according to law.

29. By contrast, imagine a person similarly situated who knew that bankruptcy fraud or abuse had been committed in a case or had a reasonable basis to suspect that it had. It could also be that she, through the exercise of due diligence and care as such court officer and federal appointee, would have found out but for her decision to engage in willful ignorance to preserve plausible denial. Imagine further that she failed to come forward and report what she knew or should have known to, among others, the FBI. Under those circumstances, if she continued to appear in court, file papers in the case, or conduct business as usual with a party in interest, she would render herself liable to criminal charges for the continuing commission, in addition to dereliction of duty, of perjury, obstruction of justice, and engaging in a cover up; and would also lay herself open to civil suits for fraud in the inducement to continue dealing with her and for the intentional infliction of material loss and emotion distress since a person is deemed to intend the reasonable consequences of her acts.

30. One thing is clear: Doing nothing when one has a duty to take a certain action, and doing as usual when one has a duty to do otherwise, compound an initial offense and breed a host of dire consequences, which could be avoided if that offense were timely pled down or negotiated away.

31. Dr. Cordero relies on Trustee Reiber's bid for trust in his honesty and expects him to do what is his legal and moral duty: recuse himself and report what he knows.

IV. Trustee Schmitt's decision to keep Trustee Reiber on the DeLano case leaves the pall of suspicion hanging over the case and, given her questionable handling of the complaint about Trustee Kenneth Gordon, raises more questions about her conduct

32. After Mr. Weidman's unlawful adjournment of the meeting of creditors on March 8, Dr. Cordero went to see Assistant U.S. Trustee Kathleen Dunivin Schmitt in the Office of the U.S. Trustee on the same floor. Nobody was there and he waited. When Paralegal Stephanie Becker arrived, he asked to speak with Trustee Schmitt, but Ms. Becker said that she was not available. Dr. Cordero told her what had happened and left with her a copy of his written objections for Trustee Schmitt.

33. The following day, Trustee Schmitt and Dr. Cordero spoke on the phone. He related the events of the previous day. He also said that Trustee Reiber had told him after the hearing that he would ask the DeLanos' attorney, Mr. Werner, whether he would allow his clients and, if so, under what conditions, to meet with Dr. Cordero for the latter to question them. Dr. Cordero indicated that Mr. Werner is in no position to grant or deny permission for his clients to meet with Dr. Cordero, let alone set conditions for the meeting, since the examination of the debtor by the creditors is a step in the bankruptcy process provided for by law. Trustee Schmitt agreed with Dr. Cordero and said that it was unfortunate for Trustee Reiber to have put it in those terms.

34. Dr. Cordero requested that she disqualify both Mr. Weidman and Trustee Reiber from the DeLano case and appoint a trustee unrelated to them, unfamiliar with case, and capable of conducting an independent investigation of their conduct in this case and of the financial affairs of the DeLanos. Trustee Schmitt indicated that she could appoint a trustee from Buffalo.

35. However, in her letter of March 11 to Dr. Cordero, Trustee Schmitt wrote that "I have had an opportunity to review your concerns with the United States Trustee for Region 2, Deirdre A. Martini, and she concurs with me that this case should be handled by the Chapter 13 trustee, George Reiber, personally". The word "concurs" means that Trustee Schmitt proposed to Trustee Martini to keep Trustee Reiber on the case.

36. For Trustee Schmitt to agree with Dr. Cordero in principle to do something but then propose the opposite to her boss is certainly not the way to build trust. Moreover, stating that Trustee Reiber will handle the case "personally" does not mean that Mr. Weidman will not continue helping him with it, much less that he has been prohibited from having further contact with the DeLanos and their attorney. Nor does the statement "that this case should be handled by…trustee…Reiber" contain any implicit obligation for him to investigate anybody or anything.

37. Even if it did, it would not mean much. The foundation for this statement is the way Trustee Schmitt handled an investigation when she was officially asked to investigate another of her trustees.

A. Trustee Schmitt's quick-job inquiry of Trustee Kenneth Gordon is precedent for what little, if anything, she would now ask Trustee Reiber to investigate and how low her standards of acceptable performance would be.

38. Indeed, two years ago Dr. Cordero was looking for his property in storage with Premier Van Lines, and was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed under Chapter 11 for bankruptcy on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.

39. Dr. Cordero complained to Judge Ninfo, before whom Mr. Palmer's petition was pending, and requested a review of Trustee Gordon's performance and fitness to serve as trustee. The judge referred the matter to Trustee Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a communication exercise limited in its scope to two people and in its depth to uncritically accepting at face value what she was told.

40. Dr. Cordero appealed Trustee Schmitt's supervisory opinion of October 22, 2002, to her hierarchical superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2, to whom he sent a detailed critical analysis of the opinion against the background of facts supported by documentary evidence. It is dated November 25, 2002. It must be in the files now under the supervision of Trustee Schwartz's successor, Ms. Deirdre A. Martini, who is referred to it by its incorporation herein. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al.

41. On that occasion, a complaint about one of her trustees was officially and spontaneously referred by a federal judge for a "thorough inquiry" to Trustee Schmitt. Nevertheless, she conducted instead a "substandard investigation…infirm with mistakes of fact and inadequate coverage of the issues raised", as stated in Dr. Cordero's accompanying letter to Trustee Schwartz. Consequently, it is counterintuitive to think that this time, at the instigation of just a creditor, particularly one who complained about her, Trustee Schmitt will ask a third party, Trustee Reiber, to investigate yet another party, Mr. Weidman, in his relation to still others, the DeLano Debtors, and that she will see to it that her trustee's investigation rises to the level of a "thorough inquiry". Hence the need to entrust this investigation to a trustee unrelated to them, unfamiliar with the case, and capable of proceeding independently to whatever results a thorough inquiry may lead. What did Trustee Schmitt tell Trustee Martini to get her to "concur" with her that there was no need to replace Trustee Reiber at all?

V. Trustee Reiber failed to be evenhanded by proposing dates for the adjourned meeting to Mr. Werner but not to Dr. Cordero, although he was going to send a letter to Dr. Cordero and Trustee Schmitt was going to request him to do so

42. On Friday, March 12, Trustee Reiber called Dr. Cordero to let him know that he had spoken with Mr. Werner and that the latter had agreed to a meeting where Dr. Cordero could examine the DeLanos. Dr. Cordero told the Trustee that the meeting had to be just as the meeting of creditors which was to have been held on March 8. The Trustee just said that he would send Dr. Cordero a letter on the subject.

43. Dr. Cordero received no letter from the Trustee in the following week. When Trustee Schmitt and Dr. Cordero spoke again on Tuesday, March 23, upon her return from training, she mentioned that Trustee Reiber had sent Dr. Cordero a letter. When Dr. Cordero said that he had received none, she said that she would ask him to send or resend the letter in question.

44. On Saturday, March 27, Dr. Cordero received a letter from Trustee Reiber together with a copy of a letter from Mr. Werner to the Trustee dated March 19. Mr. Werner wanted to let the Trustee know the dates that were agreeable to him from among those that the Trustee had proposed to him for the adjourned meeting of creditors.

45. How come Trustee Reiber did not propose them at the same time to Dr. Cordero? Proceeding this way does not show evenhandedness in Trustee Reiber's treatment of Mr. Werner and Dr. Cordero. The latter is put at a disadvantage by having to play catch up or, to avoid being put in that position, he is forced to second-guess the Trustee all the time.

46. Nor is it reassuring if Trustee Schmitt failed to ask Trustee Reiber to send or resend that letter to Dr. Cordero, or if she did ask him to do so, but failed to prevail upon him to do so, for if Trustee Reiber can disregard such a request, what other requests or advice from Trustee Schmitt can he disregard too?

47. In addition to that procedural impropriety, there are substantive reasons why the adjourned meeting cannot take place on any of the dates agreeable to Mr. Werner. Nor can it be limited to an hour given the circumstances.

VI. Why the adjourned meeting to examine the DeLanos can neither be limited to an hour nor take place until financial statements for "the covered period" have been sought, obtained, and analyzed

48. There is no justification in law or in fact to further protect the DeLanos from examination by limiting the time therefor, let alone limiting it to less than the time available at the initial meeting. On the contrary, there are solid grounds for providing for an examination without any limit on its duration:

a) The bankruptcy of a 15 year bank loan officer is in itself highly suspicious and warrants strict scrutiny.

b) Such suspicion is heightened by the incongruous information that the DeLanos provided in their Schedules. (cf. para. 1 above)

c) Written objections have been filed that lay out detailed reasons, supported by numerical computations, for examining the DeLanos in depth.

d) The DeLanos have benefited from Mr. Weidman unlawfully preventing Dr. Cordero from examining them at the March 8 meeting. As a result, they have unduly had the opportunity to examine his written objections for weeks and prepare their answers accordingly.

e) Since the spontaneity of the DeLanos' answers to specific objections has been lost irretrievably, the loss must at least be partially compensated for by an examination that in addition to eliciting their answers, tests their candor and accuracy.

49. Just as the DeLanos have had extra time to prepare their answers to the written objections, it is necessary that Dr. Cordero obtain relevant financial documents to prepare his testing questions. Among those documents are the monthly credit card statements referred to in his written objections. Those statements are indispensable to construct the timeline of debt accumulation and the nature of its composition, as explained in the objections. Hence, the DeLanos must make the statements available to Dr. Cordero, particularly since they received them and, given their nature of financial documents, have had a legal obligation to save them for a certain number of years.

50. To begin with, the DeLanos must provide the monthly statements that the 18 credit card issuers to whom they owe money have furnished them for the period during which they have accumulated their debt to them. The DeLanos describe the beginning of that period in their Schedule F thus: "1990 and prior card purchases". This period, stretching from whenever the first of those "prior card purchases" took place to date, is referred to hereinafter as "the covered period".

51. If those statements are not provided by the DeLanos because they refuse to provide those that they have or request those that they are missing, then they should be obtained by the trustee, whether it is one assigned by Trustee Schmitt to conduct a thorough independent investigation, or failing that and Trustee Reiber's recusal, then Trustee Reiber.

A. The trustee has the obligation to obtain financial documents

52. Obtaining those statements and other financial documents is the trustee's legal obligation under 11 U.S.C. §1302(b)(1). By reference, that section makes applicable §704(4), which provides that the trustee has the duty "to investigate the financial affairs of the debtor". Additionally, B.C. §§1302(b)(1) and 704(7) require him to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest".

53. Before investigating anything, Mr. Weidman and Trustee Reiber had a due diligence

duty to examine carefully the DeLanos' bankruptcy petition itself. Had they vetted their Schedules, they would have detected the suspicious figures therein and raised objections of their own (cf. para. 1 above, and Dr. Cordero's written objections). If so, Mr. Weidman would hardly have been so "flustered" –as Trustee Schmitt put it- by Dr. Cordero's questions, for he would already have asked them of the DeLanos and heard their answers. He and Trustee Reiber failed to do so. That failure does not recommend them to conduct any investigation of the DeLanos, much less justifies letting Trustee Reiber investigate Mr. Weidman.

54. Moreover, if Trustee Reiber does remain on the case, then at the very least he must perform his legal duty to investigate the DeLanos; otherwise, he would provide another reason to be replaced by a trustee that is more careful in vetting bankruptcy petitions that fall on his lap and that is willing to stand up and go out to search for pertinent documents. No trustee can earn his or her percentage fee by just rubberstamping a petition.

B. Mr. DeLano, with his 15 year experience as a loan officer, is better equipped to search for documents pertaining to his financial affairs

55. In the same vein, Mr. DeLano has no reason whatsoever for refusing to obtain pertinent documents and thereby force Dr. Cordero to do his work. As a bank loan officer for 15 years, Mr. DeLano knows that he has a legal obligation to keep financial documents for a certain number of years. In so far as he does not have documents for the period not covered by that obligation, Mr. DeLano:

    a) has a veteran's experience in obtaining financial documents;

    b) must be assumed to have knowledge of how to operate the mechanisms for obtaining statements from banks; and

    c) must be assumed to have what can prove a most valuable resource, namely, personal contacts in those banks who can help him to approve and expedite the retrieval of those statements.

56. Mr. DeLano is in no position to complain about the amount of work involved in obtaining those statements. He is presumed to have known, not only as a prospective debtor assisted by an attorney in the decision whether to file, but also as a bank loan officer involved with debtors who have filed for bankruptcy, what would be required of him to support his petition. Indeed, Mr. DeLano was the M&T Bank loan officer handling the account of Mr. David Palmer, to whom M&T extended a loan to run his company, Premier Van Lines, Inc., and who filed for bankruptcy, leaving Mr. DeLano with the task, among others, to recover and liquidate the assets in which M&T had a security interest. M&T was another of the defendants named in Pfuntner v. Trustee Gordon et al. In addition, if Mr. DeLano was capable of juggling 18 credit cards at present and who knows how many others in covered the period since before 1990, then he must juggle the tasks of retrieving their statements. The magnitude of the problem and the degree of its difficulty are of his own making.

57. Consequently, the DeLanos' financial documents, starting with the credit card statements, must be obtained in order to check their petition and prepare for their examination. If Mr. DeLano or the trustee place the work of obtaining them on the shoulders of Dr. Cordero, he will do it because the statements are necessary. But he gives notice that he will seek compensation from them therefor because to his detriment they would have failed to fulfill their obligation and failed despite their being superbly better qualified to do the work involved.

C. Dr. Cordero must not be burdened with the document search so as to hinder his examination of the DeLanos or deprive him of evidence

58. Neither law nor rule lays on creditors the obligation to investigate the debtor's financial affairs or search for documents. Thus, the work of obtaining them in this case cannot arbitrarily be offloaded on Dr. Cordero.

59. This is particularly so here because the DeLanos have provided only the institutional names of the 18 credit card issuers and their respective addresses and account numbers, but not the names of any persons in the departments handling the accounts. Therefore, if a subpoena were sent to, let's say, Bank of America, it could take weeks before it was processed and then landed in the hands of the person, or series of persons, or committee that could find out whether the statements were available and, if so, how many the Bank would release, whether it would charge a special fee for statements older than a certain number of years, etc. Searching for the phone numbers of those 18 issuers, where none has been provided, and tracking down whomever is dealing with the subpoena or with the retrieval and reproduction of the statements at that point in time will require a lot of time-consuming work.

60. Yet, that work must be done and it must be a trustee, not Dr. Cordero, who does it. If the trustee were to fail to do that too, on what basis would he or the bankruptcy judge decide whether the DeLano's bankruptcy petition had been submitted in good faith and, if so, whether it provided for the just and fair allocation of benefits and burdens among debtors and creditors? The mere self-serving information provided by debtors in their Schedules can hardly have been the only basis on which Congress intended trustees to apply its Bankruptcy Code, run the Trustee Program, or allow debtors to extricate themselves from their debts. Nor did Congress intend creditors to be left to fend for themselves when searching for financial documents on which to determine whether irresponsible debtors had taken their money or incur liability to them and were now seeking to leave them holding a bag of worthless IOUs and enforcement proof judgments.

D. The time necessary to obtain financial statements requires the adjournment of the meeting

61. In any event, whether it is the trustee, the DeLanos, Dr. Cordero, or anybody else who search for just those statements, let alone for any other financial documents that

checking the former may reveal as necessary, that work will take time. When Dr. Cordero discussed this issue with Trustee Schmitt, she agreed that it was necessary to obtain those statements and indicated that at the very least it would take 20 days to begin receiving them. Hence, that calls for the meeting of creditors adjourned to April 26 to be postponed until the documents have been obtained and analyzed, and of necessity discards any date in between proposed by Trustee Reiber and agreed to by Mr. Werner.

VII. Trustee Martini is given notice of the facts and high stakes in this case so that she may be held fully accountable for the decisions that she makes

A. Trustee Martini's mind was bent on "closure" from the moment Dr. Cordero tried to open a conversation with her

62. Dr. Cordero called Trustee Martini on March 16, and was told that she was not in her office, so he left a message on her voice mail explaining the situation and asking that she call him. Having failed to receive a return call, he called her the next day and was told again that she was not in her office. He left another voice mail for her and recorded a message for her assistant, Ms. Desire Crawford. About 10 minutes later Trustee Martini called him back.

63. After Dr. Cordero explained the situation, Trustee Martini said right away that she had already made up her mind and was not going to change her decision by bringing in another trustee to replace Trustee Reiber. Dr. Cordero asked why and she replied that she was the Trustee for Region 2 covering New York, Connecticut, and Vermont and did not have to give any explanation for her actions and that if I Dr. Cordero did not like it, he could consult an attorney and pursue his remedies. Dr. Cordero asked whether he was right in feeling antagonism toward him on her part. She denied it and said that she wanted him to stop calling her office.

64. Dr. Cordero said that he had called her office only twice. She said that he had spoken with Ms. Crawford, to which he replied that he had only left one message on Ms. Crawford's voice mail. Dr. Cordero asked again why she had that antagonist attitude toward him. She said that she wanted closure for this matter. Dr. Cordero pointed out that their current conversation was the first time ever that they had spoke. She said that she wanted "closure" for this matter and repeated that she had made her decision and that if Dr. Cordero did not like it, he could get himself a lawyer and take it from there.

65. Trustee Martini wanted "closure" on a matter that she had never before discussed with Dr. Cordero. She had already closed her mind on the matter and also made up her mind as to Dr. Cordero. What or who was the source of her decidedly antagonistic attitude toward him or whether she needed any external source whatsoever to trigger such attitude, is not known. But one thing is certain: from a public servant, not to mention a professional, one presumably educated, a member of the public is entitled to expect an open-minded and serviceable attitude. Instead, Trustee Martini decided an important

matter without any input from that member of the public and was not even interested in listening to, let alone finding out, his account of the facts or his opinion thereon.

66. A person in a position of authority, to whom power has been entrusted to make decisions that affect other people's interests, owes it to the public whom she is appointed to serve, and all the more so to a party in interest, not to be easily swayed to any position by her own prejudices or anybody else's talk, but rather to be temperamentally capable of dispassionate and unbiased approach; sufficiently curious and energetic to ask herself questions and go out to find the answers; and intellectually disciplined enough to wait until all the facts have been gathered before taking the next step of engaging in their objective analysis, evaluation, and selection as the basis for forming a reasoned and balanced judgment. By these standards, Trustee Martini's attitude was shockingly disappointing.

67. Therefore, let this detailed memorandum provide Trustee Martini with Dr. Cordero's statement of facts and position on the issues. It deprives her of the argument that she did not know about this case anything more than what Trustee Schmitt chose to tell her so that she simply 'concurred', as Trustee Schmitt put it, with what the latter suggested she do.

B. The stakes are high because the attorney of a trustee has acted unlawfully, arbitrarily, and suspiciously, yet the U.S. Trustee has allowed them to remain on the case, thus condoning their conduct

68. In any event, Trustee Martini should have recognized that at stake in this case is the integrity of the Trustee Program in the Western District of New York and should have wanted to know what is going on in this case and in that District. That the stakes are quite high should become obvious from the fact that a trustee's attorney, Mr. Weidman, one described as "experienced" by Trustee Schmitt herself in her March 23 conversation with Dr. Cordero, has made an unlawful and arbitrary decision while engaging in suspicious conduct.

69. As a matter of fact Trustee Schmitt has not asked Trustee Reiber to investigate Mr. Weidman. Even if she had, he could as a practical matter not do so because just as it is elemental that a person cannot investigate himself objectively and zealously, Principal Reiber cannot investigate Agent Weidman impartially and thoroughly. He has an inherent bias toward exonerating his agent rather than render himself liable for his acts and omissions through respondeat superior.

70. By leaving Trustee Reiber in charge of the DeLano case, Trustee Schmitt has ensured that nobody will have to know the true motives and objectives for Mr. Weidman acting unlawfully and arbitrarily: Was he on a folly of his own on March 8 or in line with his particular relation to the DeLanos? Has he acted the same way on other occasions when in the same mood or in similar relation to other debtors? Was he performing a task normally assigned to him or engaging in a routine practice of both office members? If Trustee Schmitt is not interested in asking these and many others questions, Trustee Martini should be because the integrity of the Trustee Program rides on their answers.

71. Nor has Trustee Schmitt required Trustee Reiber to investigate anybody or anything else.

He only has to conduct personally the next examination of the DeLanos. In a two-person office where he is the principal this is a meaningless requirement, unless it means that now he has an excuse for protecting personally his vested interest in nothing coming out of Mr. Weidman's unlawful and arbitrary conduct at the first meeting. Since Trustee Schmitt has allowed him to continue with the case as if nothing had happened, she has in practice condoned such unlawful and arbitrary conduct.

72. This lax approach to the law is not an exception made for Trustee Reiber by Trustee Schmitt, for she does not enforce on her other trustees either the legal requirement that they "investigate the financial affairs of the debtor" or 'furnish creditors with the documents that they request'. In this vein, Trustee Schmitt stated to Dr. Cordero that in her experience, trustees do not investigate debtors' financial affairs. Although Dr. Cordero protested that such omission is in clear violation of the duties that Congress imposed on trustees, she was not willing to require of Trustee Reiber to investigate the DeLanos. Far from it, her position is that if Dr. Cordero wants to investigate them, he has to do it himself, whether by asking the DeLanos to cooperate and voluntarily provide financial statements, or by using subpoenas. Not even she will provide anything but token cooperation given that out of the 18 credit card issuers to whom the DeLanos owe money, she would look up in her files the addresses of only five of them. Why does Trustee Schmitt not only not have the DeLanos, let alone her trustee or his attorney, investigated, and not investigate the DeLanos herself, but also not want even to cooperate except pro forma in Dr. Cordero's investigation of them?

C. Trustee Reiber's 3,909 *open* cases point to why he could find it difficult to investigate the financial affairs of debtors or furnish requested information to a party in interest and beg the question why he has been allowed to take on so many

73. Pacer, the court electronic document retrieval service, sheds light on why trustees may be quite unwilling and unable to spend time investigating anything. When queried with the name George Reiber, Trustee, it returns this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, Pacer comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end thus:

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	*Filed:* 04/01/2004	*Office:* Rochester *Asset:* Yes *Fee:* Paid *County:* 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

74. Trustee Reiber has 3,909 *open* cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink that can call that case to step up to the window for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added), as provided under §2-2.1. of the Trustee Manual. "Meaningful" under the DeLanos' plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).

75. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. Increasing the base could require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2))

76. The alternative is obvious: Never mind investigating, not even patently suspicious cases, just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover. Of necessity, such a scheme redounds to the creditors' detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor just to get what was owed them to begin with. Could U.S. Trustees have contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty under the law, which requires them "to investigate the financial affairs of the debtor" and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest"? (para. 52 above)

77. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate the financial affairs of debtors, ever more debtors with ever less deserving cases for relief under the Bankruptcy Code go ahead and file their petitions. What is worse, as people not even with debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed.

78. These dynamics could appear to explain why Mr. Weidman said in open court that he had met with the DeLanos and their lawyer and found their petition to be in good faith and why the DeLanos filed it at all, despite Mr. DeLano being a 15-year loan officer, who carries more than $98,000 in debt on 18 credit cards at the national average of 16% interest rate, unless it is at the more than 23% delinquent rate, and does not even consolidate and refinance his household debt despite some currently available loan rates at historically low levels. Instead, he and his wife take $10,000 out of their pension fund and lend it to their son, who becomes unable to repay it, and the date of the loan is not stated anywhere in the petition. What were they thinking!?

79. Trustee Martini is in a position to find out. Moreover, if she wants to be seen to be a zealous steward of the integrity of the Trustee Program, she must find out. She has been provided herein with enough credible evidence that something is amiss in the Western District of New York to warrant her conduct of an investigation of the WDNY trustees in general and of this case in particular. She can no longer limit herself to 'concurring' with one of her assistants in the target area, but must make her own decision. Whatever Trustee Martini decides to do, she will be held publicly accountable for it.

VIII. Dr. Cordero's requests

80. Therefore, Dr. Cordero requests as follows:

    a) That Trustee Schmitt and Trustee Reiber (or the trustee replacing him):

        1) postpone setting the date for Dr. Cordero to examine the DeLanos until after the necessary financial documents have been sought, obtained and analyzed;

        2) suspend the meeting of creditors adjourned to April 26 until after 1) above and Dr. Cordero has examined the DeLanos;

        3) with respect to each of the 18 credit card issuers listed as creditors by the DeLanos in Schedule F, provide Dr. Cordero with the name, address, and phone number of a contact person with the necessary authority and knowledge to handle a request for documents concerning the pertinent account whose number the DeLanos also listed;

    b) That the DeLanos provide the trustees and Dr. Cordero with copies of:

        1) the monthly statements of the credit cards listed in Schedule F since their date of issuance to date;

        2) the monthly statements of each other card issued to the DeLanos, whether by a bank or any retailer of goods or services, during the covered period;

        3) current credit bureau reports issued by Equifax, Trans Union, and Experian, and copies of any other such report that the DeLanos have received during the covered period;

        4) all the documents supporting the statement that Mr. DeLano made under oath

to Mr. Weidman at the March 8 meeting of creditors to the effect that the DeLanos had incurred most of their credit card debts when Mr. DeLano lost his job in 1989 and had to take a deep pay cut subsequently;

5) each of the DeLanos' annual income during the covered period;

6) all the documents pertaining to the loan to the DeLanos' son;

7) the information requested in a)3), above

c) That Trustee Reiber and Mr. Weidman recuse themselves from this case and ceased having any further contact, whether directly or indirectly and regardless of at whose initiative, with the DeLanos, their son, or their current or future attorneys;

d) That Trustee Reiber:

1) if he remains in charge of this case, whether alone or with Mr. Weidman, perform his duty "to investigate the financial affairs of the [DeLano] debtor" and 'furnish such information as is requested by Dr. Cordero' in a)3) above;

2) take note that Dr. Cordero makes the request in d)1), above:

i. without giving up his request that Trustee Reiber and Mr. Weidman recuse themselves from this case or be disqualified, and hence,

ii. without prejudice to his right to challenge either or both remaining on this case and their performance of any aspect of their work in that capacity, including their desinterestedness and objectivity in such performance;

3) send Dr. Cordero the letter that he told him on Friday, March 12, he was going to send him; that, according to Trustee Schmitt, he told her he had sent Dr. Cordero; and that Trustee Schmitt told Dr. Cordero she would ask him to send or resend;

4) send Dr. Cordero originals of any letters that he, Trustee Reiber, addresses to him and copies of any letters that he sends other parties in interest, and of any notice or documents that he is required to send creditors under Rule 2002(g) FRBkrP, as Dr. Cordero already requested in paragraph 30 of his written objections, which he personally served on Trustee Reiber and Mr. Weidman on March 8;

e) That Mr. Weidman jointly and severally with Trustee Reiber as his principal compensate Dr. Cordero in the amount of $1,500 for having wasted his time, effort, and money on March 8 when Mr. Weidman prevented him from examining the DeLanos at the meeting of creditors although he knew that was the sole purpose of Dr. Cordero traveling from New York City to Rochester; and that this amount be without prejudice to Dr. Cordero's right to compensation from Mr. Weidman and/or Trustee Reiber on other grounds;

f) That Trustee Schmitt:

1) recuse both Trustee Reiber and Mr. Weidman from this case;

2) require that they immediately transfer to her all their files, records, and notes on the case and have no more contacts with the DeLanos, their son, or their current or future attorneys, and have nothing else to do with this case except to be subject to examination on it;

3) appoint a trustee for the DeLano case who is:

   i. unrelated professionally, financially, socially, and in any other compromising way to the DeLanos, their son, their attorneys, Trustee Reiber, and Mr. Weidman;

   ii. unfamiliar with the case; and

   iii. capable of conducting an independent and thorough investigation of the DeLanos' financial affairs, of the DeLanos' relation with Mr. Weidman and Trustee Reiber; and of Mr. Weidman's motives and objectives in conducting the March 8 meeting as he did;

4) require whomever is in charge of the case "to investigate the financial affairs of" the Delano Debtors and make the documents obtained as well as his or her findings and conclusions available to Dr. Cordero; and 'furnish Dr. Cordero with the information requested' in a)3) and b), above;

5) take the initiative in obtaining the DeLanos' financial documents listed in b)1-6), above, and make them available to the trustee and Dr. Cordero;

6) require Mr. Weidman and Trustee Reiber to compensate Dr. Cordero as requested in e), above;

g) That Trustee Martini:

1) rescind the decision to keep Trustee Reiber on the DeLano case and appoint a replacement as described in f)3), above;

2) launch an investigation of the trustees of the Western District of New York, in general, and of this case, in particular, to be guided by the principle *Follow the money!* from the estates and the debtors to wherever it goes and whomever it ends up with, to determine:

   i. whether and, if so, with what consequences for the integrity of the Trustee Program and respect for the law, trustees pursue an income maximizing scheme whereby they take in as many cases as possible with disregard for ascertaining through investigation of the debtors' financial affairs the good faith of their petitions and the fairness of their repayment plans;

   ii. if so, why trustees are allowed to give priority to the pursuit of their economic interests instead of being required to perform their duty to "investigate the financial affairs of the debtor" and "furnish such information concerning the estate and the estate's administration as is

requested by a party in interest";

3) notify the appropriate United States attorney as provided under 28 U.S.C. §586(a)(3)(F), of the matters described in this memorandum in general and in g)2)i2)ii., above, in particular, so that such United States attorney may conduct his or her own investigation and contribute to ensuring the total independence of action and judgment of any officer called upon to replace Trustee Reiber.

81. Dr. Cordero intends to find the answers to those queries. His track record for more than two years now in defending his rights in and outside court shows that he has the necessary staying power to attain that objective. Bit by bit a picture of what is going on in Rochester and else-where is being puzzled together. Eventually that picture will become explicit enough to shock the sense of fair play and legality of public officers in high positions and private personalities that shape public opinion. They will bring their power and pressure to bear down on anybody that has engaged in wrongdoing, in covering it up, and in injuring a person who initially just wanted to find his property in storage. When that breakthrough comes to happen, that person, Dr. Cordero, will hold liable each and every individual and institution that have trampled on his rights and caused him such an enormous waste of effort, time, and money and inflicted on him such a tremendous amount of emotional distress to the point of effectively disrupting his life. When that day comes, will you be seen in the picture or indicting it from the outside?

March 30, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
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George M. Reiber, Esq.
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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

April 13, 2004

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

Re: *Judicial Conduct Complaint*, 04-8510

Dear Mr. Cordero:

Your motion for declaratory judgment is being returned to you, unfiled. The judicial conduct complaint procedure does not allow motion practice.

Because you have already directed your motion for declaratory judgment to Ms. Karen Greve Milton, Secretary of the Judicial Council, in compliance with Ms. Milton's letter to you dated March 30, 2004; and because it would be inappropriate for the Chief Judge to "launch an investigation" (he is named in your complaints), I am returning your eight (8) bound volumes to you.

Sincerely,

Roseann B. MacKechnie, Clerk of Court

Enclosures

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.

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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 manner 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 constitutes 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 my 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 exam-

ined 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, 200

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Blank

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

April 19, 2004

Ms. Karen Greve Milton [tel. (212) 857-8700 fax (212) 857-8680]
Circuit Executive
Second Judicial Circuit of the United States
United States Courthouse
40 Foley Square-Room 2904
New York, NY 10007

Dear Ms. Milton,

Please find herewith a copy of my 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 look forward to hearing from you soon and to the opportunity to discuss this matter with you.

Sincerely,

Dr. Richard Cordero

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

April 27, 2004

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

Re: *Judicial Conduct Complaint*, 04-8510

Dear Mr. Cordero:

I write in response to your "request to Roseann MacKechnie "to review her decision . . ." Your document was received in this office on April 19, 2004. I am returning it to you without any action taken, today, April 27, 2004.

The rejection of your motion for declaratory judgment and unacceptable Statement of Facts was in compliance with the Rules and long established practice in this Court. The Rules governing the judicial conduct procedure (28 U.S.C. § 351) does not allow motion practice. All supplemental documents submitted in regard to judicial complaints will not be accepted. The documents will be returned without benefit of a cover letter. You have not been singled out for disparate treatment. Documents that are not in compliance are returned, unfiled.

We will notify you once a decision has been made concerning your complaints.

Sincerely,

Fernando Galindo
Acting Clerk of Court

Enclosure

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

April 28, 2004

Ms. Roseann MacKechnie
Clerk of Court
Att.: Ms. Patricia Chin-Allen
Deputy Clerk
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Ms. Allen,

Yesterday I called you to ask whether Ms. MacKechnie had received the paper that I addressed to her and filed last April 19, entitled 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. You acknowledged receipt of it, but said that it would be returned to me because §351 does not allow either supplementation or motions. You said that whatever I had to say about it, I should put it in writing. I already did.

The fact is that the Request follows upon Ms. MacKechnie's return to me of my 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. It should be quite obvious that for any clerk to decide whether to submit this paper to the panel of the Court in session creates a conflict of interest. The only way to avoid the conflict is to allow the panel to make that decision.

This is all the more pertinent because the Request argues against the return of the motion. Its content and form are those of a legal brief in which I discuss the legal basis for a complainant to make a motion under §351. As I indicated in the Request and to you yesterday, neither you nor Ms. MacKechnie are authorized to pass judgment on a legal issue. That is the function of the judges. That is why I asked that the Request be submitted to the panel of the court in session for them to decide what §351 allows.

You indicated that Ms. MacKechnie is out of the office because her father is gravely ill, that in her absence you deal with her correspondence in the order in which it was received, and that you are now dealing with that dated April 12. Thus, I ask that you allow Ms. MacKechnie to make a decision on the Request when she is back. The justification for my asking this is that if despite the conflict of interest, a clerk is going to assume the responsibility for deciding whether a clerk has power to decide a question of law in the context of §351, then it should be the Clerk of Court to do so, not a deputy.

This is all the more justified given the fact that yesterday you replied to my question whether you had read the Request by saying that if something is not written in black and white in the Rules, then it cannot be done. From that statement one can reasonably infer that you will not even bother to read that paper before proceeding to send it back to me. Not even a judge would dare show such prejudgment.

Consequently, it is in your interest not to overstep you authority by deciding a legal question, certainly not without even reading the brief discussing it, and not to decide it in lieu of the clerk of court, to whom I am specifically asking you to defer the decision; otherwise, submit it to the panel in session.

Sincerely,

Dr. Richard Cordero

C:510 Dr. Cordero's letter of 4/28/4 to Clerks MacKechnie & Allen re return unfiled of his 4/18 request for review

Dr. Richard Cordero

Ph.D., University of Cambridge, England
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59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

April 29, 2004

Ms. Karen Greve Milton
Circuit Executive
U.S. Second Judicial Circuit [tel. (212) 857-8700 fax (212) 857-8680]
United States Courthouse
40 Foley Square-Room 2904
New York, NY 10007

Re: Judicial misconduct complaints 03-8547 and 04-8510

Dear Ms. Milton,

Last March 30, you wrote to let me know that my letters to members of the Judicial Council concerning my complaint 03-8547 had been forwarded to you. You stated that since it was inappropriate for them to correspond regarding pending litigation, "kindly direct any future questions to me". I reasonably understood that to mean that if I invested my effort, time, and money to direct to you my questions, you intended to do likewise and reply to those questions.

So I wrote to you on April 12 and 19. On the former date, I sent you a package of information, including a memorandum setting forth the financial interests at stake in the matter complained about. I asked whether you would transmit it to the head of the FBI in New York City and set up a meeting with such officer for us to discuss the matter. I stated the rationale for such transmission to be that those financial interests include a flow of money that calls for an investigation guided by the principle *Follow the money!* I explained that conducting it requires forensic accounting, the valuation of estates, and the means to trace assets from debtors to wherever they are placed and whomever they end up with. I indicated that judges are not qualified to undertake such investigation, but the FBI is. However, I did not receive any answer from you to my question. Nor did I receive any answer to my question whether in the alternative you would cause the Council to launch an investigation to determine the following:

> Whether Clerk of Court Roseann B. MacKechnie, Deputy Clerk Patricia Chin Allen, and other administrative and judicial officers of the Court of Appeals for the Second Circuit:
>
> 1. through the way they handled Dr. Cordero's judicial misconduct complaints of March 2004, about the Hon. John M. Walker, Chief Judge (docket no. 04-8510) and of August 11, 2003, about the Hon. John C. Ninfo, II, (docket no. 03-8547), caused and, given the foreseeability of the consequences of their actions, intended to cause,
>
>   a) a delay in Dr. Cordero's submission of those complaints to dissuade him from resubmitting them and thereby hindered the exercise of his right under 11 U.S.C. §351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers to complain about those judicial officers;
>
>   b) the waste of Dr. Cordero's time, effort, and money, and the infliction on him of emotional distress.
>
> 2. have disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero as to have engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

3. have entered into a wrongful coordination of their acts with officers in the Bankruptcy and Districts Courts in Rochester in order to wear down and dissuade Dr. Cordero from pursuing his judicial misconduct complaints as well as the adversary proceeding and appeal and thereby afford themselves and their superiors protection from legal liability to him and from prosecution.

I never received an answer to that question either. Instead, although my April 12 letter to you was labeled Confidential on the cardboard envelope that contained it and on its first page, and bore the header "CONFIDENTIAL letter of Dr. Richard Cordero to Circuit Executive Karen Milton" on each subsequent page, a few days later I received a letter from Court of Clerk Roseann MacKechnie making reference to it. Yet, I had specifically asked "that you restrict the circulation of this letter to people that are not in a position to retaliate against me" and explained the evidence that made the fear underlying that request a reasonable one.

Whether Ms. MacKechnie wanted thereby to let me know that there had been a breach of confidentiality and on whose side you are, remains to be determined. But the fact is that while she heard from you, I did not. Actually, she heard from you in terms reassuring enough to return to me unfiled my 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. I had sent you a copy of it.

As a result of Ms. MacKechnie's return of my motion, which denies me access to the judges that could review my complaint about her and her subordinates' conduct, I had to write a 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.

With my letter of April 19, I sent you a copy of that Request. If you have read it, you will have noticed that the Request is a legal brief presenting the basis for admitting motions under §351. Although that brief raises a legal issue for the judges to decide, it too was returned to me unfiled in spite of my objections to Ms MacKechnie and Ms. Allen thus preventing me once more from accessing the judges. Those objections are set forth in my letter to them of April 28, of which I enclose a copy. Nor you have answered my question in my April 19 letter either, namely, whether you will meet with me to discuss this matter. Indeed, you have not answered my questions, not only despite your having asked me to send them to you, but also despite my having pointed out that both §351 and the Circuit's Governing Rules require "prompt" and "expeditious" action on matters thereunder.

Consequently, I ask you whether you asked me to send you my questions –at the expense of my effort, time, and money as well as my reasonable expectations- so that you would know what I was planning to do and disclose it to and reassure others or whether you asked me to do so in good faith because you intended to move this matter forward and, if so, how. If you intend to answer, please do so by May 10.

Sincerely,

Dr. Richard Cordero

cc: Letter to Clerks MacKechnie & Allen of 4/28/04

SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE-ROOM 2904
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE

JOHN M. WALKER, JR.
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

May 14, 2004

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

Re: Judicial Conduct Complaint, #03-8547 and 04-8510

Dear Dr. Cordero:

I am writing in response to your letter of April 29, 2004. Although I understand your concerns, I can assure you that the Clerk of the Court, Ms. MacKechnie, has acted in a manner that is consistent with the rules governing judicial conduct matters, 28 U.S.C. §351. In reference to the Motion for Declaratory Judgment in #04-8510, those same rules do not allow motion practice with regard to judicial conduct complaints. I have reviewed both files and am certain that the complaints were forwarded to the appropriate judicial officers for ruling.

Furthermore, I must inform you that I do not have the jurisdiction to refer matters to the Federal Bureau of Investigation for review. Therefore, I am unable to assist you in that regard.

I trust you find this information helpful.

Very truly yours,

Karen Greve Milton

KGM/jdk

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

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: Declaratory judgment that the legal grounds for updating opening and reply appeal briefs and for 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, enable the Court to 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:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

MOTION FOR DECLARATORY JUDGMENT
that the legal grounds for updating opening and reply appeal briefs and for 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.

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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 show-ing 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:

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

2) 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

3) 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

59 Crescent Street
Brooklyn, NY 11208

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

Blank

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

June 19, 2004

Hon. John M. Walker, Jr.
Chief Judge, U.S. Court of Appeals, Cir. 2
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Chief Judge,

Last Wednesday, June 16, I went to the Take-in Room 1803 of the Court and requested of the head of that Room, Ms. Harris, to see the judicial misconduct orders and supporting memoranda. Ms. Harris did not know what I was talking about so I showed her the printed set of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers and drew her attention to Rule 17(a) and (b). After searching for them, Ms. Harris could not produce them. Those orders have not been made available to me yet although they are supposed to be made publicly available by this Court.

Indeed, on that occasion Ms. Harris told me that she would have to find out when I could see them and would call me the following morning to let me know. At that time I wrote down my name, phone number, and Rules that I was invoking. I pointed out to Ms. Harris that I also wanted to find out whether I could get access to the reports provided for under Rule 4(g). Ms. Harris failed to call me on Thursday morning and when I called her in the afternoon she still had not asked. She told me that she would ask and call me within the hour to let me know. She failed to do so too. When I called her again she said that she had been told that the orders had to be examined to determine whether they complied with the requirement concerning the disclosure of the name of the complainant and the complained-about judge. I told her that her statement was wrong since the determination of whether to disclose those names is made before the orders are requested by a member of the public, not upon his request; otherwise, the orders are not in fact been made publicly available, as required. Ms. Harris would not give me the name of the person who gave her that statement, but transferred me to Mr. Fernando Galindo.

Mr. Galindo said that he would find out what orders could be made available to me and call me the next morning. I brought to his attention that I am working to a filing deadline imposed by this Court and need to have access to those orders without further delay. Yet, Mr. Galindo failed to call me on Friday morning. When I called him in the afternoon, he said that he had talked to his Clerk of Court and had been told that the orders had to be submitted to you to determine which complied with the name disclosure requirement and could be made available to me. For the reasons that I had already explained to him on Thursday, I told Mr. Galindo that his statement was wrong, that the Court was not in compliance with its own Governing Rules, and was making me waste time that I need to prepare to meet the deadline.

Therefore, I respectfully request that:

1. pursuant to Rule 17(a), the "the docket-sheet record of the orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council" be made available to me;
2. it be determined whether I can obtain access to the reports under Rule 4(g); and
3. the deadline of July 9, for me to file a petition for review of the Order, filed June 8, 2004, dismissing my judicial conduct complaint, docket no. 03-8547, be extended by the same number of days from June 16 to the day of your mailing your reply, plus an additional three days, cf. FRAP 26(c).

Sincerely, Dr. Richard Cordero

C:530 Dr. Cordero's letter of 6/19/4 to CJ Walker re CA2's noncompliance with duty to make conduct orders available

referred to in documents made public pursuant to rule 17.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) General Rule. A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee or of it is disposed of by council order dismissing the complaint for reasons other than mootness, or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge or magistrate judge complained about without such judge's consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate judge will be disclosed.

(4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate judge is to be disclosed.

(5) The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) **Manner of Making Public.** The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at the United States Courthouse, Foley Square, New York, New York 10007. The clerk will send copies of the publicly available materials to the Administrative Office of the United States Courts, Office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) **Decisions of Judicial Conference Standing Committee.** To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.

(d) **Special Rule for Decisions of Judicial Council.** When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) **Complaints Referred to the Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18. DISQUALIFICATION

(a) **Complainant.** If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. If the complaint is filed by a judge, or identified by the chief judge pursuant to 28 U.S.C. § 351(a), that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

Dr. Richard Cordero

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

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June 30, 2004

Hon. John M. Walker, Jr.
Chief Judge of the U.S. Court of Appeals, Cir. 2
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Chief Judge,

Since June 16, I have requested that the judicial misconduct orders and related material that are required to be made publicly available under Rule 17(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers be made available to me. I even put in writing my request to you in my letter of June 19, 2004, a copy of which is attached hereto. Therein I brought to your attention, among other things, that my judicial conduct complaint, docket no. 03-8547, was dismissed by an Order, filed June 8, 2004, and that the deadline for me to file a petition for review is July 9. I have not yet received your answer to my letter. Thus, since sending that letter and for the purpose of finding out whether your answer had been sent and, if not, when it would be, I placed calls that went unanswered to Chief Deputy of the Clerk of Court Fernando Galindo, to whom my initial request was transferred from the In-take Room 1803 where the orders and related materials should have been publicly available.

Finally, on June 29, Mr. Galindo called me to let me know that the orders would be available to me on June 30. During the conversation and in response to my questions elicited by the implications of Mr. Galindo's statements, it came out that the orders are not being made available, except for the marginal fraction of those issued in the current and previous two years out of those that have been issued since the enactment of the Judicial Conduct and Disability Act of 1980. When I inquired about where I could consult the others, Mr. Galindo let me know, for the first time too, that I would have to request in writing that they be retrieved from storage and to that end, pay a fee of $35. Actually, when I went to the In-take Room of the Court on June 30 and inquired about retrieving the stored bulk of those orders, the Head of that Room, Mrs. Harris, let me know that it would cost $45 to retrieve them and it would take at least 10 days. But my deadline is July 9! So I asked to speak with Chief Deputy Galindo.

Through the Chief Deputy's explanation of why it would take so long to obtain access to those orders, it came out that the "publicly available" orders are not stored in the Court's building, they are not stored in any annex to the building, they are not stored in any building in the City of New York, they are not even stored in the State of New York, for they are stored in the state of Missouri, in the National Archives! This is a clear violation of Rule 17(b), which provides thus:

> Rule 17(b) The records referred to in paragraph (a) will be made public by placing them in a **publicly accessible file** in the office of the clerk of the court of appeals at the **United States Courthouse, Foley Square, New York, New York 10007**. The clerk will send copies of the publicly available materials to the **Administrative Office of the United States Courts, office of the General Counsel, Thurgood Marshall Federal Judiciary**

> **Building, One Columbus Circle, N.E. Washington, DC 20544**, where such materials will also be *available for public inspection.* In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published. (emphasis added)

The specificity of those addresses as the places where those records will be maintained in a file and the clearly stated purpose for keeping them there raise the reasonable expectation that if a person goes to either of those addresses and asks to consult those records, they will then and there "be available for public inspection"…not pursuant to a written request, after payment of a $45 fee, and at least 10 days later or whenever it is that they arrive from Missouri. The unambiguous language used in Rule 17(b) shows that the Judicial Council intended for those records to be kept on site and available upon demand as materials of current interest. That language is incompatible with considering such records as only of historical value to be preserved in an archive. It must be reasonably presumed that the Judicial Council was aware that our legal system is based on precedent and that those records would be used, among other purposes, to prepare petitions for review that comply with its own requirements in Rule 6(a), where the Council provided that:

> A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

Chief Deputy Galindo tried to explain the archiving of the orders in Missouri by saying that there is no space in the Court's building to keep them there. To begin with, the Rules of the Judicial Council establish a procedural right for the benefit of the public. The Court cannot abridge that right on the by comparison irrelevant administrative consideration of space. This is particularly so given that those records are not publicly available elsewhere, as opinions are available by subscription to a reporter, and at the public libraries, and through internet access to WestLaw or Lexis.

But even the Chief Deputy's explanation is factually untenable. Indeed, the marginal fraction of orders made available are kept in three 2" round ring binders. As shown in the attached copy of the OfficeDepot catalog page that deals with binders, such binders can hold 375 pages. What is more, the same 2" binder with locking rings can hold 540. Yet, the Court uses the round ring binders that have the smallest sheet capacity of the four types available on the market. Worse yet, the Court does not use any of those binder to its full capacity, for the criterion that it uses is rather the year in which the record was made. Not only is that an equally irrelevant storage criterion in light of the intended purpose of making the records publicly available, but it is also an administratively wasteful criterion. As a result, each of those three binders for the years 2002, 2003, and 2004, respectively, was more than three quarters empty. Bottom line is: the Court has not made the reasonable effort, even in application of its irrelevant excuse of lack of space, to use to the fullest the space that it has arbitrarily set aside to "comply", or more factually to avoid complying, with the legal requirement that it made those records publicly available.

But not even the irrelevant criterion of limited filing space can justify why the Court does not make available "A docket-sheet record of orders of…".Chief Deputy Galindo admitted that he could not produce such record. Again, given that there is no digest of such orders, such as the digests prepared for the published opinions and which are invaluable for engaging in legal research, the docket-sheet record is a necessary, if sorely poor, legal research tool.

Likewise, in what I have thus far being able to consult, I have not found any of the "dissenting opinions or separate statements by members of the judicial council", which under Rule 17(a) are to be made publicly available. It is very suspect that judges in three-member panels who regularly write dissenting opinions, when they get together in the larger body of the Judicial Council they write no dissenting opinions or separate statements. By the same token, the nine-member Supreme Court should write no dissenting opinions.

In brief, I am discovering information about the Court's violation of Rule 17 piecemeal and only because I have kept asking questions. The word violation is used advisedly, for the law recognizes that a man intends the reasonable consequences of his acts. The consequences of the Court's handling of those orders are that they are not made publicly available and dissuade any person from requesting and consulting them.

I also asked Chief Deputy Galindo whether I would be allowed to bring in a portable photocopier, plug it in, and copy the orders. He said that first I would have to find out whether the Marshals would allow me to bring it in and if they did, he would find out from you. I found out that the Marshals will allow me to bring a portable photocopier into the building if they receive an authorization from you.

Therefore, I respectfully request that:

1. the Court recognize that it has denied public access to the records that it is required to make publicly available under Rule 17;
2. it has made me waste two weeks waiting for such access although it knows that it has not made the records publicly available;
3. it bring at its own expense such orders to the Courthouse on Foley Square and make them publicly available there upon demand and at no charge;
4. make available the docket-sheet record;
5. extend the deadline for me to file my petition for review by two weeks and the additional three days provided under FRAP 26(c) if notice is given to me by letter;
6. it authorize the Marshals to allow me to bring in a portable photocopier;
7. allow me to plug in such photocopier in the review room opposite the counter in the In-take Room 1803 or another room similarly accessible and suitable for the intended purpose;
8. provide an answer before I have done the necessary research and writing to comply with the deadline of July 9;
9. disclose all other bits and pieces of information about its handling of such records so that I am not subject anymore to any more unfair and very upsetting surprises.

Sincerely,

Dr. Richard Cordero

BINDER SOLUTIONS

HOW TO CHOOSE THE RIGHT BINDER

D-Ring	Holds 25% more than round ring binders; easy page turning.
Locking	Designed to prevent rings from gapping for unmatched document security.
View	Allows for customizable covers and spines—Ideal for presentations.
Non-Stick	Special clear material prevents ink toner transfer. Keeps your view binders clean.

Locking Rings

Locking rings eliminate gapping— documents won't fall off binder rings, even with frequent use, or when traveling. Look for these symbols on the following pages.

binder size	sheet capacity			
		locking		locking
½"	100	—	125	—
1"	175	175	220	275
1-½"	280	280	350	400
2"	375	375	480	540
3"	480	480	600	670
4"	—	—	700	780
5"	—	—	950	1050

HOW DO YOU USE YOUR BINDER?

Presentation

Recommended Binders	Page	D-Ring	Locking	View	Non-Stick
All-in-One View-Tab™	132			X	
Flexi-View Presentation	132			X	
Flexi-View Stand and Stack	132			X	
Print Won't Stick	134	X	X	X	X
Slant-D Spinevue™	136	X	X	X	
Flexible Presentation	132			X	
DublLock™	135	X	X	X	
Easy Open Clearvue™	134	X	X	X	
Xtralife™ Clearvue	135	X	X	X	

Binder Description	Page	D-Ring	Locking	View	Non-Stick
DublLock™ Heavy Duty	135	X	X	X	
Framed View	136	X	X	X	
Design Edge	138		X	X	
Easy Open Clearvue™ Round Ring	138		X	X	
Nonglare DublLock™	138		X	X	
See-Thru	139			X	
Clearthru Presentation	140			X	
Easel Binders	149				

Organization

Recommended Binders	Page	D-Ring	Locking	View	Non-Stick
Active Use	133				
Impact	133				
DublLock™	135	X	X	X	
Xtralife™ Clearvue	135	X	X	X	
DublLock™ Heavy Duty	135	X	X	X	
Duratech	133				
Translucent Poly	133				
Accohide Poly	133				
Easy Open Clearvue	134	X	X	X	
Print Won't Stick	134	X	X	X	
Extended Cover	137	X		X	

Binder Description	Page	D-Ring	Locking	View	Non-Stick
Easy Open Clearvue™ Round Ring	138		X	X	
Nonglare DublLock™	138		X	X	X
Standard Round Ring	139			X	
A4 European 4-Ring	140			X	
DublLock™ Vinyl	142	X	X		
Easy Open Vinyl	146	X	X		
Deluxe Locking Round Ring	144		X		
Heavy Duty Vinyl	145		X		
Recycled Vinyl	145		X		
Pro Series View Tab	149				
Specialty & Hanging	147-149				

Storage

Recommended Binders	Page	D-Ring	Locking	View	Non-Stick
DublLock™	135	X	X	X	
Easy Open Clearvue™	134	X	X	X	
DublLock™ Heavy Duty	135	X	X	X	
Xtralife™ Clearvue	135	X	X	X	
Sturdy Storage	141	X	X		
Print Won't Stick	134	X	X	X	
Nonglare DublLock™	138		X	X	

Binder Description	Page	D-Ring	Locking	View	Non-Stick
View Case	142			X	
Project Case	142				
DublLock™ Vinyl	142	X	X		
Easy Open Vinyl	146	X	X		
Deluxe Vinyl	144		X		
Heavy Duty Vinyl	145		X		
Recycled Vinyl	145		X		

Look for binders beginning on page 132.

CALL 1-800-GO-DEPOT CLICK www.officedepot.com ...OR JUST COME BY!

C:536 Dr. Cordero's letter to CJ Walker of 6/30/4: OfficeDepot catalog page on binders & number of pages they can hold

Dr. Richard Cordero

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July 1, 2004

Mr. Fernando Galindo
Chief Deputy of the Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

As agreed, I went today to the In-take Room 1803 and filed a second letter to Chief Judge Walker concerning both the new obstacles to my accessing all the "publicly available" judicial misconduct orders and my unanswered June 19 letter requesting them. Thanks to you, there was no problem. I guess you must have talked to Mrs. Harris, the head of that Room. When she saw me, she came over and took charge of my filing; she also date-stamped my copy of that second letter. I asked her to let you know that I had brought it, as yesterday you had requested that I put also those concerns in writing to the Chief Judge and I stated to you that I would.

Then, as if enough obstacles to my accessing those orders had not been raised despite the impending date of July 9 for filing my petition of review to the Judicial Council of the dismissal of my misconduct complaint, the following happened. Mrs. Harris asked me whether I was done with the available misconduct orders. I said no and that I wanted to check out the 2003 binder. She told me to fill out a card and give her my I.D. card. It was about quarter past noon when I went with the binder through the entrance of the doorless glass panel, which is parallel to and across from the In-take counter, to the adjoining reading room, where I sat at a table and began to read and take notes. Sometime later a male clerk came in and asked me whether I was waiting for somebody or something similar. I said no. He also told me that there was no sleeping in the room. I realized that I must have been nodding. He went out of the reading room and back to the clerk's room behind the counter. I went on reading and taking notes for several hours.

Then somebody called me. I looked to my right and it was Mrs. Harris standing by the other reading table next to mine. She said that I was sleeping and that there was no sleeping in the reading room. I told here that I had not gone there to sleep, but rather that I must have fallen asleep. She replied that I had already been warned and that if I fell asleep again, she would call the marshals. I said nothing and she left. I went on reading and taking notes…in shock!

Mrs. Harris would call the marshals on me because I was nodding in the reading room, thereby treating me as if I were a homeless bum that had gone there just looking for a place where to sleep, though I was reading documents that I had checked out through her! What a disproportionate, heavyhanded, and embarrassing public exercise of raw power! Because I was nodding, she would have the marshals escort me out of the reading room and thus, of the courthouse, for it is reasonable to assume that she would not call them to ask that they bring me a cup of coffee or take me down to their room in the lobby to share their coffee with me. What a humiliating experience that would have been! Would the Chief Judge stop listening to and asking questions during a court session to tell a person who he knew was there waiting to deliver oral argument, and thus, engaged in bona fide business of the court, that he would call the marshals on him because he was nodding?

I was nodding shortly after noon due to, among other understandable reasons, mental fatigue. Indeed, I was trying to concentrate on reading and analyzing the orders despite the many distractions in the reading room, which, by contrast, Mrs. Harris, or the other clerks for that matter, could not escape noticing and yet tolerated, as they do routinely. To begin with, a corner office of the In-take Room shares one side with the reading room, from which it is divided by a wood panel that, like the glass panel to which it is perpendicular, does not reach the ceiling. Just as on many previous occasions on which I have been there, a radio was turned on to popular rock music and could distinctly be heard across and over the panel some ten feet away at the table at which I was reading. Ask yourself what is more offensive: that the clerks keep a radio on in an office where clerks of a court of appeals must carefully pay attention to their processing of documents that affect directly and substantially the life, liberty, and property of members of the public or that a member of the public nods while reading those documents?

Likewise, in the clerks' room the clerks were talking business among themselves and with people that came in to file or check out documents and they also bantered among themselves. A female clerk that sits by a window and right outside Mrs. Harris' cubicle was talking particularly loud and frequently. The clerks' talk and banter could on that occasion, as it can normally, be clearly heard across and over the glass panel, which has no door closing off the reading from the clerks' room. What would be a more justifiable housekeeping measure:

1. for Mrs. Harris to instruct her clerks to keep their voices down and limit their banter so that they can concentrate on their important work and not distract readers, or
2. to instruct a clerk or the clerks to keep an eye looking across the glass panel to see if a reader nods, stop what they are doing to go there and tell him not to nod, and keep an eye to see whether he commits nodding again so that they can stop what they are doing and report it to Mrs. Harris, for her to stop what she is doing and go from her cubicle to the reading room to tell the reader that he has already been warned against nodding and next time he nods she will call the marshals, for them to stop their work of protecting federal employees and the public in the building by mainly operating the metal detectors to prevent criminals, particularly terrorists, from bringing in weapons, such as bombs or detonating devices in cellular phones or portable photocopiers, and come up to the 18th floor to take custody of a reader threatening everybody in the reading and clerks' rooms with nodding?

Your turn. Would you, Mr. Galindo, or Clerk of Court MacKechnie or Chief Judge Walker want to stand up and defend before the jury Mrs. Harris's personnel and resource management and public relations skills as well as her priorities and discretion in exercising power? If not, let me bring to your attention other sources of noise that I was trying to shut off my mind while trying to concentrate on the reading and that contributed to the mental fatigue that made me nod.

To my right were people dropping coins into, and operating, the two console photocopiers some eight feet away from me. Right above me was a noisy utility pipe, which conducts perhaps the air of the roaring air conditioner by the windows; that pipe can be seen because a 2 sq. ft. tile of the covering ceiling is missing. To my left was a young woman some four feet from me by the window keyboarding on a beeping pager.

That she was able to bring it in past the marshals may point to her being an employee. A young man walked in and sat next to her by the row of computers through which other people could access court documents. They began to chat about what they had eaten with their friends

and their next activities, just as loudly as if they were in their living room, not a reading room. I turned around and looked at the young man several times, but he did not get the hint. So I went to the counter and told the male clerk that had first warned me against nodding that this couple was talking loudly and that "It is very distracting." Yet, neither he nor Mrs. Harris came into the reading room to ask them to stop their banter, let alone call the marshals on the young woman to confiscate her pager and interrogate her on how she had gotten it into the building past security.

Could Mrs. Harris' nonsensical and discriminatory treatment of people in the reading room be explained by the fact that the day before I had pointed out to her that her statement about the archiving of misconduct orders was not in harmony with Rule 17 of the Rules Governing Misconduct Orders and she rebuked me in public for trying to tell her what the Rules were? When you and I talked subsequently, you admitted that neither you nor the clerks were familiar with those Rules and I brought to your attention Mrs. Harris' all the more unjustified rebuke. You said that you would talk to her about it. Was she retaliating against me? To that end, was she inventing a prohibition on nodding, which is not posted anywhere in the reading room? Note that, by contrast, at least 5 types of notices, including one on "No eating or drinking in this area", are posted, some in several copies, throughout the room, thus revealing the relative unimportance of nodding.

I cannot control nodding, specially in such a noisy environment, just as neither you, nor Mrs. MacKechnie, nor Chief Judge Walker can give any assurance that none of you will nod, be it while reading, watching TV, or even doing something as dangerous as driving a car, for nodding is an involuntary physiological state. But I can deliberately not go to that reading room to avoid exposing myself to the humiliating experience and grave consequences of having the marshals lead me away upon Mrs. Harris charging me with the crime of nodding while reading.

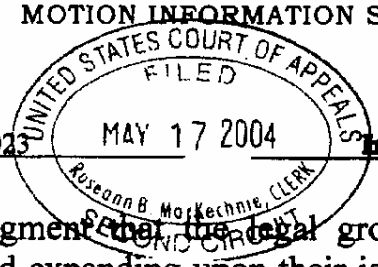
Therefore, for my protection and the Court's from the poor judgment and excesses of its agents while performing by its appointment and under color of apparent authority, I respectfully request that you give me assurances:

1. that if I go to the reading room to read court documents and it happens that I nod, neither Mrs. Harris nor any other clerk will disturb me, let alone call the marshals on me;
2. that neither Mrs. Harris nor them will rebuke me for any reasonable conduct on my part, such as pointing to a Court rule as support for a procedural right that I invoke;
3. that on the contrary, Mrs. Harris and the other clerks will treat me with the professionalism and courtesy that anybody that goes to that room, including a prudent and polite person like myself, is entitled to, particularly from public servants employed by an institution headed by officers whose function it is precisely to judge people by the standard of the conduct of a reasonable person;
4. that you take notice of the positive aspects of my comments about noise in the reading room and will consider the possibility of taking appropriate remedial action; and
5. I also request that your assurances, though expected to be given timely generally, be given taking particular account of the timeliness required by the Court-imposed deadline of July 9 for me to research, write, print, and file my petition for review.

Sincerely,

Dr. Richard Cordero

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

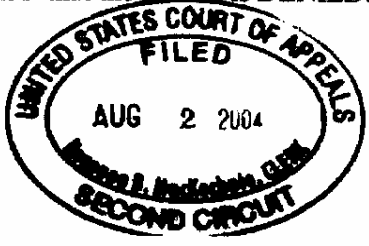
Date: May 15, 2004

ORDER

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

IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004
Date



FOR THE COURT:
Roseann B. MacKechnie, Clerk
by
Arthur M. Heller
Motions Staff Attorney.

C:540 CA2's denial of 8/2/4 of Dr. Cordero's motion for declaratory judgment on updatability of §351 complaints

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July 8, 2004

Ms. Roseann B. MacKechnie
Clerk of Court of U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Ms. MacKechnie,

I hereby petition the Judicial Council for review of the Chief Judge's order of June 8, 2004, dismissing my judicial misconduct complaint, docket no. 03-8547 (hereinafter the Complaint).

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I. The Chief Judge violated his obligation with respect to this complaint in several substantive aspects so as to warrant the appointment by the Judicial Council of a special committee

A. The Chief Judge violated his obligation to act promptly and expeditiously

1. The obligation to handle judicial misconduct complaints "promptly" and "expeditiously" permeates the provisions adopted by Congress at 28 U.S.C. §351 et seq. and those adopted

thereunder by this Judicial Council in its Rules Governing Complaints Against Judicial Officers (collectively hereinafter the Complaint Provisions). To begin with, one of the grounds for the complaint is that "a judge has engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts"; §351(a), (emphasis added); cf. Preface to the Rules.

2. That obligation was violated by the Chief Judge, the Hon. John M. Walker, Jr., before he even received the Complaint. Indeed, he set up or allowed the continued operation of a procedure that bottlenecks all complaints through one single clerk; (page 3, infra). This has the reasonable consequence –from which intention can be inferred- of making the clerk, who may be on vacation, sick, or too busy, liable to fail to comply with the obligation under §351(c) that "…the clerk shall promptly transmit the complaint to the chief judge"; cf. Rule 3(a)(1). In fact, the clerk failed so to comply not only in this precise instance, but also in the subsequent complaint of March 19, 2004, about the Chief Judge himself, docket no. 04-8510; (22, infra).

3. Once the complaint is transmitted, even its thorough, conscientious review has to be expeditious. This obligation is laid on the chief judge by Congress, which provided thus:

> **§352(a) Expeditious review; limited inquiry**.-The chief judge shall expeditiously review any complaint received under section 351(a)…

4. A complaint can be reviewed "expeditiously" because the law specifically provides that:

> §352(a)…The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute. (cf. Rule 4(b))

5. The Complaint was filed on August 11, 2003. No special committee was appointed. Moreover, there are facts from which it can reasonably be deduced that as of March 8, 2004, the Chief Judge had not even contacted the complained-about judge, the Hon. John C. Ninfo, II, Bankruptcy Judge in Rochester, WBNY; (22-24, infra). This deduction finds support in the fact that the dismissal order is predicated only on the content of the Complaint itself and in nothing other than "A review of the docket sheet in this case", such as the one accompanying the Complaint and, thus, readily available. The fact that the Chief Judge refused even to take possession of a letter of February 2, inquiring about the status of the Complaint, (76, infra), also allows the explanation that he had made no inquiries even six months after submission and, consequently, had nothing to reply and no better way to avoid admitting to it than to send the letter back immediately on February 4, 2004, (78, infra).

6. The Complaint was dismissed on June 8, 2004, in three double-spaced pages and three lines. This means that to perform the "**Expeditious review**" that §352(a) requires of the chief judge, Chief Judge Walker unreasonably took **10 months!** It cannot reasonably be pretended that such a no-inquiry, quick-job, pro-forma dismissal required 10 months.

7. Consequently, Chief Judge Walker's violation of his promptness obligation casts doubt on his commitment to complying with his other obligations under the Complaint Provisions, such as those laying out the criteria applicable to dismiss or to appoint a special committee.

B. The Chief Judge violated his obligation to dispose of the Complaint and write a reasoned order himself

8. The fact is that Chief Judge Walker did not comply with his obligation under the Com-plaint Provisions to dispose of the complaint by deciding for one of the only options for action available to him. It was the Hon. Dennis Jacobs, Circuit Judge, who did so. The importance of

this fact lies, on the one hand, in his lack of legal authority to delegate an obligation that the Complaint Provisions unambiguously impose on the chief judge and, on the other hand, the Chief Judge's motive for not complying given the benefit that he derives therefrom.

1. Chief Judge Walker lacked authority to delegate his disposition obligation

9. Section 351provides that '(a) a complaint is filed with the clerk of the court of appeals, who '(c) promptly transmits it to the chief judge of the circuit.' Only when the chief judge is the one complained about, is the clerk required to transmit it to someone else, namely, the next eligible chief judge. Rule 40c)-(f) requires the chief judge to take the subsequent action, as do:

> §352(a)…After expeditiously reviewing a complaint under subsection (a), **the chief judge**, by written order stating **his** or her **reasons**, may-
>
> (1) dismiss the complaint-
>
> (A) if **the chief judge** finds the complaint to be-…
>
> (2) conclude the proceeding if the **chief judge** finds that…
>
> §353. Special committees
>
> (a) Appointment.-If **the chief judge** does not enter an order under section 352(b), **the chief judge** shall promptly-
>
> (1) appoint…a special committee to investigate…(emphasis added)

10. Congress did not provide for the chief judge to designate another person to make a decision and write it down in a reasoned order. By contrast, when Congress did want to authorize the chief judge to proceed by delegation, it clearly provided therefor. So in §352(a) it allowed that "The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge…or any other person who may have knowledge of the matter…".

11. Likewise, Rule 4(b) provides that "In determining what action to take, the chief judge, with such assistance as may be appropriate, may conduct a limited inquiry…". But the Rule makes no provision for the chief judge to receive any other assistance by delegating his disposition obligation. Hence, subsection (c) allows a complaint to be dismissed only "if **the chief judge** concludes" that one of the dismissal criteria is applicable. For its part, subsection (f) lays squarely on the chief judge alone the obligation to take the following step:

> Rule 4(f)(1) If the complaint is dismissed…**the chief judge** will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. (emphasis added)

12. There is no other provision for the chief judge informally, without any order or expla-nation whatsoever, to have somebody else write the chief judge's reasons, let alone for that other person to dispose of the complaint as he or she sees fit and write his or her own reasons. This is a court of law. Procedural events occur according to law or rule. They do no take the place of legally provided events just because the judges feel like it. Brethren they may be, but pals in a fraternity covering for each other they are not.

2. The Chief Judge had a self-serving motive for not complying with his disposition obligation

13. In any activity that depends on trust in some people for the acceptance of their actions by others,

it is not enough to do the right thing, but one must also be seen doing the right thing. It was Judge Jacobs, as "acting chief judge", who dismissed the Complaint and wrote the memorandum. Under what circumstances this occurred is important to know. For one thing, it was Chief Judge Walker who has the legal obligation with no delegating authority to decide its disposition and write his reasons therefor. In addition, his obligation was strengthened by a special circumstance, namely, that a second complaint, one about him, was submitted to Judge Jacob by Dr. Cordero on March 19, 2004, docket no. 04-8510 (22, infra). Hence, who disposed of the Complaint, the one about Judge Ninfo, has serious implications for future decisions and events concerning the complaint about Chief Judge Walker himself.

14. Indeed, if the Chief Judge came under investigation upon the complaint about him, he would be subject to important restrictions, namely:

> §359 Restrictions
>
> (a) **Restriction on individuals who are subject of investigation**.-No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

15. If the Chief Judge were investigated, these restrictions would apply to him for a long time, even years. This is particularly so in light of the Chief Judge's implied interpretation of his statutory and regulatory obligation to act "promptly" and "expeditiously" as allowing him to take ten months just to dismiss the complaint, without even communicating with anybody, let alone appointing a special committee. By the same token, those with the obligation to act "expeditiously" with regard to the complaint about him could take just as long. Among those with such obligations are these:

    a) the special committee, which has the obligation to "expeditiously file a comprehensive written report"; §353(c);

    b) the judicial council, which has the obligation to "take such action as is appropriate to assure the effective and expeditious administration of the business of the courts", §354(a)(1)(C); "shall immediately provide written notice to…the judge" complained about; (a)(4); and "shall promptly certify such determination [e.g. of an impeachable offense by the judge complained about]…to the Judicial Conference"; (b)(2(B); and

    c) the Judicial Conference, which simply acts "as it considers appropriate", §355(a), and that could take years!, for it has no direct obligation to act with promptness other than that flowing indirectly from §354(a)(1)(C).

16. No doubt, if these bodies acted as 'promptly' as Chief Judge Walker did, §359 restrictions could substantially limit him in his official role as chief judge for the remainder of his current term as such. That must safely be assumed to raise the most unwelcome prospect of a constant source of embarrassment, to put it mildly.

17. However, the Chief Judge's problem in avoiding an investigation is that the Complaint about Judge Ninfo and the complaint about him are related. It is reasonable to supposed that if Judge Ninfo were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker

too disregarded for at least 10 months the law imposing on him the promptness obligation, thereby allowing the continuation of 'a prejudice "to the administration of the business of the courts"' so grave as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, equally dismissed without any investigation, would have led a prudent and impartial person to investigate them. Questions like these could spin the investigation out of control quite easily.

18. Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than him, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed too.

19. It so happens that after the obligation to act "promptly" and "expeditiously" was disregarded for 10 months and despite the lack of any delegating authority, that less risky situation has set in through the dismissal by Judge Jacobs of the Complaint. Whether what appears to have happened is what actually happened is a matter to be determined by the Judicial Council through the appointment of a special committee. But that appearance reasonably arises from the totally of circumstances.

20. Moreover, the appearance of a self-serving motive for the action taken is supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Much less can they do so reliably since their loyalties and their short and long term self-interests in the context of office politics will induce or even force them to close ranks against an 'attack' from an outsider. Only independent investigators whose careers cannot be affected one way or another by those investigated or their friendly peers can be expected to conduct a reliable investigation.

C. The Chief Judge violated his obligation to make misconduct orders "publicly available"

21. Rule 17(a) provides that:

> A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made available to the public when final…

22. However, Chief Judge Walker violated this provision too. Thus, Dr. Cordero received the order of dismissal on Saturday, June 12, and went to the Courthouse on June 16, to request Rule 17(a) records. But they were not made available to him. Instead, the matter was referred to Mr. Fernando Galindo, Chief Deputy of the Clerk of Court, who referred it to Clerk of Court Rose-ann MacKechnie, who, according to Mr. Galindo, referred it to Chief Judge Walker. Dr. Cordero wrote a letter to the Chief Judge on June 19 to make him aware that he was invoking his right to access those records; that the Chief Judge had an obligation to make them available; and that time was of the essence because of the deadline of July 9 for submitting this petition for review (28, infra). Yet, the letter was never answered. Dr. Cordero called Mr. Galindo and left messages for him. Only on June 29 did Mr. Galindo call back Dr. Cordero to tell him that the orders would be made available to him the next day, June 30, fully two weeks after his initial request.

23. When on the 30th Dr. Cordero requested those records at the Courthouse In-take Room, imagine his bafflement when he was told for the first time that only the orders of 2002, 2003, and 2004 were available! He asked to speak with Chief Deputy Galindo, who then told him that the orders for all the previous years were in the archive. Where!? In the archive, but neither in the basement of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, no: In the National Archives in Missouri! Moreover, to consult them, Dr. Cordero would have to make a written request, pay $45, and wait at least 10 days for them to arrive. Dr. Cordero asked for at least the docket sheet of those records, but Mr. Galindo told him that there was none. Neither the records nor the truth about them was made available to him timely or completely.

24. Dr. Cordero felt cheated! How would you have felt? If you had written that day, June 30, to the Chief Judge protesting such piecemeal and substantially incomplete disclosure of what you were entitled to and which was made only because you kept insisting, whereby you were made to waste half the time allowed for you to exercise your right to appeal (29, infra), but the letter was never answered, would you trust that the Chief Judge cared about even appearing to comply with his obligations under the Complaint Provisions? Would his non-compliance with his obligation to make those orders available cause you to distrust that he had complied with those Provisions when dismissing your complaint?

25. Consider this. The next day Dr. Cordero checked out a binder of orders from Mrs. Harris, the Head of the In-take Room, and stepped into the adjoining reading room. He sat and read for some time the…'There is no sleeping in the reading room', a clerk told him. It appears that Dr. Cordero was nodding. He went on reading for several hours and taking notes in his…'You are sleeping and there is no sleeping in the reading room'. This time it was Mrs. Harris, the Head In-taker. He told her that he had not gone there to sleep, but rather must have fallen asleep. She replied 'You have already been warned and if you fall asleep again, I will call the marshals.'

26. The marshals!, those security officers in charge of preventing criminals and terrorists from smuggling into the Courthouse guns and bombs to kill and maim federal employees and visitors. Mrs. Harris would call them away from manning the metal detectors in the lobby to catch Dr. Cordero as he threatened everybody in the reading and In-take rooms with nodding! Can you assure yourself, let alone others, that you will not nod again while reading for hours in a noisy room? (33, infra) How would you feel if you, a professional and self-respecting person, were taken away in public by the marshals?

27. Was Mrs. Harris acting on her own initiative or as an agent in a Courthouse where… madhouse, the nurse! The infamous head nurse in "One Flew over the Cuckoos' Nest"! Did she need specific instructions to apply minute rules so insensitively to mentally ill inmates or was she the product of an institution, imitating top managers that had no respect for the obligations of their profession, psychiatry, and disregarded the rights of the inmates -particularly the one faking mental illness- whose requests they repressed with electroshocks to their brains to quash any sense of self-assertion in their minds? Here, in the lawhouse -the law of trickle down unlawfulness (36, infra) and of power unchecked is power abused- the Head In-taker will call in the marshals to straitjacket a reader dangerously nodding everybody around, while Chief Warden electrocutes his obligation to keep misconduct orders publicly available and sends the body of those orders to the padded room of archival preservation in Missouri. How dangerous is that body?

28. Very. The table of the few orders left behind in the Courthouse and read by Dr. Cordero shows (57, infra) that all complaints were dismissed in reasoned orders written by Chief Judge Walker.

For its part, the Judicial Council, without any supporting memoranda, dismissed all the petitions for review. No wonder that body of orders is considered to be so dangerous as to need to be put far away in an archive, for it kicks and screams loud and clear an indictment, not of the complainants for each of them without exception submitting allegedly meritless or "frivolous" complaints, but rather of the judges for dismissing out of hand with no investigation by any special committee all misconduct complaints and review petitions.

29. Such systematic dismissal explains a most extraordinary phenomenon that defies statistical probabilities: While the 2003 Report of the Administrative Office of the U.S. Courts highlights that another record was set with federal appeals filings that grew 6% to 60,847, and civil filings in the U.S. district courts of 252,962, (66, infra), the three consecutive reports of the Judicial Conference for March 2004, and September and March 2003, (60, infra), astonishingly indicate that, as the latter put it:

> The Committee [to Review Circuit Council Conduct and Disability Orders] has not received any petitions for review of judicial council action taken under 28 U.S.C. §354 (section 372(c)(6) since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time. (65; cf. 59, infra)

30. This is incredible! No, no that complainants lose the will to appeal to the Judicial Conference once their complaints have been dismissed by the judicial councils. In a society as litigious as ours that is a cultural impossibility. Rather, what is incredible is that the judicial councils would abuse so blatantly their discretion under §352(c) to deny all petitions for review of chief judges' orders, thereby barring their way to the Judicial Conference; (cf. Rule 8(f)(2)). One can justifiably imagine how each circuit makes it a point of honor not to disavow their respective chief judge and certainly never refer up their dirty laundry to be washed in the Judicial Conference. It is as if the courts of appeals had the power to prevent each and every case from reaching the Supreme Court and abused it systematically. In that event, instead of reporting 8,255 filings in the 2002 Term –an increase of 4% from the 7,924 in the 2001 Term (66, infra)- the Supreme Court would be caused to report 0 filings in a term! Somebody would notice! Sooner or later the Justices too would realize that such appeals system was what the current operation of the judicial misconduct complaints procedure is: a sham!

31. And somebody has noticed: None other than Supreme Court Chief Justice William Rehnquist, who has appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee (67, infra). Congress too has taken notice. The Chairman of the House of Representatives Committee on the Judiciary, F. James Sensenbrenner, Jr., welcomed the appointment of Justice Breyer and recognized the need for the study saying that "Since [the 1980s], however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation." (69, infra)

32. Such perfunctory dismissals have compromised, as Justice Breyer's Committee put it in its news release after its first meeting last June 10, "The public's confidence in the integrity of the judicial branch [which] depends not only upon the Constitution's assurance of judicial independence [but] also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability"; (67, infra). If the Justice and his colleagues put an effective complaint procedure at a par with the judiciary's constitutionally ensured independence, why then have chief judges and judicial councils treated complaints with so much contempt? Are they dispensing protection to each other in their peer system at the

expense of those for whose benefit they took an oath to dispense justice?

II. The dismissal of the Complaint was so "out of hand" that it did not even recognize the two issues presented or how an unbiased understanding of the adduced circumstantial evidence required it to be considered within the scope of the Complaint Provisions and in need of investigation by a special committee

33. Given that the 'out of hand dismissal of complaints without any investigation' has been recognized as a problem that warrants action by officers at the top of the judicial branch, there is little justification for putting any stock on the allegations for dismissing the Complaint. This is all the more so because the Chief Judge has openly and repeatedly violated unambiguous obligations under the Complaint Provisions, including his own circuit's Rules, and has a personal interest in the related complaint about him not being investigated, which would trigger embarrassing and long lasting restrictions on his official role. From him a reasonable person would not expect strict and impartial application of the criteria for handling the Complaint.

34. The same negative expectation is elicited by Judge Jacobs, who dismissed the Complaint 10 months after it was submitted on August 11, 20003, and has disregarded his obligation to han-dle "promptly" and "expeditiously" the complaint of March 19, 2004, about his peer, the Chief Judge; (22, infra). Hence, how could one dignify his "Disposition" by discussing it at length as if he had even attempted to apply legal reasoning to examine the facts presented? Instead, he repeats the sweeping and conclusory statements found in the other dismissals, such as:

    [a] Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts."

    [b] his statements…amount to a challenge to the merits of a decision or a procedural ruling. [This is a particularly inane dismissal cop-out because when complaining about the conduct of judges as such, their misconduct is most likely to be related to and find its way into their decisions. The insightful question to ask is in what way the judge's misconduct biased his judgment and colored his decision.]

    [c] his allegations of bias and prejudice are unsupported and therefore rejected as frivolous. [Brilliantly concise legal definition and careful application to the facts of the lazy catch-all term 'frivolous'!]

    [d] Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…

35. That last statement is much more interesting because it reveals that Judge Jacobs did not even know what the issues presented were, namely (75, infra):

> Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;
>
> 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 the detriment of non-local pro se party Dr. Cordero.

36. Judge Jacobs failed to recognize the abstract notion of motive and how it could lead Judge Ninfo to take decisions that only apparently had anything to do with legal merits. What is less, he did not even detect, let alone refer to, the concrete and expressly used term "pattern". Had he detected it, he could have understood how acts by non-judges, and thus not normally covered by the Complaint Provisions, could form part of unlawful activity coordinated by a judge, which would definitely constitute misconduct, to put it mildly. But he remained at the superficial level of considering each individual act in isolation and dismissing them singly. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart so that they can be looked at collectively?

37. Circumstantial evidence is so indisputably admitted in our legal system that cases built on it can cause a person to lose his property, his freedom, and even his life. Such cases look at the totality of circumstances. The Complaint describes those circumstances as a whole. It is supported by a separate volume of documentary evidence consisting of more than 500 pages –referred to as A-#, which were discussed in greater detail in another separate 54 page memorandum that laid out the facts and showed how they formed a pattern of activity. This memorandum is referred to as E-# in the 5-page Complaint, which is only its summary; (71-75, infra). Just the heft of such evidence and its carefully intertwined presentation would induce an unbiased person –one with no agenda other than to insure the integrity of the courts and to grant a meaningful hearing to the complainant- to entertain the idea that the Complaint might be a thoughtful piece of work with substance to it. Judge Jacobs not only failed to make reference to that material, but he did not even acknowledge its existence. Is it reasonable to assume that he did not waste time browsing it if he only intended to write a quick job, pro-forma dismissal?

38. The totality of circumstances presented in the Complaint is sufficient to raise reasonable suspicion of wrongdoing. There is no requirement that the complainant, who is a private citizen, not a private investigator, build an airtight criminal case ready for submission by the district attorney to the judge for trial. That is the work that a special committee would begin to do upon its appointment by a chief judge or a judicial council concerned by even the appearance of wrongdoing that undermines public confidence in their circuit's judicial sys-tem. Unlike the complainant, such committee can conduct a deeper and more extensive investigation because it has the necessary subpoena power. An even more effective investigation can be mounted in cooperation with the FBI through a simultaneous referral to it. Indeed, the FBI has in addition the required expert manpower and resources to interview and depose large numbers of persons anywhere they may be and cross-relate their statements; engage in forensic accounting and trace bankruptcy debtors' assets from where they were to wherever they may have ended up; and flush out and pursue evidence of official corruption. What motives could Chief Judge Walker and Judge Jacobs have had to fail to take these elementary prudent steps given the stakes?

39. Had they appointed a special committee, it would have found at least the following:

    a) The Chapter 7 trustee referred to Judge Ninfo by Dr. Cordero for a review of his performance and fitness to serve has, according to Pacer[1], *3,383 cases*! No wonder he had no

[1] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

time to find out that Dr. Cordero's property was covered by an income producing contract that was an asset of the estate. Did Judge Ninfo know about this but dismissed Dr. Cordero's claims against the trustee to protect the trustee, who is a regular in his court?

b) What is more, the Chapter 13 trustee has, again according to Pacer, 3,909 *open* cases! He also cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith. So on what basis does he accept petitions and ready them for confirmation of their plans of debt repayment by Judge Ninfo, before whom he regularly appears?

c) A petition for bankruptcy, dated January 26, 2004, was filed by David and Mary Ann DeLano; (82 et seq., infra). Though internally riddled with red flags as to its good faith (79, infra), it was accepted by the trustee without asking for a single external supporting financial document; and was readied for confirmation by the bankruptcy court. This is a test case that will blow up the cover of everything that is wrong in that bankruptcy district.

40. This Complaint too is a test case whether, as expected, this petition is denied by the Judicial Council, and then it goes straight to Justice Breyer's Committee; or the petition is granted and a special committee is belatedly appointed and the good faith and thoroughness of its investigation are checked by comparing its results against those of others underway.

III. Relief Requested

41. Therefore, I, Dr. Cordero, respectfully request of the Judicial Council that:

a) neither Chief Judge Walker appoint himself nor Judge Dennis Jacobs be appointed to the review panel;

b) the review panel refer the petition to the full membership of the Judicial Council;

c) the Judicial Council itself take the "appropriate action" under Rule 5 of appointing a special committee to investigate and that neither Chief Judge Walker nor Judge Jacobs be members of such committee, but its members be experienced investigators unrelated to the Court of Appeals and the WDNY Bankruptcy and District Courts and be capable of conducting an independent, objective, and zealous investigation;

d) the special committee be charged with investigating any and all judges, administrative staff, debtors as well as both private and U.S. trustees in WDNY and NYC to determine:

1) their involvement in the pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts complained about;

2) the relation between misconduct of judicial personnel and a scheme of bankruptcy fraud involving non-judicial personnel; and

3) whether district and circuit judges have engaged in a systematic effort to suppress misconduct complaints and/or have violated Complaint Provisions;

e) this matter be simultaneously referred to the FBI for cooperative investigation; and

f) this Complaint together with this petition and the documentary evidence submitted with each be referred to the Judicial Conference of the United States; (cf. Rule 14(a) and (e)(2).

Sincerely,

Dr. Richard Cordero

Table of Exhibits

accompanying the **petition** of July 8, 2004
to the Judicial Council of the Second Circuit
for **review** of the Chief Judge's **order** of June 8, 2004
dismissing the judicial misconduct **complaint,** docket no. 03-8547
against Judge John C. Ninfo, II, WBNY
by
Dr. Richard Cordero

1. Dr. Richard **Cordero**'s **Motion** of **April 18**, 2004, for Leave to Update the Motion For the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeal for the Second Circuit to **Recuse Himself** from *In re Premier Van et al.*, no. 03-5023, CA2, With Recent Evidence of a **Tolerated Pattern of Disregard** for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal ..... E-1 [C:327]
2. Dr. **Cordero**'s **Statement of Facts** of **March 19**, 2004, Setting forth a **Complaint** under 28 U.S.C. §351 against Chief Judge Walker **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 ..... E-22 [C:271]
3. **Acknowledgment** by Patricia Chin **Allen, Clerk**, of **March 30**, 2004, of Dr. Cordero's judicial misconduct **complaint against Chief Judge** Walker ..... E-27 [C:326]
4. Dr. **Cordero**'s **letter** of **June 19**, 2004, to **Chief Judge** Walker, stating that the judicial misconduct **orders** have **not** been **made** publicly **available**, as required under the Rules Governing Misconduct Complaints, and requesting that they be made available to him for his use before the deadline of July 9 for submitting his petition for review ..... E-28 [C:530]
5. Dr. **Cordero**'s **letter** of **June 30**, 2004, to **Chief Judge** Walker, stating that the Court's **archiving** of all judicial misconduct orders except those for the last three years constitutes **a violation of Rule 17** of the Rules Governing Misconduct Complaints ..... E-29 [C:533]
6. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando Galindo, **Chief Deputy** of the Clerk of Court, **concerning** the warning to him by Mrs. Harris, **Head of the In-take Room**, that **if he nodded** a third time in the reading room while reading misconduct orders, she would **call the marshals on him** ..... E-33 [C:537]

7. 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 ..... E-36 [C:442]

8. Table of Judicial **Misconduct Orders**, made **available** on July 1, 2004, by the **Court of Appeals** for the Second Circuit **two weeks after requested** by Dr. Richard Cordero and read by him; but **docket-sheet record** not available, though required under Rule 17(a); and **dissenting opinions and separate statements** by CA2 Judicial Council members, if written, **not available** ..... E-57 [C:564]

9. Table of All **Memoranda and Orders** of the **Judicial Conference** of the United States Committee to Review Circuit Council Conduct and Disability Orders sent in July 2004 to Dr. Cordero from the General Counsel's Office of the Administrative Office of the U.S. Courts and **showing** how **few** §351 complaints are allowed to **reach the Judicial Conference** as petitions for review of judicial council action ..... E-59 [C:566]

10. **Report** of September 23, 2003, of the Proceedings of the **Judicial Conference** of the United States, and Reports of March and September 2003 and March 2004, of the Judicial Conference's **Committee to Review** Circuit Council Conduct and Disability **Orders** stating that there are **no pending petitions** for review of judicial council action on misconduct orders ..... E-60 [C:567]

11. **Supreme Court** of the United States **2003 Year-end Report** on the Federal Judiciary; www.supremecourtus.gov ..... E-66 [C:573]

12. News release of the **Supreme Court** of **June 10**, 2004, on the Organization-al Meeting of the **Judicial Conduct** and Disability Act Study **Committee chaired by Justice Stephen Breyer;** http://www.supremecourtus.gov/publicinfo/press /pr_04-13-04.html ..... E-67 [C:574]

13. **Statement** of Mr. James Sensenbrenner, Chairman of the **Committee on the Judiciary** of the House of Representatives, of **May 26**, 2004, regarding the new **Commission on Judicial Misconduct;** http://judiciary.house.gov ..... E-69 [C:576]

14. Dr. **Cordero**'s Statement of facts of **August 11**, 2003, in support of a **complaint** under 28 U.S.C. §351 submitted to the Court of Appeals **against** 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 ..... E-71 [C:63]

15. Dr. **Cordero**'s **letter** of **February 2**, 2004, to **Chief Judge** Walker **inquiring** about the status of the complaint against Judge Ninfo **and updating** its supporting evidence ..... E-76 [C:105]

16. Clerk **MacKechnie**'s letter by **Clerk Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made ..... E-78 [C:109]

17. The **DeLano Bankruptcy Petition**, A **test case** that illustrates how a bankruptcy petition riddled with red flags as to its good faith is **accepted without review** by the trustee **and readied for** confirmation by the **bankruptcy court** ..... E-79 [C:578]

18. **Notice** of Chapter 13 Bankruptcy Case re David **DeLano** and Mary Ann DeLano, docket no. 04-20280, **Meeting of Creditors**, Deadlines, dated **January 27**, 2004, and filed on February 6, 2004, in the U.S. Bankruptcy Court, WDNY, with Certificate of Mailing, which contains addresses of creditors and other parties ..... E-82 [C:581]

19. **Petition for Bankruptcy** under 11 U.S.C. Chapter 13, by David **DeLano** and Mary Ann DeLano, dated **January 26**, 2004, with Schedules ..... E-85 [C:585]

20. Chapter 13 **Plan of Debt Repayment** of David and Mary Ann DeLano, dated January 26, 2004 ..... E-116 [C:617]

21. **Useful addresses** for investigating the judicial misconduct and bankruptcy scheme (see also other addresses at 83-84, infra) ..... E-118 [C:619]

Table of Judicial Misconduct Orders

orders made available to Petitioner on July 1, 2004,
by the Court of Appeals, 2nd Cir., to be read in its Reading Room
two weeks after he requested them
to prepare his petition to the Judicial Council for review of the dismissal
of his complaint, no. 03-8547, CA2, against Judge John C. Ninfo, II, WBNY,
but no docket-sheet record was available, though required under
Rule 17(a) of the Rules of the Judicial Council of the Second Circuit
Governing Complaints against Judicial Officers;
and dissenting opinions and separate statements
by Judicial Council members, if written, were not available
(listed in the order in which they were found in the 2003 binder)

by

Dr. Richard Cordero

	Docket no.	**Review Petition** granted/denied by Jud. Council	**Order** of the Jud. Council[1] signed by	**Disposition** of complaint	**Memorandum** if available, signed by	**Special Committee**
1.	03-8552	denied	Cir. Exec. Milton	dismissed		
2.	03-8512	denied	Cir. Exec. Milton	dismissed		
3.	03-8515	denied	Cir. Exec. Milton	dismissed		
4.	03-8517, 03-8518, 03-8521	denied	Cir. Exec. Milton	dismissed		
5.	**02**-8534	denied	Cir. Exec. Milton	dismissed		
6.	**02**-8539	denied	Cir. Exec. Milton	dismissed		
7.	**02**-8580	denied	Cir. Exec. Milton	dismissed		
8.	**02**-8573, **02**-8574	denied	Cir. Exec. Milton	dismissed		
9.	**02**-8550	denied	Cir. Exec. Milton	dismissed		
10.	03-8523	denied	Cir. Exec. Milton	dismissed		
11.	03-8528	denied	Cir. Exec. Milton	dismissed		
12.	03-8522	denied	Cir. Exec. Milton	dismissed		

[1] Upon consideration thereof by the Council it is ORDERED that the petition for review is DENIED for the reasons stated in the order dated____.[signed] Karen Greve Milton, Circuit Executive, by Direction of the Judicial Council

13.	03-8517, 03-8518			dismissed	Chief Jdg. Walker	not appointed
14.	03-8516	denied		dismissed	Chief Jdg. Walker	not appointed
15.	03-8513, 03-8514, 03-8515	denied		dismissed	Chief Jdg. Walker	not appointed
16.	03-8512			dismissed	Chief Jdg. Walker	not appointed
17.	03-8509	denied		dismissed	Chief Jdg. Walker	not appointed
18.	03-8508	denied		dismissed	Chief Jdg. Walker	not appointed
19.	03-8523	denied		dismissed	Chief Jdg. Walker	not appointed
20.	03-8504, 03-8505, 03-8506	denied		dismissed	Chief Jdg. Walker	not appointed
21.	03-8502	denied		dismissed	Chief Jdg. Walker	not appointed[2]
22.	03-8501	denied		dismissed	Chief Jdg. Walker	not appointed[3]
23.	**02**-8575	denied		dismissed	Chief Jdg. Walker	not appointed
24.	**02**-8577, **02**-8578, **02**-8579	denied		dismissed	Chief Jdg. Walker	not appointed
25.	**02**-8580	denied		dismissed	Chief Jdg. Walker	not appointed
26.	**02**-8581	denied		dismissed	Chief Jdg. Walker	not appointed
27.	**02**-8582	denied		dismissed	Chief Jdg. Walker	not appointed
28.	**02**-8562	denied		dismissed	Chief Jdg. Walker	not appointed
29.	**02**-8565	denied		dismissed	Chief Jdg. Walker	not appointed
30.	**02**-8571	denied		dismissed	Chief Jdg. Walker	not appointed
31.	**02**-8570	denied		dismissed	Chief Jdg. Walker	not appointed

[2] Reference in the memorandum to "An independent review of the District Court docket sheet in that case reveals that…".
[3] Reference in the memorandum to "an independent review of the transcript of the pretrial conference".

Table of All Memoranda and Orders
of
The Judicial Conference of the United States
Committee to Review Circuit Council Conduct and Disability Orders
sent in July 2004 to Dr. Cordero from the General Counsel's Office of the Administrative Office of the U.S. Courts and showing how few complaints under 28 U.S.C. §351 et seq. are allowed to reach the Judicial Conference as petitions for review of judicial council action

	In re Complaint of	Docket no.	Status	Circuit Council	
1.	George Arshal	82-372-001	Incomplete after p.3	Court of Claims	
2.	Gail Spilman	82-372-002		6th	
3.	Thomas C. Murphy	82-372-003		2nd	
4.	Andrew Sulner	82-372-004		2nd	
5.			Missing?		
6.	John A. Course	82-372-006		7th	
7.	Avabelle Baskett, et al.	83-372-001		Court of Claims	
8.	of bankruptcy judge	84-372-001		9th	
9.	Fred W. Phelps, Sr. et al. v. Hon. Patrick F. Kelly	87-372-001		10th	
10.	Petition No. 88-372-001	88-372-001		not stated	
11.	Donald Gene Henthorn v. Judge Vela and Magistrate Judges Mallet and Garza	92-372-001		5th	
12.	In re: Complaints of Judicial Misconduct	93-372-001		10th	
13.	In re: Complaints of Judicial Misconduct	94-372-001		D.C. Ct. of Appeals	
14.	In re: Complaints of Judicial Misconduct	95-372-001		9th	
15.	In re: Complaints of Judicial Misconduct or Disability [Dist. Judge John H. McBryde]	98-372-001		5th	
16.	In re: Complaint of Judicial Misconduct	01-372-001	Incomplete after p.3	D.C. Ct. of Appeals	
17.	Agenda E-17, Conduct and Disability; March 2003: no petitions for review pending; Committee "is monitoring the status of Spargo v. NYS Comms. on Judicial Conduct, 244 F.Supp.2d 72(NDNY 2003)		p. 2 is missing or p. 1 and 3 are mismatched		
18.	Agenda E-17, Conduct and Disability; September 2003: no petitions for review pending; the Committee "has continued to monitor congressional activity in the area of judicial conduct an disability", p.35				
19.	Agenda E-17, Conduct and Disability; March 2004: no petitions for review for received or pending				

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

SEPTEMBER 23, 2003
WASHINGTON, D.C.

JUDICIAL CONFERENCE OF THE UNITED STATES
CHIEF JUSTICE WILLIAM H. REHNQUIST,
PRESIDING
LEONIDAS RALPH MECHAM, SECRETARY

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

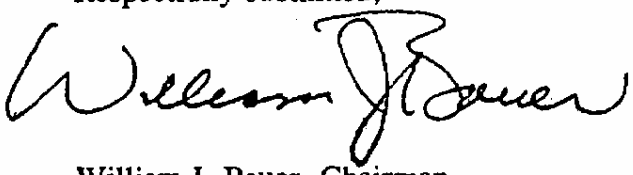
TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

PETITIONS FOR REVIEW

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,



William J. Bauer, Chairman
Pasco M. Bowman
Carolyn R. Dimmick
Barefoot Sanders
Stephanie K. Seymour

NOTICE
NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

AMENDMENTS TO THE JUDICIAL CONDUCT AND DISABILITY ACT

The 21st Century Department of Justice Appropriations Authorization Act, Division C, Title I, Subtitle C, §§ 11041-43 (Pub. L. No. 107-273, 11/2/02), amended the Judicial Conduct and Disability Act, the former 28 U.S.C. § 372(c), in several minor respects. For the most part the provisions of that Act have been preserved verbatim.

The statute makes essentially four changes in the provisions of the Judicial Conduct and Disability Act:

1. As a matter of form, the statute recodifies section 372(c) as sections 351 through 364 of title 28.

NOTICE
NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

and Disability Act, 28 U.S.C. § 372(c)(6)(B), because of the judge's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others." The sanctions consisted of (1) a public reprimand, (2) a one-year suspension from new case assignments, and (3) a three-year suspension from hearing cases in which certain listed attorneys appeared. The court of appeals had affirmed the district court's dismissal of the district judge's challenges to the public reprimand, and had ruled that the district judge's challenges to the one-year and three-year suspensions should have been dismissed as moot.

The denial of certiorari by the Supreme Court would appear to finally put an end to this long-running litigation.

PETITIONS FOR REVIEW

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 (section 372(c)(6)) since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,

William J. Bauer, Chairman
Pasco M. Bowman
Carolyn R. Dimmick
Barefoot Sanders
Stephanie K. Seymour

judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules 1-15 approved in September 2003 (JCUS-SEP 03, p. 37) have been deferred until all the civil rules have been revised, which is expected to occur early in 2005. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed in August 2003 to their respective sets of rules.

For further information contact
Public Information Office 202-479-3211

EMBARGOED FOR RELEASE
January 1, 2004, 12:01 a.m. E.S.T.

2003 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

This Year-End Report on the Federal Judiciary is my 18th.

I am pleased to report that the Senate confirmed 55 District Court judges during 2003, leaving only 27 vacancies out of 680 judgeships. At the same time, 13 Court of Appeals judges were confirmed, but 17 nominations remain pending.

…

III. The Year in Review

The Supreme Court of the United States

This year we broke ground on our long-anticipated building modernization program. It is my hope that we remain on schedule and complete the project under budget.

The total number of case filings in the Supreme Court increased from 7,924 in the 2001 Term to 8,255 in the 2002 Term - an increase of 4 percent. Filings in the Court's *in forma pauperis* docket increased from 6,037 to 6,386 - a 5.8 percent rise. The Court's paid docket decreased by 17 cases, from 1,886 to 1,869 - a 1 percent decline. During the 2002 Term, 84 cases were argued and 79 were disposed of in 71 signed opinions, compared to 88 cases argued and 85 disposed of in 76 signed opinions in the 2001 Term. No cases from the 2002 Term were scheduled for re-argument in the 2003 Term. This year the Court reconvened a month earlier than usual to hear a full day's argument in the Bipartisan Campaign Reform Act cases. Written opinions deciding the cases were handed down in December.

The Federal Courts' Caseload

In Fiscal Year 2003, the federal courts experienced record highs in filings in most program areas, and a decline in only one. Filings in the 12 regional courts of appeals grew 6 percent from 57,555 to 60,847, a record number.[3] Criminal case filings increased 5 percent to an all-time high of 70,642, surpassing the previous record reported in 1932, the year before the Prohibition Amendment was repealed.[4] In contrast, civil filings declined 8 percent to 252,962.[5] Filings in the U.S. bankruptcy courts increased 7 percent from 1,547,669 to 1,661,996, the second consecutive year filings have set a record.[6] The number of persons on probation and supervised release went…

FOR IMMEDIATE RELEASE
June 10, 2004

For Further Information Contact:
Public Information Office
Phone: 202-479-3211

Judicial Conduct and Disability Act Study Committee

Organizational Meeting

June 10, 2004

The Judicial Conduct and Disability Act Study Committee held its initial organizational meeting today at the Supreme Court. The Chief Justice established the Committee, chaired by Justice Stephen Breyer, to evaluate how the federal judicial system has implemented the Judicial Conduct and Disability Act of 1980. (See 28 U.S.C. §§ 351-364.) That Act authorizes "any person" to file a complaint alleging that a federal circuit judge, district judge, bankruptcy judge, or magistrate judge has "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts," or is physically or mentally unable to perform his or her duties. The Act does not itself prescribe ethical standards; nor does it apply to the Supreme Court.

At today's meeting, the Committee decided that it will initially examine as many non-frivolous Act-related complaints as can be identified, along with a statistical sample of all complaints, filed in the last several years. The Committee will use this information to help shape a further course of examination and analysis, eventually leading to Committee recommendations to the Chief Justice.

"The Committee's task is narrow, but important," Justice Breyer said. "The 1980 Act put a system in place so that action can be taken when judges engage in misconduct or are physically or mentally unable to carry out their duties. We need to see how the system is working. The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability."

In addition to Justice Breyer, the Committee members are: Judge J. Harvie Wilkinson (U.S. Court of Appeals for the Fourth Circuit); Judge Pasco M. Bowman (U.S. Court of Appeals for the Eighth Circuit); Judge D. Brock Hornby (U.S. District Court for the District of Maine); Judge Sarah Evans Barker (U.S. District Court for the Southern District of Indiana); and Sally M. Rider (administrative assistant to the Chief Justice).

The Committee will use staff drawn from the Administrative Office of the United States Courts and the Federal Judicial Center. The staff will develop a research plan based both on statistical sampling and interviews, including interviews of judges, administrators, and practicing lawyers, such as prosecutors and defense attorneys. It will examine complaints submitted by members of the public to other institutions, including Congress, and will develop methods for obtaining information from members of the public. Although the Committee will proceed publicly where useful and appropriate, it recognizes the statutory requirement to maintain confidentiality of records and complaints. (See 28 U.S.C. § 360.) It will likely take eighteen months to two years for the Committee to complete its work. The Committee will meet again in the fall.

Last Updated: June 10, 2004
Page Name: http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html

[Previous Doc in Result List] [Next Doc in Result List]

U.S. House of Representatives
Committee on the Judiciary
F. James Sensenbrenner, Jr., Chairman

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www.house.gov/judiciary
News Advisory
For immediate release
Contact: Jeff Lungren/Terry Shawn
May 26, 2004
202-225-2492

Sensenbrenner Statement Regarding New Commission on Judicial Misconduct

WASHINGTON, D.C. - U.S. Supreme Court Chief Justice William Rehnquist yesterday announced the creation of a judicial commission, headed by Supreme Court Justice Stephen Breyer, to look into the implementation of the Judicial Conduct and Disability Act of 1980 concerning judicial misconduct and discipline. House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) released the following statement:

"I am pleased and encouraged by this announcement. Chief Justice Rehnquist should be commended for his willingness to work with the Congress and address this issue in a serious manner. Chief Justice Rehnquist made a wise choice in asking Justice Breyer to head this commission and I´m grateful Justice Breyer has agreed to serve as head of this panel. Justice Breyer´s devotion to the law combined with his exemplary standards of character and integrity will provide this commission with the qualities needed to complete its work."

"The 1980 Act, which was amended during the 107th Congress, is based on a self-governing construct that allows the judicial branch large deference to police itself regarding matters of judicial misconduct and discipline. This system worked quite well during the 1980's. For instance, on three separate occasions, a judicial branch investigation recommended a federal judge be impeached for misconduct. Congress followed these recommendations in each case by impeaching these judges. Since then, however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."

Background on Judicial Conduct and Disability Act of 1980

Individuals who believe a U.S. circuit or district court judge has indulged in misconduct may file a complaint against the judge in the relevant circuit. The chief judge of the circuit is empowered

to dismiss frivolous complaints or those that relate to the merits of a decision. More serious complaints are subject to review by an investigatory committee selected by the chief judge of the circuit and further review may be warranted by judicial councils empaneled for that purpose. The councils and the Judicial Conference, the leadership arm of the federal judiciary, are given wide latitude to take any necessary corrective action, including the authority to recommend that a judge be impeached.

The 1980 Act does not apply to Supreme Court justices. The authority to create this process as a way to instill ethical behavior within the lower federal courts is explicit under Article III of the Constitution. Constitutional questions would arise under the separation of powers doctrine to apply the same construct to Supreme Court justices.

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[Previous Doc in Result List] [Next Doc in Result List]

The DeLano Bankruptcy Petition
of January 27, 2004
A test case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for confirmation by the bankruptcy court

by

Dr. Richard Cordero

1. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (docket no. 04-20280; 74, infra). The figures in its schedules and the surrounding circumstances should have readily alerted the trustee and his attorney to the suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., approved the petition and were about to submit its repayment plan on March 8 to the court for confirmation when Dr. Richard Cordero, a creditor, submitted written objections to confirming that plan. Even so, the Trustee and his attorney vouched in open court for the petition's good faith. The U.S. Trustees kept Trustee Reiber on the case despite Dr. Cordero's request for his removal. Judge for yourself from the following salient figures and circumstances whether they all instead had reason to suspect the petition's good faith:

   a) Mr. DeLano has been *a bank officer for 15 years!*, or rather more precisely, a **loan** bank officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). He had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist on one of its machines.

   b) The DeLanos incurred scores of thousands of dollars in credit card debt;

   c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;

   d) during which they were late in their monthly payments at least 232 times documented by even incomplete Equifax credit bureau reports of April and May 2004;

   e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

   f) owe also a mortgage of $77,084;

   g) have near the end of their work life equity in their house of only $21,415;

   h) declared earnings in 2001 of $91,229, in 2002 of $91,655, and in 2003 of $108,586;

   i) yet claim that after a lifetime of work they have only $2,910 worth of household goods;

   j) their cash in hand or on account declared in their petition was only $535.50;

   k) the rest of their personal property is just two cars worth $6,500;

   l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

   m) make a $10,000 loan to their son and declare it uncollectible;

n) but offer to repay only 22 cents on the dollar without interest for just 3 years;

o) refused for months to submit any credit card statement covering any length of time 'because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies';

p) however, the DeLanos:

(1) must still receive the **monthly** statement from each of the 18 credit card issuers in Schedule F, given that on April 16, their attorney, Christopher Werner, Esq., stated to the court: "Debtors have maintained the minimum payments on those obligations";

(2) must have consulted in January 2004, such statements to provide in Schedule F the numbers of their accounts with those issuers and their addresses; and

(3) must know –Loan Officer DeLano must no doubt be presumed to know- that they have an obligation to keep financial documents for a certain number of years;

q) despite Dr. Cordero's requests for financial documents of March 4 and 30, April 23, and May 23, and the Trustee's of April 20 and May 18, the DeLanos provided only some financial documents on June 14, so late that the Trustee moved on June 15 for dismissal for "unreasonable delay", and what they did provide is incomplete and incriminatory:

(1) only 1 statement of each of only 8 credit card accounts,

(2) those statements are missing the section that shows from which provider of goods and services a purchase was made and for what amount, which is indispensable information to establish the timeline of debt accumulation and its nature;

(3) the statements are not even the latest ones of May and June 2004, but rather are of between July and October 2003! Why would the DeLanos ever do such thing?!;

(4) the credit bureau report submitted for Mr. DeLano and the one for Mrs. DeLano are from only one bureau, namely, Equifax, even though the DeLanos must know that none of the reports of even the other two major bureaus, that is, Trans Union and Experian, is exhaustive by including all accounts or up to date as to each account, but rather their reports are complementary;

(5) worse yet, the Equifax reports submitted are missing pages, even pages that must contain information on accounts, such as outstanding balance and payment history;

(6) the figures in the three IRS 1040 forms for 2001, 2002, and 2003 do not coincide with the information on earnings in the DeLanos' bankruptcy petition of January 26, 2004.

2. A comparison between those credit card statements, the Equifax reports, the bankruptcy petition, and the court-developed claims register and creditors matrix calls into question the petition's good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.

3. Indeed, in Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let's assume that in 1989 the combined income of him and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what

they owned before 1989, let alone their credit card borrowing. Where did the money go? Where is it? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?

4. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants' financial documents, have thought that it would be deemed in good faith to submit such objectively incomplete documents? Did he have any reason to expect Trustee Reiber not to analyze them? Did the Trustee and Attorney Weidman ask themselves that? How did they ascertain the timeline of debt accumulation and its nature if they did not even have those documents before readying the petition for submission to the court?

5. Did the Trustee and his Attorney ever get the hint that the figures in the petition and the surrounding circumstances made no sense or were they too busy with their other cases, which according to Pacer are 3,909, as well a the in-take of new ones to ask any questions and request any supporting documents? How many other cases did they also accept under the motto "don't ask, don't check, just cash in"? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?

6. Assistant U.S. Trustee Kathleen Schmitt and U.S. Trustee for Region 2 Deirdre Martini have allowed Trustee Reiber to hold on to this case despite Dr. Cordero's reasoned request of March 30 for his replacement. Only because of his repeated assertion of his right to examine financial information about the DeLanos has Trustee Reiber requested documents. Yet, the Trustee's late request of April 20 was insufficient, covering just 8 accounts out of 18 for only three years out of 15. Although Trustee Reiber received only a few on June 14, as of July 6 he had not even realized how incomplete the 8 pages of bank statements and 11 pages of Equifax reports were, let alone analyzed them and detected their grave implications for the petition's good faith. He refuses to subpoena the missing documents. Hence, the U.S. Trustees must take notice of his ineffective and halfhearted effort to "investigate" the DeLanos. They must not disregard any longer his obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, and himself for approving such a questionable petition and vouching for its good faith in open court on March 8, thereby casting doubt on his myriad other cases.

7. Indeed, if a case as meritless as the DeLanos' passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from U.S. Trustees Schmitt and Martini. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

8. What were they all thinking!? Whatever it was, from their perspective now their best self-protection is not to set in motion an investigative process that can spin out of control and end up crushing them. Will the Judicial Council let them get away with it or will it appoint a special committee –better yet, make a referral to the FBI- to investigate the DeLano test case and the thousands like it that undermine the integrity of the judicial system and the public trust in it?

Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):

DAVID G DELANO
1262 SHOECRAFT ROAD

WEBSTER, NY 14580

AKA:

Joint: MARY ANN DELANO
1262 SHOECRAFT ROAD

WEBSTER, NY 14580

Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
January 27, 2004	XXX-XX-3894 XXX-XX-0517

Individual debtors must provide picture identfication and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):

CHRISTOPHER K WERNER, ESQ
BOYLAN, BROWN, ET AL
2400 CHASE SQUARE
ROCHESTER, NY 14604-0000

Telephone Number: (716) 232-5300

Bankruptcy Trustee (name and address):

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

Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM

Location: U.S. Trustees Office
6080 U.S. Courthouse
100 State Street
Rochester, NY 14614

RECEIVED
FEB - 6 2004
BANKRUPTCY COURT
ROCHESTER, NY

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004

For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM

Location: U. S. Bankruptcy Court
1400 U.S. Courthouse
100 State Street
Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court
100 State St.

Rochester, NY 14614

Website: http://www.nywb.uscourts.gov

Clerk of the Bankruptcy Court:
PAUL R. WARREN

DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

020304.0027.63.00111358.001 0420280.Court.A. 146

Notice of the Bankruptcy Court, WBNY, of 2/3/4 of meeting of the DeLanos' creditors C:581

EXPLANATIONS

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specificied amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.

---Refer To Other Side For Important Deadlines and Notices---

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court		U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee		George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor		DAVID G DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint		MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001	CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005	AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021	DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014	CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023	HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004	GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026	MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019	DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022	FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008	BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012	CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020	DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146 Page 2 of 2
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY T Morton

XCM - Indicates notice served via Certified Mail

(Official Form 1) (12/03)

FORM B1

United States Bankruptcy Court
Western District of New York

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): DeLano, David G.	Name of Joint Debtor (Spouse) (Last, First, Middle): DeLano, Mary Ann
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517
Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580
County of Residence or of the Principal Place of Business: Monroe	County of Residence or of the Principal Place of Business: Monroe
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

■ Individual(s)
☐ Corporation
☐ Partnership
☐ Other_____
☐ Railroad
☐ Stockbroker
☐ Commodity Broker
☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

☐ Chapter 7
☐ Chapter 9
☐ Chapter 11
☐ Chapter 12
■ Chapter 13
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

■ Consumer/Non-Business
☐ Business

Chapter 11 Small Business (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

■ Full Filing Fee attached
☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

■ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
☐	■	☐	☐	☐	☐

Estimated Assets

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Estimated Debts

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s): **FORM B1**, Page 2
DeLano, David G.
DeLano, Mary Ann

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed:	Case Number:	Date Filed:
- None -		

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:	Case Number:	Date Filed:
- None -		
District:	**Relationship:**	**Judge:**

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David G. DeLano
Signature of Debtor David G. DeLano

X /s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

Signature of Attorney

X /s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)

Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)

Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name

2400 Chase Square
Rochester, NY 14604
Address

585-232-5300
Telephone Number

January 26, 2004
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X /s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.
■ No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C.§ 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court
Western District of New York

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

Chapter 13

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	98,500.00		
B - Personal Property	Yes	4	164,956.57		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		87,369.49	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	4		98,092.91	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			4,886.50
J - Current Expenditures of Individual Debtor(s)	Yes	1			2,946.50
Total Number of Sheets of ALL Schedules		16			
		Total Assets	263,456.57		
			Total Liabilities	185,462.40	

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	Fee Simple	J	98,500.00	77,084.49

Sub-Total >	98,500.00	(Total of this page)
Total >	98,500.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1.	Cash on hand		misc cash on hand	J	35.00
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		M & T Checking account	J	300.00
			M & T Savings	W	200.00
			M & T Bank Checking	W	0.50
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.		Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	J	2,000.00
			computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill,	J	350.00
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		misc books, misc wall decorations, family photos, family bible	J	100.00
6.	Wearing apparel.		misc wearing apparel	J	50.00
7.	Furs and jewelry.		wedding rings, wrist watches	J	100.00
			misc costume jewelry, string of pearls	W	200.00
			Sub-Total > (Total of this page)		3,335.50

3 continuation sheets attached to the Schedule of Personal Property

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
8.	Firearms and sports, photographic, and other hobby equipment.		camera - 35mm snapshot cameras ((2) purchased for $19.95 each new	J	10.00
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			
11.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	W	59,000.00
			401-k (net of outstanding loan $9,642.56)	H	96,111.07
12.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13.	Interests in partnerships or joint ventures. Itemize.	X			
14.	Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15.	Accounts receivable.		Debt due from son ($10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress	J	Unknown
16.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17.	Other liquidated debts owing debtor including tax refunds. Give particulars.		2003 tax liability expected	J	0.00
18.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			

Sub-Total > (Total of this page) 155,121.07

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1993 Chevrolet Cavalier 70,000 miles	W	1,000.00
		1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)	H	5,500.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			

Sub-Total > (Total of this page) 6,500.00

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total > (Total of this page)	0.00
Total >	164,956.57

Sheet 3 of 3 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
[Check one box]

☐ 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.

■ 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Real Property			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
Household Goods and Furnishings			
Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	NYCPLR § 5205(a)(5)	2,000.00	2,000.00
Books, Pictures and Other Art Objects; Collectibles			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
Wearing Apparel			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
Furs and Jewelry			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	Debtor & Creditor Law § 282(2)(e)	59,000.00	59,000.00
401-k (net of outstanding loan $9,642.56)	Debtor & Creditor Law § 282(2)(e)	96,111.07	96,111.07
Automobiles, Trucks, Trailers, and Other Vehicles			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

0 continuation sheets attached to Schedule of Property Claimed as Exempt

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Form B6D
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
Account No. 5687652 Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	2001 auto lien 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition) Value $ 5,500.00				10,285.00	4,785.00
Account No. Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	fist mortgage 1262 Shoecraft Road, Webster (value per appraisal 11/23/03) Value $ 98,500.00				77,084.49	0.00
Account No. Value $								
Account No. Value $								

0 continuation sheets attached

Subtotal (Total of this page) 87,369.49

Total (Report on Summary of Schedules) 87,369.49

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Form B6E
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

■ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, which ever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to $2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

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Form B6F
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5398-8090-0311-9990 AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217		H	1990 and prior Credit card purchases				1,912.63
Account No. 4024-0807-6136-1712 Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132		H	1990 and prior Credit card purchases				3,296.83
Account No. 4266-8699-5018-4134 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 prior Credit card purchases				9,846.80
Account No. 4712-0207-0151-3292 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				5,130.80
						Subtotal (Total of this page)	20,187.06

3 continuation sheets attached

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Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4262 519 982 211 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				9,876.49
Account No. 4388-6413-4765-8994 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001- 8/03 Credit card purchases				449.35
Account No. 4862-3621-5719-3502 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001 - 8/03 Credit card purchases				460.26
Account No. 4102-0082-4002-1537 Chase P.O. Box 1010 Hicksville, NY 11802		W	1990 and prior Credit card purchases				10,909.01
Account No. 5457-1500-2197-7384 Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116		W	1990 and prior Credit card purchases				2,127.08

Sheet no. 1 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 23,822.19

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Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5466-5360-6017-7176 Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115		H	1990 and prior Credit card purchases				4,043.94
Account No. 6011-0020-4000-6645 Discover Card P.O. Box 15251 Wilmington, DE 19886-5251		J	1990 and prior Credit card purchases				5,219.03
Account No. Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515		H	2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.		X	X	Unknown
Account No. 5487-8900-2018-8012 Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368		W	1990 and prior Credit card purchases				2,126.92
Account No. 5215-3125-0126-4385 HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627		H	1990 and prior Credit card purchases				9,065.01
Sheet no. 2 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	20,454.90

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Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4313-0228-5801-9530 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		W	1990 and prior Credit card purchases				6,422.47
Account No. 5329-0315-0992-1928 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		H	1990 and prior Credit card purchases				18,498.21
Account No. 749 90063 031 903 MBNA America P.O. Box 15102 Wilmington, DE 19886-5102		H	1990 and prior Credit card purchases				3,823.74
Account No. 34 80074 30593 0 Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149		H	1990 - 10/99 Credit card purchases				3,554.34
Account No. 17720544 Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784		H	8/03 Credit card purchases				1,330.00

Sheet no. 3 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 33,628.76

Total (Report on Summary of Schedules) 98,092.91

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

■ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

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In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

SCHEDULE H. CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

■ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

0 continuation sheets attached to Schedule of Codebtors

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Form B6I
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP	AGE
Married	None.	

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Loan officer	
Name of Employer	M & T Bank	unemployed - Xerox
How long employed		
Address of Employer	PO Box 427 Buffalo, NY 14240	

INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	$ 5,760.00	$ 1,741.00
Estimated monthly overtime	$ 0.00	$ 0.00
SUBTOTAL	$ 5,760.00	$ 1,741.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ 1,440.00	$ 435.25
b. Insurance	$ 414.95	$ 0.00
c. Union dues	$ 0.00	$ 0.00
d. Other (Specify) Retirement Loan (to 10/05)	$ 324.30	$ 0.00
	$ 0.00	$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	$ 2,179.25	$ 435.25
TOTAL NET MONTHLY TAKE HOME PAY	$ 3,580.75	$ 1,305.75
Regular income from operation of business or profession or farm (attach detailed statement)	$ 0.00	$ 0.00
Income from real property	$ 0.00	$ 0.00
Interest and dividends	$ 0.00	$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	$ 0.00	$ 0.00
Social security or other government assistance (Specify)	$ 0.00	$ 0.00
	$ 0.00	$ 0.00
Pension or retirement income	$ 0.00	$ 0.00
Other monthly income (Specify)	$ 0.00	$ 0.00
	$ 0.00	$ 0.00
TOTAL MONTHLY INCOME	$ 3,580.75	$ 1,305.75
TOTAL COMBINED MONTHLY INCOME $ 4,886.50	(Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by $1,129/month.

Retirement Loan was made to son, who was to re-pay @$200/mon. but has been unable to do so as employed at $10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ 1,167.00
Are real estate taxes included? Yes X No	
Is property insurance included? Yes No X	
Utilities: Electricity and heating fuel	$ 168.00
Water and sewer	$ 30.00
Telephone	$ 40.00
Other Cell Phone $62 (req. for work); cable $55; Internet $23.95	$ 140.95
Home maintenance (repairs and upkeep)	$ 50.00
Food	$ 430.00
Clothing	$ 60.00
Laundry and dry cleaning	$ 5.00
Medical and dental expenses	$ 120.00
Transportation (not including car payments)	$ 295.00
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 107.50
Charitable contributions	$ 50.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	$ 0.00
Life	$ 0.00
Health	$ 0.00
Auto	$ 110.00
Other	$ 0.00
Taxes (not deducted from wages or included in home mortgage payments)	
(Specify)	$ 0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)	
Auto	$ 0.00
Other reserve for auto	$ 50.00
Other Parking	$ 58.05
Other	$ 0.00
Alimony, maintenance, and support paid to others	$ 0.00
Payments for support of additional dependents not living at your home	$ 0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
Other family gifts - Christmas/Birthdays	$ 20.00
Other Haircuts and personal hygine	$ 45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ 2,946.50

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$ 4,886.50
B. Total projected monthly expenses	$ 2,946.50
C. Excess income (A minus B)	$ 1,940.00
D. Total amount to be paid into plan each Monthly (interval)	$ 1,940.00

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets *[total shown on summary page plus 1]*, and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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Form 7
(12/03)

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

---

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
$91,655.00	2002 joint income
$108,586.00	2003 Income (H) $67,118; (W) $41,468

2. Income other than from employment or operation of business

None ■ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

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3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	monthly mortgage $1,167/mon with taxes and insurance	$5,000.00	$77,082.49
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016	monthly auto payment $348/mon	$1,044.00	$10,000.00

None ■ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano	(As against debtor) damages for inability of Cordero to recover property held in storage	US Bankruptcy Court, Western District of NY	pending

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

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6. Assignments and receiverships

None ■ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ■ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ■ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

8. Losses

None ■ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher K. Werner 2400 Chase Square Rochester, NY 14604	Nov - Dec 2003	$1,350 plus filing fee

10. Other transfers

None ■ List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

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11. Closed financial accounts

None ■ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
M & T Bank Webster Branch	debtors	Personal papers	

13. Setoffs

None ■ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ■ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

15. Prior address of debtor

None ■ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

16. Spouses and Former Spouses

None ■ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

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17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ■ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18 . Nature, location and name of business

None ■ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

None ■ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS

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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None ■ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED

None ■ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ■ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS

None ■ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED

20. Inventories

None ■ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ■ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None ■ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ■ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

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22 . Former partners, officers, directors and shareholders

None ■ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ■ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None ■ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

None ■ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

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United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$	1,350.00
Prior to the filing of this statement I have received	$	1,350.00
Balance Due	$	0.00

2. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

4. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
   a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
   c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d. [Other provisions as needed]
      Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
   Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.
Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

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C:612 The DeLanos' petition of 1/26/4 for voluntary bankruptcy uncer 11 U.S.C. Ch. 13 in WBNY

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

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AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

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

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

Blank

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

CHAPTER 13 PLAN

1. Payments to the Trustee: The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of $1,940.00 per month for 5 months, then $635.00 per month for 25 months, then $960.00 per month for 6 months.
   Total of plan payments: $31,335.00
2. Plan Length: This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
   a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
   b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
   c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

   a. Administrative Expenses
      (1) Trustee's Fee: 10.00%
      (2) Attorney's Fee (unpaid portion): NONE
      (3) Filing Fee (unpaid portion): NONE

   b. Priority Claims under 11 U.S.C. § 507

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

   c. Secured Claims
      (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

Name	Proposed Amount of Allowed Secured Claim	Monthly Payment (If fixed)	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00	Prorata	6.00%

      (2) Secured Debts Which Will Extend Beyond the Length of the Plan

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
-NONE-			

   d. Unsecured Claims
      (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

      (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than $10.00 it may be paid in full.

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5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

Creditor	Amount of Default to be Cured	Interest Rate (If specified)
-NONE-		

6. The Debtor shall make regular payments directly to the following creditors:

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
Genesee Regional Bank	77,084.49	0.00	0.00%

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

Name	Amount of Claim	Description of Property
-NONE-		

11. Title to the Debtor's property shall revest in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

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Useful addresses for investigating

the judicial misconduct and bankruptcy fraud scheme revealed by *DeLano*

(see also other addresses after the Notice of Meeting of Creditors, above)

1.	George M. **Reiber**, Esq. **Chapter 13 Trustee** [in DeLanos' case… South Winton Court […no. 04-20280] 3136 S. Winton Road, Suite 206 Rochester, NY 14623 tel. (585) 427-7225 fax (585) 427-7804
2.	David G. and Mary Ann **DeLano** [Debtors] 1262 Shoecraft Road Webster, NY 14580
3.	Christopher K. **Werner**, Esq. [DeLanos's … Boylan, Brown, Code, […attorney] Vigdor & Wilson, LLP 2400 Chase Square Rochester, NY 14604 tel. (585) 232-5300 fax (585) 232-3528
4.	Kathleen Dunivin **Schmitt**, Esq. **Assistant U.S. Trustee** Federal Office Building, Room 6090 100 State Street, Room 6090 Rochester, New York 14614 tel. (585) 263-5812 fax (585) 263-5862
5.	Ms. Deirdre A. **Martini** **U.S. Trustee for Region 2** Office of the United States Trustee 55 Whitehall Street, 21st Floor New York, NY 10004 tel. (212) 510-0500 fax (212) 668-2255
6.	Hon. Judge John C. **Ninfo**, II **Bankruptcy Judge** United States Bankruptcy Court 1400 United States Courthouse 100 State Street Rochester, NY 14614 tel. (585) 613-4200
7.	Hon. David **Larimer** U.S. **District Judge** United States District Court 2120 U.S. Courthouse 100 State Street Rochester, NY 14614-1387 tel. (585) 263-6263
8.	Kenneth W. **Gordon**, Esq. **Chapter 7 Trustee** [in the Premier Van Lines Gordon & Schaal, LLP […case **01-20692**] 100 Meridian Centre Blvd., Suite 120 Rochester, New York 14618 tel. (585) 244-1070 fax (585) 244-1085
9.	Mr. David **Palmer** [Debtor in Premier Van 1829 Middle Road [Lines case **01-20692**] Rush, NY 14543 tel.(585)244-1070 cfA:1005
10.	Hon. John M. **Walker**, Jr., Chief **Judge** Hon. Dennis **Jacobs** [next eligible chief judge] Ms. Roseann MacKechnie **Clerk of Court** Mr. Fernando Galindo **Chief Deputy** Clerk **Court of Appeals** for the Second Circuit Thurgood Marshall United States Courthouse 40 Foley Square, Room 1802 New York, NY 10007 tel. (212) 857-8500
11.	**Justice** Stephen **Breyer** Ms. Cathy Arbur (202)479-3050 Public Information Office **Supreme Court** of the United States 1 First Street, N.E. Washington, D.C. 20543 tel. (202)479-3000
12.	Mr. Leonidas Ralph Mecham **Director** William Burchill, Esq. **General Counse**l Jeffrey Barr, Esq. **Assistant** General Counsel **Administrative Office** of the U.S. Courts Office of the General Counsel One Columbus Circle, NE, Suite 7-290 Washington, DC 20544 tel. (202) 502-1100 fax (202) 502-1033
13.	Ms. Wendy Janis United States **Judicial Conference** (202)502-2400

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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

July 9, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

This letter is to acknowledge receipt of your petition for review.

I am returning your petition for review, unfiled. It is not in the proper form under these rules. Rule 6(b) states the petition for review must be in the form of a letter. Rule 6(e) states "The letter should set forth a brief statement." It has been the long-standing practice of this court to use the authority of Rule 2(b) as a guideline and establish the definition of ***brief*** as applied to the ***statement of grounds for petition*** to five pages. "It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition."

Please resubmit ONLY your petition letter, **by no later than July 24, 2004.** If your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken. Should that be the case, please note that the Rules do not provide for any further relief in this matter.

Sincerely,

Fernando Galindo
Acting Clerk of Court

Enclosures

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

July 13, 2004

Mr. Fernando Galindo
Acting Clerk of Court ofAppeals, 2nd Cir.
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

Pursuant to your letter of July 9, I am resubmitting a 5-page version of my original 10-page letter of petition for review of the dismissal of my judicial misconduct complaint, docket no. 03-8547. As agreed in our phone conversation on July 12, I am also resubmitting the exhibits as a separate volume. If the exhibits volume were to prevent the filing of the petition letter, please as agreed, consider that volume withdrawn, send it back to me, and file the letter.

However, that separate exhibits volume should be filed just as my original letter bound with the exhibits should have been found in compliance with this Circuit's Rules Governing Misconduct Complaints and filed. The reasons for this are the following, which I respectfully request that you consider.

In the letter of July 9 it is stated thus: "…resubmit ONLY your petition letter…[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." That letter invokes "the authority of Rule 2(b) as a guideline [to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages". But if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) in the context of petition letters, it would have so provided. By not doing so, it indicated that "brief" is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page letter, containing a table of contents, headings, and quotations from 28 U.S.C. §351 et seq., the Rules, and statements by persons to support my arguments and facilitate their reading.

Moreover, the July 9 letter is inconsistent in that it applies by analogy to petition letters the Rule 2(b) 5-page limit on complaints but fails to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint.

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the court has failed to give petitioners notice thereof. Yet, this court has had the oppor-tunity to give them notice of its practice in the notification that it is required under Rule 4(f)(1) to give them of the dismissal of their complaints and their right to appeal; and it should have done so in light of the public notice requirement under §358(c). Instead, the court lets petitioners waste their time guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness.

Likewise, "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant". Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communi-cations" addressed to them by the complainant. Hence, the 10-page letter and its exhibits should have been filed. They should be available to any judicial council member under Rule 8(c). To that end, I am submitting the exhibits as a separate volume.

Sincerely, Dr. Richard Cordero

C:622 Dr. Cordero's protest of 7/13/4 to Clerk Galindo re unstated & inconsistent requirements for review petition

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

July 8, resubmitted on July 13, 2004

Mr. Fernando Galindo
Acting Clerk of the Court of Appeals, Cir. 2
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

I hereby petition the Judicial Council for review of the Chief Judge's order of June 8, 2004, dismissing my judicial misconduct complaint, docket no. 03-8547 (the Complaint).

The dismissal of the Complaint was so out of hand that it did not even acknowledge the two issues presented or how a pattern of non-coincidental, intentional, and coordinated wrongful acts by judicial and non-judicial officers is within the scope of 28 U.S.C. §351 et seq. and this Circuit's Rules Governing Judicial Misconduct Complaints (collectively referred to as Complaint Provisions) and in need of investigation by a special committee

1. The dismissal of my complaint is an example of why Supreme Court Chief Justice Wil-liam Rehnquist appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee and why, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation" (Exhibits-67, 69[1]).

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[1] The source for this and every other statement made in this letter is contained in a 125-page bound volume of exhibits. When timely submitted on July 8, it was prefaced by my original 10-page petition letter. Nevertheless, both that letter and the exhibits were returned to me with your letter of July 9 emphasizing that I should "resubmit ONLY your petition letter…[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." Your letter invokes "the authority of Rule 2(b) as a guideline [to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages".

However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) in the context of petition letters, it would have so provided. By not doing so, it indicated that "brief" is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page letter, containing a table of contents, headings, and quotations from §351 et seq., the Rules, and statements by persons to support my arguments and facilitate their reading. Moreover, the July 9 letter is inconsistent in that it applies by analogy to petition letters the Rule 2(b) 5-page limit on complaints but fails to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint.

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the court has failed to give petitioners notice thereof. Yet, this court has had the opportunity to give them notice of its practice in the notification that it is required under Rule 4(f)(1) to give them of the dismissal and their right to appeal; it should have done so in light of the public notice requirement under §358(c). Instead, the court lets petitioners waste their time guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness.

2. Given that such systematic dismissal of complaints regardless of merits has been recognized as a problem so grave as to warrant action by the top officers of the judicial branch, there is little justification for considering seriously the stock allegations for dismissing my Complaint. The latter is just another casualty added to a phenomenon that defies statistical probabilities: While the 2003 Report of the Administrative Office of the U.S. Courts highlights that another record was set with federal appeals filings that grew 6% to 60,847, and civil filings in the U.S. district courts of 252,962 (E-66), the three consecutive reports of the Judicial Conference for March 2004, and September and March 2003 (E-60), astonishingly indicate that, as the latter report put it, the Conference "has not received any petitions for review of judicial council action, …nor are there any petitions for review pending from before that time" (E-59).

3. It is shocking that the judicial councils would abuse so blatantly their discretion under §352(c) to deny all petitions for review of chief judges' orders, thus barring their way to the Judicial Conference; (E-59; cf. Rule 8(f)(2)). One can justifiably imagine how each circuit makes it a point of honor not to disavow its chief judge and certainly never refer up its dirty laundry to be washed in the Judicial Conference. It is as if the courts of appeals had the power to prevent each and every case from reaching the Supreme Court and abused it systematically. In that event, instead of the Supreme Court reporting 8,255 filings in the 2002 Term –an increase of 4% from the 7,924 in the 2001 Term (E-66)- the Court would be caused to report 0 filings in a term! (E-60-65) Sooner or later the Justices would realize that such appeals system was what the current operation of the judicial misconduct complaints procedure is: a sham!

4. This is so evident here because Chief Judge Walker has repeatedly violated unambiguous obligations even under his own Circuit's Rules (E-119). To begin with, the Chief Judge violated his obligation under §352(a) to act "promptly" and "expeditiously" (E-76-77), taking instead 10 months to dispose of the Complaint (E-71) despite the circumstantial and documentary evidence that not even a Rule 4(b) "limited inquiry" was conducted (E-22-24). Secondly, Chief Judge Walker lacked authority under the Complaint Provisions to delegate to Judge Dennis Jacobs, who actually disposed of the Complaint, his obligation under §352(b) and Rule 4(f)(1), to handle such complaints and write reasoned orders to dispose of them. Thirdly, the Chief Judge violated his obligation under Rule 17(a) to make misconduct orders "publicly available", keeping all but those of the last three years, neither in the shelves, nor in a storage room of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, but rather in the National Archives in Missouri! (E-28, 29, 33)

5. For violating so conspicuously the Complaint Provisions, the Chief Judge has a personal interest: to facilitate the dismissal of the related complaint against him submitted to Judge Jacob by Dr. Cordero on March 19, 2004, dkt. no. 04-8510 (E-22). If under that complaint the Chief Judge were investigated, the severe §359(a) Restrictions on individuals subject of investigation would

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Likewise, "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant". Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed. They should be available to any judicial council member under Rule 8(c). To that end, I am submitting the exhibits as a separate volume. But if it were to prevent the filing of the petition letter, consider that volume withdrawn, send it back to me, and file the letter, as we agreed on July 12.

be applicable and weigh him down even for years until the complaint's final disposition.

6. Indeed, if the Complaint, the one about Bankruptcy Judge John C. Ninfo, II, (E-71) were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker too disregarded for 10 months the law imposing on him the promptness obligation, thereby allowing the continuation of 'a prejudice "to the administration of the business of the courts"' so serious as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, dismissed too without investigation, would have been investigated by a law-abiding officer not biased toward his peers. Similar questions could spin the investigation out of control quite easily.

7. Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than himself, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed. The fact is that the Complaint was dismissed by another, that is, Judge Jacobs, who likewise has disregarded his obligation to handle "promptly" and "expeditiously" the complaint of March 19, 2004, about his peer, the Chief Judge (E-22).

8. The appearance of a self-serving motive for dismissing the Complaint arises reasonably from the totality of circumstances. It is also supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Nor can they do so reliably. Their interest in preventing a precedent that one day could be applied to them if they were complained about as well as their loyalties in the context of office politics will induce or even force insiders to close ranks against an 'attack' from an outsider. Only independent investigators whose careers cannot be affected for better or for worse by those investigated or their friendly peers can be expected to conduct a reliable investigation.

9. Instead the constant found in Judge Jacobs' dismissal of the Complaint was the sweeping and conclusory statements found in other dismissals ordered in the last three years (E-57):

   a) Complainant has failed to provide evidence of any conduct "prejudicial to the effec-tive and expeditious administration of the business of the courts." [Citing a standard and saying that it was not met, without discussing what the requirements for meeting it have been held to be –our legal system is based on precedent, not on 'because I say so'- and how the evidence presented failed to meet it, does not turn a foregone conclusion into a reasoned order.]

   b) Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling. [This is a particularly inane dismissal cop-out because when complaining about the conduct of judges as such, their misconduct is most likely to be related to and find its way into their decisions. The insightful question to ask is in what way the judge's misconduct biased his judgment and colored his decision.]

   c) Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. [Brilliantly concise legal definition and careful application to the facts of the lazy catch-all term 'frivolous'!]

   d) Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…

10. That last statement is much more revealing because it shows that Judge Jacobs did not even know what the issues presented were, namely 1) whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of the Debtor's Owner, namely, David Palmer; and 2) 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 the detriment of Dr. Cordero, the only non-local and pro se party.

11. Judge Jacobs failed to recognize the abstract notion of motive and how it could lead Judge Ninfo to take decisions that only apparently had anything to do with legal merits. What is less, he did not even detect, let alone refer to, the concrete and expressly used term "pattern". Had he detected it, he could have understood how acts by non-judges, and thus not normally covered by the Complaint Provisions, could form part of unlawful activity coordinated by a judge, which would definitely constitute misconduct, to put it mildly. But he remained at the superficial level of considering each individual act in isolation and dismissing each singly. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart so that they can be looked at collectively?

12. Circumstantial evidence is so indisputably admitted in our legal system that cases built on it can cause a person to lose his property, his freedom, and even his life. Such cases look at the totality of circumstances. The Complaint describes those circumstances as a whole. It is support-ed by a separate volume of documentary evidence consisting of more than 500 pages –referred to as A-#– which was discussed in greater detail in another separate 54 page memorandum that laid out the facts and showed how they formed a pattern of activity. This memorandum is referred to as E-# in the 5-page Complaint, which is only its summary. Just the heft of such evidence and its carefully intertwined presentation would induce an unbiased person –one with no agenda other than to insure the integrity of the courts and to grant the complainant a meaningful hearing– to entertain the idea that the Complaint might be a thoughtful piece of work with substance to it that should be read carefully. Judge Jacobs not only failed to make reference to that material, but he did not even acknowledge its existence. Is it reasonable to assume that he did not waste time browsing it if he only intended to write a quick job, pro-forma dismissal?

13. The totality of circumstances presented in the Complaint is sufficient to raise reasonable suspicion of wrongdoing. There is no requirement that the complainant, who is a private citizen, not a private investigator, build an airtight criminal case ready for submission by the district attorney to the judge for trial. That is the work that a special committee would begin to do upon its appointment by a chief judge or a judicial council concerned by even the appearance of wrongdoing that undermines public confidence in their circuit's judicial system. Unlike the complainant, such committee can conduct a deeper and more extensive investigation because it has the necessary subpoena power.

14. A more effective investigation can be mounted in cooperation with the FBI through a simultaneous referral to it. Indeed, the FBI has not only subpoena power, but also the required expert manpower and resources to interview and depose large numbers of persons anywhere they may be and cross-relate their statements; engage in forensic accounting and trace bankruptcy debtors' assets from where they were to wherever they may have ended up; and flush out and track down evidence of official corruption, such as bribes. What motives could Chief Judge Walker and Judge Jacobs have had to fail to set in motion either investigation given the stakes?

15. Had they appointed a special committee, it would have found at least the following:

    a) Chapter 7 Trustee K. Gordon was referred to Judge Ninfo for a review of his performance and fitness to serve; then sued for failure to realize that storage contracts were income producing assets of the estate, which would have allowed him to find Dr. Cordero's property lost by the debtor. Disregarding the genuine issues of material fact, the Judge dismissed all claims. Was he protecting a well-known Trustee who had no time to find out anything, for according to Pacer[2], the Trustee has *3,383 cases!*, all but one before Judge Ninfo? (E-126)

    b) What is more, Chapter 13 Trustee George Reiber has, again according to Pacer, 3,909 *open* cases! He also cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith. So on what basis does he accept petitions and ready them for confirmation of their plans of debt repayment by Judge Ninfo, before whom he appears time and again?

    c) A petition for bankruptcy, dated January 26, 2004, was filed by David and Mary Ann DeLano; (E-82 et seq.). Though internally riddled with red flags as to its good faith (E-79), it was accepted by Trustee Reiber without asking for a single supporting financial document; and was readied for confirmation by Judge Ninfo (E-22-24). This is a test case that will blow up the cover of everything that is wrong in that bankruptcy district.

16. My Complaint too is a test case whether, as expected, this petition is denied, upon which I will submit it to Justice Breyer's Committee; or it is granted and a special committee is appointed. If the latter happens, it is necessary that its investigation appear to be and actually be independent as much as possible. Thus, I respectfully request that:

    a) Neither the Chief Judge appoint himself nor Judge Jacobs be appointed to the review panel;

    b) The review panel refer the petition to the full membership of the Judicial Council;

    c) The Judicial Council itself take the "appropriate action" under Rule 5 of appointing a special committee to investigate and that neither Chief Judge Walker nor Judge Jacobs be members of such committee, but its members be experienced investigators unrelated to the Court of Appeals and the WDNY Bankruptcy and District Courts and be capable of conducting an independent, objective, and zealous investigation;

    d) The special committee be charged with conducting an investigation to determine:

        1) the involvement in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts on the part of judges, administrative staff, debtors as well as both private and U.S. trustees in WDNY and NYC;

        2) the link between judicial misconduct and a bankruptcy fraud scheme involving the approval for legal and illegal fees of numerous meritless bankruptcy petitions; and

        3) the participation of district and circuit judges in a systematic effort to suppress misconduct complaints in violation of §351 et seq. and this Circuit's Complaint Rules;

    e) This matter be simultaneously referred to the FBI for cooperative investigation; and

    f) This petition together with the Complaint and the documentary evidence submitted with each be referred to the Judicial Conference of the United States; (cf. Rule 14(a) and (e)(2).

Sincerely, Dr. Richard Cordero

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[2] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

EXHIBITS

in support of

the letter containing
the Statement of Grounds
for a Petition for Review

to

THE JUDICIAL COUNCIL
FOR
THE SECOND CIRCUIT

submitted

under Rules 5 and 8(e)(2) of this Circuit's
Rules Governing Judicial Misconduct Complaints

to
the Acting Clerk of Court*

on
July 8 and 13, 2004

by

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

*If the submission of this volume of Exhibits were to prevent the filing of the separately submitted petition letter, please as agreed on July 12, consider this volume withdrawn, return it to me, and file the letter. Dr. Richard Cordero.

Table of Exhibits

in support of the petition of July 8, as reformatted on July 13, 2004
to the Judicial Council of the Second Circuit
for review of the dismissal
of the judicial misconduct complaint, no. 03-8547, CA2,
against Bankruptcy Judge John C. Ninfo, II, WBNY
by
Dr. Richard Cordero

1. Dr. Richard **Cordero**'s **Motion** of **April 18**, 2004, for Leave to Update the Motion For the Hon. **Chief Judge** John M. Walker, Jr., to **Recuse Himself** from this Case With Recent Evidence of a **Tolerated Pattern of Disregard** for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal ..... E-1 [C:337]
2. Dr. **Cordero**'s **Statement of Facts** of **March 19**, 2004, Setting forth a **Complaint** under 28 U.S.C. §351 against Chief Judge Walker **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 ..... E-22 [C:271]
3. **Acknowledgment** by Patricia Chin **Allen, Clerk**, of **March 30**, 2004, of Dr. Cordero's judicial misconduct **complaint about Chief Judge** Walker, docketed under no. 04-8510 ..... E-27 [C:326]
4. Dr. **Cordero**'s **letter** of **June 19**, 2004, to **Chief Judge** Walker, stating that the judicial misconduct **orders** have **not** been **made** publicly **available**, as required under the Rules Governing Misconduct Complaints, and requesting that they be made available to him for his use before the deadline of July 9 for submitting his petition for review ..... E-28 [C:530]
5. Dr. **Cordero**'s **letter** of **June 30**, 2004, to **Chief Judge** Walker, stating that the Court's **archiving** of all judicial misconduct orders except those for the last three years constitutes **a violation of Rule 17** of the Rules Governing Misconduct Complaints ..... E-29 [C:533]
6. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando Galindo, **Chief Deputy** of the Clerk of Court, **concerning** the warning to him by Mrs. Harris, **Head of the In-take Room**, that **if he nodded** a third time in the reading room while reading misconduct orders, she would **call the marshals on him** ..... E-33 [C:537]

7. 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.....E-36 [C:442]

8. Table of Judicial **Misconduct Orders**, made **available** by the **Court of Appeals** for the Second Circuit two weeks after requested by Dr. Richard Cordero and read by him; but docket-sheet record not available, though required under Rule 17(a); and dissenting opinions and separate statements by CA2 Judicial Council members, if written, not available.....E-57 [C:564]

9. Table of All **Memoranda and Orders** of the **Judicial Conference** of the United States Committee to Review Circuit Council Conduct and Disability Orders sent to Dr. Cordero from the General Counsel's Office of the Administrative Office of the U.S. Courts and **showing** how **few** §351 complaints are allowed to **reach the Judicial Conference** as petitions for review of judicial council action.....E-59 [C:566]

10. **Report** of September 23, 2003, of the Proceedings of the **Judicial Conference** of the United States, and Reports of March and September 2003 and March 2004, of the Judicial Conference's **Committee to Review** Circuit Council Conduct and Disability **Orders** stating that there are **no pending petitions** for review of judicial council action on misconduct orders.....E-60 [C:567]

11. **Supreme Court** of the United States **2003** Year-end **Report** on the Federal Judiciary: from 7,924 **filings** in the 2001 Term to **8,255 in** the **2002** Term; www.supremecourtus.gov.....E-66 [C:573]

12. **News** release of the Supreme Court of **June 10**, 2004, on the Organization-al Meeting of the **Judicial** Conduct and Disability Act Study Committee **chaired by** Justice Stephen **Breyer;** http://www.supremecourtus.gov/publicinfo/press/ pr_04-13-04.html.....E-67 [C:574]

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by

Dr. Richard Cordero

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A. The Chief Judge violated his obligation to act promptly and expeditiously

1. The obligation to handle judicial misconduct complaints "promptly" and "expeditiously" permeates the provisions adopted by Congress at 28 U.S.C. §351 et seq. and those adopted thereunder by this Judicial Council in its Rules Governing Complaints Against Judicial Officers (collectively hereinafter the Complaint Provisions). To begin with, one of the grounds for the complaint is that "a judge has engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts"; §351(a), (emphasis added); cf. Preface to the Rules.

2. That obligation was violated by the Chief Judge, the Hon. John M. Walker, Jr., before he even received the Complaint. Indeed, he set up or allowed the continued operation of a procedure that bottlenecks all complaints through one single clerk; (page 3, infra). This has the reasonable consequence –from which intention can be inferred- of making the clerk, who may be on vacation, sick, or too busy, liable to fail to comply with the obligation under §351(c) that "…the clerk shall promptly transmit the complaint to the chief judge"; cf. Rule 3(a)(1). In fact, the clerk failed so to comply not only in this precise instance, but also in the subsequent complaint of March 19, 2004, about the Chief Judge himself, docket no. 04-8510; (22, infra).
3. Once the complaint is transmitted, even its thorough, conscientious review has to be expeditious. This obligation is laid on the chief judge by Congress, which provided thus:

> **§352(a) Expeditious review; limited inquiry**.-The chief judge shall expeditiously review any complaint received under section 351(a)…

4. A complaint can be reviewed "expeditiously" because the law specifically provides that:

> **§352(a)**…The chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute. (cf. Rule 4(b))

5. The Complaint was filed on August 11, 2003. No special committee was appointed. Moreover, there are facts from which it can reasonably be deduced that as of March 8, 2004, the Chief Judge had not even contacted the complained-about judge, the Hon. John C. Ninfo, II, Bankruptcy Judge in Rochester, WBNY; (22-24, infra). This deduction finds support in the fact that the dismissal order is predicated only on the content of the Complaint itself and in nothing other than "A review of the docket sheet in this case", such as the one accompanying the Complaint and, thus, readily available. The fact that the Chief Judge refused even to take possession of a letter of February 2, inquiring about the status of the Complaint, (76, infra), also allows the explanation that he had made no inquiries even six months after submission and, consequently, had nothing to reply and no better way to avoid admitting to it than to send the letter back immediately on February 4, 2004, (78, infra).
6. The Complaint was dismissed on June 8, 2004, in three double-spaced pages and three lines. This means that to perform the "**Expeditious review**" that §352(a) requires of the chief judge, Chief Judge Walker unreasonably took **10 months!** It cannot reasonably be pretended

that such a no-inquiry, quick-job, pro-forma dismissal required 10 months.

7. Consequently, Chief Judge Walker's violation of his promptness obligation casts doubt on his commitment to complying with his other obligations under the Complaint Provisions, such as those laying out the criteria applicable to dismiss or to appoint a special committee.

B. The Chief Judge violated his obligation to dispose of the Complaint and write a reasoned order himself

8. The fact is that Chief Judge Walker did not comply with his obligation under the Com-plaint Provisions to dispose of the complaint by deciding for one of the only options for action available to him. It was the Hon. Dennis Jacobs, Circuit Judge, who did so. The importance of this fact lies, on the one hand, in his lack of legal authority to delegate an obligation that the Complaint Provisions unambiguously impose on the chief judge and, on the other hand, the Chief Judge's motive for not complying given the benefit that he derives therefrom.

1. Chief Judge Walker lacked authority to delegate his disposition obligation

9. Section 351provides that '(a) a complaint is filed with the clerk of the court of appeals, who '(c) promptly transmits it to the chief judge of the circuit.' Only when the chief judge is the one complained about, is the clerk required to transmit it to someone else, namely, the next eligible chief judge. Rule 40c)-(f) requires the chief judge to take the subsequent action, as do:

> §352(a)…After expeditiously reviewing a complaint under subsection (a), **the chief judge**, by written order stating **his** or her **reasons**, may-
>
> (1) dismiss the complaint-
>
> (A) if **the chief judge** finds the complaint to be-…
>
> (2) conclude the proceeding if the **chief judge** finds that…
>
> §353. Special committees
>
> (a) Appointment.-If **the chief judge** does not enter an order under section 352(b), **the chief judge** shall promptly-
>
> (1) appoint…a special committee to investigate…(emphasis added)

10. Congress did not provide for the chief judge to designate another person to make a decision

and write it down in a reasoned order. By contrast, when Congress did want to authorize the chief judge to proceed by delegation, it clearly provided therefor. So in §352(a) it allowed that "The chief judge or his or her designee may also communicate orally or in writing with the complainant, the judge…or any other person who may have knowledge of the matter…".

11. Likewise, Rule 4(b) provides that "In determining what action to take, the chief judge, with such assistance as may be appropriate, may conduct a limited inquiry…". But the Rule makes no provision for the chief judge to receive any other assistance by delegating his disposition obligation. Hence, subsection (c) allows a complaint to be dismissed only "if **the chief judge** concludes" that one of the dismissal criteria is applicable. For its part, subsection (f) lays squarely on the chief judge alone the obligation to take the following step:

> Rule 4(f)(1) If the complaint is dismissed…**the chief judge** will prepare a supporting memorandum that sets forth the allegations of the complaint and the reasons for the disposition. (emphasis added)

12. There is no other provision for the chief judge informally, without any order or expla-nation whatsoever, to have somebody else write the chief judge's reasons, let alone for that other person to dispose of the complaint as he or she sees fit and write his or her own reasons. This is a court of law. Procedural events occur according to law or rule. They do no take the place of legally provided events just because the judges feel like it. Brethren they may be, but pals in a fraternity covering for each other they are not.

2. The Chief Judge had a self-serving motive for not complying with his disposition obligation

13. In any activity that depends on trust in some people for the acceptance of their actions by others, it is not enough to do the right thing, but one must also be seen doing the right thing. It was Judge Jacobs, as "acting chief judge", who dismissed the Complaint and wrote the memorandum. Under what circumstances this occurred is important to know. For one thing, it was Chief Judge Walker who has the legal obligation with no delegating authority to decide its disposition and write his reasons therefor. In addition, his obligation was strengthened by a special circumstance, namely, that a second complaint, one about him, was submitted to Judge Jacob by Dr. Cordero on March 19, 2004, docket no. 04-8510 (22, infra).

Hence, who disposed of the Complaint, the one about Judge Ninfo, has serious implications for future decisions and events concerning the complaint about Chief Judge Walker himself.

14. Indeed, if the Chief Judge came under investigation upon the complaint about him, he would be subject to important restrictions, namely:

> §359 Restrictions
>
> (a) **Restriction on individuals who are subject of investigation**.-No judge whose conduct is the subject of an investigation under this chapter shall serve upon a special committee appointed under section 353, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331, until all proceedings under this chapter relating to such investigation have been finally terminated.

15. If the Chief Judge were investigated, these restrictions would apply to him for a long time, even years. This is particularly so in light of the Chief Judge's implied interpretation of his statutory and regulatory obligation to act "promptly" and "expeditiously" as allowing him to take ten months just to dismiss the complaint, without even communicating with anybody, let alone appointing a special committee. By the same token, those with the obligation to act "expeditiously" with regard to the complaint about him could take just as long. Among those with such obligations are these:

    1) the special committee, which has the obligation to "expeditiously file a comprehensive written report"; §353(c);
    2) the judicial council, which has the obligation to "take such action as is appropriate to assure the effective and expeditious administration of the business of the courts", §354(a)(1)(C); "shall immediately provide written notice to…the judge" complained about; (a)(4); and "shall promptly certify such determination [e.g. of an impeachable offense by the judge complained about]…to the Judicial Conference"; (b)(2(B); and
    3) the Judicial Conference, which simply acts "as it considers appropriate", §355(a), and that could take years!, for it has no direct obligation to act with promptness other than that flowing indirectly from §354(a)(1)(C).

16. No doubt, if these bodies acted as 'promptly' as Chief Judge Walker did, §359 restrictions could substantially limit him in his official role as chief judge for the remainder of his current term as such. That must safely be assumed to raise the most unwelcome prospect of a constant source of embarrassment, to put it mildly.

17. However, the Chief Judge's problem in avoiding an investigation is that the Complaint about

Judge Ninfo and the complaint about him are related. It is reasonable to supposed that if Judge Ninfo were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker too disregarded for at least 10 months the law imposing on him the promptness obligation, thereby allowing the continuation of 'a prejudice "to the administration of the business of the courts"' so grave as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, equally dismissed without any investigation, would have led a prudent and impartial person to investigate them. Questions like these could spin the investigation out of control quite easily.

18. Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than him, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed too.

19. It so happens that after the obligation to act "promptly" and "expeditiously" was disregarded for 10 months and despite the lack of any delegating authority, that less risky situation has set in through the dismissal by Judge Jacobs of the Complaint. Whether what appears to have happened is what actually happened is a matter to be determined by the Judicial Council through the appointment of a special committee. But that appearance reasonably arises from the totally of circumstances.

20. Moreover, the appearance of a self-serving motive for the action taken is supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Much less can they do so reliably since their loyalties and their short and long term self-interests in the context of office politics will induce or even force them to close ranks against an 'attack' from an outsider. Only independent investigators whose careers cannot be affected one way or another by those investigated or their friendly peers can be expected to conduct a reliable investigation.

C. The Chief Judge violated his obligation to make misconduct orders "publicly available"

21. Rule 17(a) provides that:

> A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made available to the public when final…

22. However, Chief Judge Walker violated this provision too. Thus, Dr. Cordero received the order of dismissal on Saturday, June 12, and went to the Courthouse on June 16, to request Rule 17(a) records. But they were not made available to him. Instead, the matter was referred to Mr. Fernando Galindo, Chief Deputy of the Clerk of Court, who referred it to Clerk of Court Rose-ann MacKechnie, who, according to Mr. Galindo, referred it to Chief Judge Walker. Dr. Cordero wrote a letter to the Chief Judge on June 19 to make him aware that he was invoking his right to access those records; that the Chief Judge had an obligation to make them available; and that time was of the essence because of the deadline of July 9 for submitting this petition for review (28, infra). Yet, the letter was never answered. Dr. Cordero called Mr. Galindo and left messages for him. Only on June 29 did Mr. Galindo call back Dr. Cordero to tell him that the orders would be made available to him the next day, June 30, fully two weeks after his initial request.

23. When on the 30th Dr. Cordero requested those records at the Courthouse In-take Room, imagine his bafflement when he was told for the first time that only the orders of 2002, 2003, and 2004 were available! He asked to speak with Chief Deputy Galindo, who then told him that the orders for all the previous years were in the archive. Where!? In the archive, but neither in the basement of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, no: In the National Archives in Missouri! Moreover, to consult them, Dr. Cordero would have to make a written request, pay $45, and wait at least 10 days for them to arrive. Dr. Cordero asked for at least the docket sheet of those records, but Mr. Galindo told him that there was none. Neither the records nor the truth about them was made available to him timely or completely.

24. Dr. Cordero felt cheated! How would you have felt? If you had written that day, June 30, to the Chief Judge protesting such piecemeal and substantially incomplete disclosure of what you were entitled to and which was made only because you kept insisting, whereby you were

made to waste half the time allowed for you to exercise your right to appeal (29, infra), but the letter was never answered, would you trust that the Chief Judge cared about even appearing to comply with his obligations under the Complaint Provisions? Would his non-compliance with his obligation to make those orders available cause you to distrust that he had complied with those Provisions when dismissing your complaint?

25. Consider this. The next day Dr. Cordero checked out a binder of orders from Mrs. Harris, the Head of the In-take Room, and stepped into the adjoining reading room. He sat and read for some time the…'There is no sleeping in the reading room', a clerk told him. It appears that Dr. Cordero was nodding. He went on reading for several hours and taking notes in his…'You are sleeping and there is no sleeping in the reading room'. This time it was Mrs. Harris, the Head In-taker. He told her that he had not gone there to sleep, but rather must have fallen asleep. She replied 'You have already been warned and if you fall asleep again, I would call the marshals.'

26. The marshals!, those security officers in charge of preventing criminals and terrorists from smuggling into the Courthouse guns and bombs to kill and maim federal employees and visitors. Mrs. Harris would call them away from manning the metal detectors in the lobby to catch Dr. Cordero as he threatened everybody in the reading and In-take rooms with nodding! Can you assure yourself, let alone others, that you will not nod again while reading for hours in a noisy room? (33, infra) How would you feel if you, a professional and self-respecting person, were taken away in public by the marshals?

27. Was Mrs. Harris acting on her own initiative or as an agent in a Courthouse where… madhouse, the nurse! The infamous head nurse in "One Flew over the Cuckoos' Nest"! Did she need specific instructions to apply minute rules so insensitively to mentally ill inmates or was she the product of an institution, imitating top managers that had no respect for the obligations of their profession, psychiatry, and disregarded the rights of the inmates - particularly the one faking mental illness- whose requests they repressed with electroshocks to their brains to quash any sense of self-assertion in their minds? Here, in the lawhouse -the law of trickle down unlawful-ness (36, infra) and of power unchecked is power abused- the Head In-taker will call in the mar-shals to straitjacket a reader dangerously nodding everybody around, while Chief Warden elec-trocutes his obligation to keep misconduct orders publicly available and sends the body of those orders to the padded room of archival

preservation in Missouri. How dangerous is that body?

28. Very. The table of the few orders left behind in the Courthouse and read by Dr. Cordero shows (57, infra) that all complaints were dismissed in reasoned orders written by Chief Judge Walker. For its part, the Judicial Council, without any supporting memoranda, dismissed all the petitions for review. No wonder that body of orders is considered to be so dangerous as to need to be put far away in an archive, for it kicks and screams loud and clear an indictment, not of the complainants for each of them without exception submitting allegedly meritless or "frivolous" complaints, but rather of the judges for dismissing out of hand with no investigation by any special committee all misconduct complaints and review petitions.

29. Such perfunctory dismissals have compromised, as Justice Breyer's Committee put it in its news release after its first meeting last June 10, "The public's confidence in the integrity of the judicial branch [which] depends not only upon the Constitution's assurance of judicial independence [but] also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability"; (67, infra). If the Justice and his colleagues put an effective complaint procedure at a par with the judiciary's constitutionally ensured independence, why then have chief judges and judicial councils treated complaints with so much contempt? Are they dispensing protection to each other in their peer system at the expense of those for whose benefit they took an oath to dispense justice? From these circumstances it is reasonable to infer that the Complaint was dismiss with disregard for the Complaint Provisions.

July 8, 2004

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A Chapter 7 Trustee with *3,383 cases!*

How he showed that with such workload
he could not and did not pay attention
to the facts and merits of each case;
yet, Judge Ninfo and the U.S. Trustee protected him
from a complaint about his performance and fitness to serve
and even dismissed claims of negligence against the Trustee
without allowing any discovery

by

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1. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero to the bankruptcy court and others, and merely referred him back to the same people that had referred him to Trustee Gordon.
2. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge Ninfo did not investigate whether the Trustee had submitted to him false statements, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and held back in its depth to uncritically accepting at face value

what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.

3. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.
4. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has *thousands* of cases. The statistics on Pacer as of November 3, 2003, showed that Trustee Gordon was the trustee in 3,092 cases! What is more, as of June 26, 2004, Pacer replied in page https://ecf.nywb.uscourts.gov/cgi-bin/login.pl to a query of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". The latest one is:

2-04-22525-JCN	Thomas E. Smith	filed 06/14/04

5. This means that in fewer than 8 months and excluding weekends and holidays and without taking into account any vacation, sick days, training, or conference attendance, Trustee Gordon has taken on an additional 291 cases or an average of 2 cases per day! What kind of 'quality time' can he give to the review of the filing data and ascertainment of legal compliance and good faith of two new cases a day while at the same time he monitors all his enormous load of other cases?…and goes to court for hearings, and writes reports for the court, and confers with his supervisor, the assistant U.S. Trustee, and discusses the concerns of creditors…that too?, well, perhaps not too often, for he also prosecutes or defends lawsuits in 142 cases, the latest one being, according to Pacer:

2-04-22720-JCN	Norman G Kraft and Ellen K Kraft	filed 06/23/04

6. To top it off, he is also named a party in 76 cases, the latest of which Pacer identifies as being:

2-04-02014-JCN	Gordon v. Murphy	filed 01/29/04

7. Now comes a critically important piece of information, or rather three, for Paces shows that in all those 76 cases in which Trustee Gordon is named a party, the judge has been none other than JCN, that is, the Hon. John C. Ninfo, II; that in 138 out of those 142 cases in which Trustee Gordon was named an attorney, the judge has been Judge Ninfo; and that in all but one of the 3,383 cases in which Trustee Gordon was the trustee, Judge Ninfo has been the judge. They have worked together in thousands of cases!, for years, day in and day out, with Trustee Gordon appearing before Judge Ninfo in the same session several times for different cases. It is more than reasonable to assume that they have developed, if not a personal bond, then the working relationship between a grantor of rulings who is not to be challenged and a petitioner of rulings who wants them to be favorable. Such relationship benefits from cooperation and mutual support as well as the avoidance of even the appearance of defiance, not to mention antagonism. It induces its participants to become partners. Outsiders had better abstain from challenging either of them, let alone both of them.

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court
compared with the number of cases of bankruptcy attorneys appearing there
as of November 3, 2003, at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

NAME	# OF CASES AND CAPACITY IN WHICH APPEARING SINCE					
	since	trustee	since	attorney	since	party
Trustee Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Trustee Kathleen D.Schmitt	09/30/02	9				
Attorney David D. MacKnight			04/07/82	479	05/20/91	6
Attorney Michael J. Beyma			01/30/91	13	12/27/02	1
Attorney Karl S. Essler			04/08/91	6		
Attorney Raymond C. Stilwell			12/29/88	248		

8. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section II, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed, in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend

Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct toward Dr. Cordero?

9. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (see his misconduct complaints). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.
10. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over complying with the laws and rules of Congress or being truthful about the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times in a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the entries shown in the table below.
11. When locals must pay such respect to the judge, there develops among them a vassal-lord relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the Fiefdom of Rochester. Therein the law of close personal relationships reigns supreme.

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight[1]	3
Kathleen Schmitt	3	Raymond Stilwell[2]	2

12. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local, Dr. Cordero, who dared assert his rights against them under a foreign law, that is, the laws of Congress.
13. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came to his vassal's assistance. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 8, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.
14. However, while this case started with Dr. Cordero, a non-citizen of the Fiefdom of Rochester, being dragged from New York City as a defendant into that diverse jurisdiction, it did not end when Dr. Cordero, naively thinking that he was in a federal court, had the 'temerity' to challenge the Deferential Counsel *to* the Court Gordon, and Lord Ninfo had no qualms in

[1] David MacKnight, Esq., is the attorney of Mr. James Pfuntner, the owner of a warehouse used by Mr. David Palmer, the owner of Premier Van Lines, the moving and storage company that went bankrupt.

[2] Raymond Stilwell, Esq., was the attorney representing Mr. David Palmer.

defending his Counsel by disregarding legality and dismissing Dr. Cordero's challenge. Far from it, thereupon Dr. Cordero, still disoriented by a compass pointing to the law of Congress, had the 'boldness' to go on appeal to the district court. Then it was time for Duke of the District David Larimer, who rules from the floor above that of Lord Ninfo in the same federal building, to come to the rescue of his very close colleague. By likewise disregarding the law, the rules, and the facts, the Duke dismissed Dr. Cordero from his jurisdiction.

15. Dr. Cordero came back to New York City to appeal to the judges of the circuit, whom he thought second to none in their respect for the law, their sense of duty, and fair-mindedness. What a foolish idea! Only a man that believes in law and order can be led astray by so misguiding idealism. Tightly knitted and long lasting working conditions give rise to office politics and vested interests that engulf into a morass of compromise and upside down priorities all but the strongest individuals. These are the ones who can stand alone on a limb for what is right. They can even provide a point of anchor to those battered and in danger of being sunk by wave after wave of the misconduct of officers who were supposed to provide a safe haven. In what category of persons do you put yourself through your acts?

July 8, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

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[C:647-650 reserved]

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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

July 16, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

We hereby acknowledge receipt of your revised petition for review, dated February 13, 2004 and received in the Clerk's Office on February 14, 2004.

Your petition for review of the June 8, 2004 Order of the Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351.*

You will be notified by letter once a decision has been made.

Your exhibits volume is returned.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

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
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[Sample of letters to members of the Judicial Council, 2nd Cir.]

July 30, 2004

Hon. Rosemary S. **Pooler**, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Re: judicial misconduct complaint, docket no. 03-8547

Dear Judge Pooler,

Last July 8, I submitted and on July 13 resubmitted to the Clerk of Court of the Court of Appeals for the Second Circuit a petition for review of the dismissal on June 8 of my complaint, filed on August 11, 2003. In connection with that petition, this letter is a communication properly addressed to you under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq., which provides thus:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

In support of my petition, I submitted bound with it exhibits, which were returned to me unfiled. Upon resubmitting the petition, I submitted the exhibits in a separate bound volume, which was also returned to me unfiled while the petition was accepted. I was not allowed to attach to the petition even the table of exhibits.

There is no provision, whether in the Rules or in §351 et seq., that prohibits the submission of exhibits with a review petition. On the contrary, by analogy to Rule 2(d) allowing the submission of documents as evidence supporting a complaint, they should have been filed. They should also have been accepted in application of the general principle that evidence, such as that contained in exhibits, accompanying a statement of arguments submitted to judges for determination of their legal validity, is not only welcome as a means to lend credence to such arguments, but also required as a way to eliminate a party's unfounded assertions and allow the judges to ascertain on their own the meaning and weight of the arguments' alleged source of support. The exhibits should also have been accepted so that the clerk of court could make them available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" How can the clerk make documents available if she does not even file them?

In any event, what harm could conceivably result from filing exhibits with a petition for review? Why would the clerk take it upon herself in the absence of any legal or practical justification, to deprive a petitioner of his right to do what he is not prohibited from doing, whether expressly or by implication, and in the process deprive the members of the Judicial Council of what could assist them in performing their duty to assess the merits of a petition?

Therefore, I am hereby communicating to you the table of exhibits so that you may request any or all of them from the clerk of court, to whom I am resubmitting them once more, or from me directly. For context and ease of reference, I am also including a copy of the petition.

Sincerely, Dr. Richard Cordero

List of Members of the Judicial Council of the Second Circuit

to whom were sent the letters of July 30, 2004
protesting the refusal by CA2 clerks of exhibits
whether bound with the petition or in a separate volume supporting
the petition for review of the dismissal of complaint, no. 03-8547, CA2,
against Judge John C. Ninfo, II, WBNY

by

Dr. Richard Cordero

Madam Justice **Ginsburg**
Circuit Justice for the 2nd Circuit
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Hon. John M. Walker, Jr., Chief Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals, for the 2nd Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Hon. Jose A. **Cabranes**, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals, for the 2nd Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Hon. Guido **Calabresi**, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Hon. Dennis **Jacobs**, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Hon. Rosemary S. **Pooler**, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Hon. Chester J. **Straub**, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Hon. Frederick J. **Scullin**, Jr., Chief Judge
Member of the Judicial Council of the 2nd Circuit
U.S. District Court for the NDNY
James T. Foley U.S. Courthouse
Albany, NY 12207-2924

Hon. Edward R. **Korman**, Chief Judge
Member of the Judicial Council of the 2nd Circuit
U.S. District Court for the EDNY
225 Cadman Plaza East
Brooklyn, NY 11201

Hon. Michael B. **Mukasey**, Chief Judge
Member of the Judicial Council of the 2nd Circuit
U.S. District Court for the SDNY
500 Pearl Street, Room 2240
New York, NY 10007-1312

Hon. Robert N. **Chatigny**, Chief Judge
Member of the Judicial Council of the 2nd Circuit
U.S. District Court for the District of Connecticut
450 Main Street
Hartford, Ct 06103

Hon. William **Sessions**, III, Chief Judge
Member of the Judicial Council of the 2nd Circuit
U.S. District Court for the District of Vermont
P.O. Box 945
Burlington, VT 05402-0945

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

July 31, 2004

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square, Room 1802
New York, NY 10007

Re: Petition for review in judicial misconduct complaint 03-8547

Dear Ms. MacKechnie,

Last July 8, I submitted and on July 13 resubmitted to you and Chief Deputy Clerk Fernando Galindo, respectively, a petition for review of the dismissal on June 8 of the above captioned complaint, filed on August 11, 2003. In connection with that petition, I have properly addressed a communication to each and all members of the Judicial Council under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq., which provides thus:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

In that communication, I sent to the Judicial Council members a copy of both the table of exhibits that formed part of the separate bound volume of exhibits that accompanied my revised petition of July 13 and a copy of that petition. That volume was returned to me unfiled. I have argued to the members why the exhibits should have been filed. Among the arguments are these:

1. There is no provision, whether in the Rules or in §351 et seq., that prohibits the submission of exhibits with a review petition.
2. On the contrary, by analogy to Rule 2(d) allowing the submission of documents as evidence supporting a complaint, they should have been filed.
3. They should also have been accepted in application of the general principle that evidence, such as that contained in exhibits, accompanying a statement of arguments submitted to judges for determination of their legal validity, is not only welcome as a means to lend credence to such arguments, but also required as a way to eliminate a party's unfounded assertions and allow the judges to ascertain on their own the meaning and weight of the arguments' alleged source of support.
4. It is not for the clerk of court to take it upon herself to deprive the members of the Judicial Council of documents that can assist them in performing their duty to assess the merits of a petition for review.
5. No harm can conceivably result from filing exhibits with a petition for review.

Therefore, I respectfully submit that you should accept the enclosed bound volume of exhibits and its table of contents so that you can make any or all of them available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" It follows that for the clerk to be able to make documents available to the members, she must file them.

Sincerely, Dr. Richard Cordero

C:654 Dr. Cordero's request of 7/31/4 for Clerk MacKechnie to accept exhibits vol. for use by J. Council members

EXHIBITS

in support of the letter containing
the Statement of Grounds
for a Petition for Review to

THE JUDICIAL COUNCIL
OF THE SECOND CIRCUIT

of the dismissal of
judicial misconduct complaint 03-8547

submitted on July 31, 2004

to

Clerk of Court Roseann MacKechnie
under Rule 8(c) pursuant to
a communication to the members of the Judicial Council
under Rule 8(e)(2) of this Circuit's Rules Governing Judicial
Misconduct Complaints under 28 U.S.C. §351 et seq.

by

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 3, 2004

Mr. Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

I write in response to your letter, dated July 30, 2004, addressed to Judge Dennis Jacobs, and your letter of July 31, 2004, addressed to the Clerk of Court.

Your petition for review of the dismissal of your judicial misconduct complaint in the above-referenced matter is pending before the judicial council. Copies of all documents filed in this matter were forwarded to the council members for their review in accordance with the Rules governing this procedure.

You will be notified by letter once a decision has been filed.

Sincerely,

Roseann B. MacKechnie

Enclosures

C:656 Clk MacKechnie's return of 8/3/4 to Dr. Cordero of exhibits vol & 7/30 letter, petition, & Tbl Exh to J Jacobs

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 13, 2004

Mr. Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Your letter, dated July 30, 2004, addressed to Chief Judge John M. Walker, Jr., has been forwarded to this office for response.

Your petition for review of the dismissal of your judicial misconduct complaint in the above-referenced matter is pending before the judicial council. Copies of the documents filed in this matter were forwarded to the council members for their review in accordance with the Rules governing this procedure.

You will be notified by letter once a decision has been filed.

Sincerely,
Roseann B. MacKechnie, Clerk

By: _____
Patricia Chin-Allen, Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 18, 2004

Mr. Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Your letter, dated July 30, 2004, addressed to Judge Chester J. Straub, has been forwarded to this office for response.

Your petition for review of the dismissal of your judicial misconduct complaint in the above-referenced matter is pending before the judicial council. Copies of the documents filed in this matter were forwarded to the council members for their review in accordance with the Rules governing this procedure.

You will be notified by letter once a decision has been filed.

Sincerely,
Roseann B. MacKechnie, Clerk

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

C:658 Clerk Allen's return of 8/18/4 to Dr. Cordero of his7/30 letter, copy of petition, &Tbl of Exh to Judge Straub

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

[Sample of letters to members of the Judicial Council, 2nd Cir.]

August 27, 2004

Chief Judge Edward R. Korman
U.S. District Court, EDNY
225 Cadman Street
Brooklyn, NY 11212

Re: petition for review of misconduct complaint, 03-8547, v. J. Ninfo

Dear Chief Judge Korman,

Last July 16 my petition was filed (Exh. 1, infra) for review of the dismissal of the above-captioned complaint, filed on August 11, 2003. This is a permissible communication with you[1] that updates it with recent events that raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard for the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo and the 3,382 that Trustee Kenneth Gordon likewise has.

This update is compelling because of the strongly suspicious way in which Judge Ninfo has handled the flagrantly bogus petition of David and Mary Ann DeLano, docket no. 04-20280: Mr. DeLano has been for 15 years and still is a bank *loan* officer, that is, he is an insider of the lending industry and an expert in how to assess and maintain his borrowing clients' creditworthiness; yet he owes with his wife more than $98,000 on 18 credit cards; in the last three years alone they earned $291,470, yet declared household goods worth only $2,910, and cash totaling merely $535. Where is the rest of their earnings during a lifetime of work? (See §I, infra.)

Disregarding the law again, Judge Ninfo has refused to require the DeLanos to produce documents to show the whereabouts of hundreds of thousands of dollars unaccounted for (§I ¶2) Although they listed me as a creditor in their petition of January 26, 2004, and their attorney has treated me as such for 6 months, at the latter's instigation Judge Ninfo has now taken steps to remove me as a creditor and has stayed all proceedings in their case (Exh. 2, entry 61), including my request for account statements that could show concealment of assets. To that end, he has required that I prove in this case the claim that I brought against Mr. DeLano in *Pfuntner v. Gordon et al*, docket no. 02-2230, precisely the case that I appealed to and is in the Court of Appeals and that gave rise to this complaint because, among other things, 11 months after its filing he had failed to comply with FRCivP Rule 26, so that no discovery was ever taken of Mr. DeLano and other parties. Yet, Judge Ninfo requires me to try that *Pfuntner* case within this *DeLano* case (§II), thus making a mockery of the Appeals Court and process by forestalling the order that I requested for the removal of the *Pfuntner* case to Albany due to his participation in the pattern of wrongdoing and his bias against me. Why would Judge Ninfo not ask the DeLanos to produce concurrently their financial documents and instead ignores their contempt for his own July 26 order of production? (§III) Did money drive the decision in this and other similar cases?

What else would it take for you to feel that this petition presents evidence of misconduct, let alone, of a threat to the judicial system, that warrants the appointment of a special committee?

Sincerely,

Dr. Richard Cordero

STATEMENT UPDATING THE PETITION FOR REVIEW

to the Judicial Council of the Second Circuit
of the dismissal of the complaint against Judge John C. Ninfo, II
with evidence as of August 27, 2004
of lots of money generated by fraudulent bankruptcy petitions
as the force driving the complained-about bias
and pattern of non-coincidental, intentional, and coordinated acts
of disregard for the law, the rules, and the facts
engaged in by Judge Ninfo and others in WBNY and WDNY
by

Dr. Richard Cordero

1. The Judicial Council is entitled to accept and review this update because it constitutes a communication properly addressed to you and your colleagues under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq.:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
>
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

A. Numbers and circumstances of the DeLanos' bankruptcy petition are so incongruous that Judge Ninfo had to realize that it was bogus yet it was approved by Trustee Reiber, who did not want to investigate it just as the DeLanos disobeyed his order for document production, whereupon he had the obligation to safeguard the integrity of the financial system and the duty under 18 U.S.C. §3057(a) to report them to the U.S. Attorney as under suspicion of collusion to commit bankruptcy fraud...but instead he took steps to remove Dr. Cordero as creditor, the only one who requested and analyzed documents and discovered evidence of concealment of assets, debt underreporting, accounts non-reporting, and a voidable preferential transfer to the Debtors' son!

2. Judge for yourself from the following salient numbers and circumstances whether Judge John C. Ninfo, II, WBNY, had reason to suspect the good faith of the DeLanos' bankruptcy petition:

   a) Mr. DeLano has been *a bank loan officer for 15 years!* His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in ways to remain solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines.

   b) The DeLanos incurred scores of thousands of dollars in credit card debt;

   c) carried it at the average rate of 16% or the delinquent rate of over 23% for over 10 years;

   d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

   e) have ended up owing $98,092 to 18 credit card issuers listed in their petition's Schedule F;

   f) owe also a mortgage of $77,084;

   g) but have at the end of their work life equity in their home worth merely $21,415;

   h) declared these earnings in their 1040 IRS forms in just the last three years:

2001	**2002**	**2003**	**total**
$91,229	91,655	108,586	$291,470.00

   i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!; why kind of purchases could they possibly have made with all those 18 credit cards?;

   j) their cash in hand or on account declared in their petition was only $535.50;

   k) the rest of their tangible personal property is just two cars worth a total of $6,500;

   l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

   m) make a $10,000 loan to their son, declare it uncollectible, and do not provide even its date;

n) and offer to repay only 22 cents on the dollar without interest for just 3 years.

3. In Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let's assume that in 1989 the combined income of Bank Loan Officer DeLano and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what they owned before 1989, let alone their credit card borrowing and two loans totaling $118,000. Where did the money go? Where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement have they been planning for and where?
4. It is reasonable to assume that Trustee Reiber's attorney, James Weidman, Esq., knows. The Trustee has the duty to conduct 11 U.S.C. §341 meetings of creditors personally, cf. 28 CFR §58.6. However, in violation thereof he appointed Att. Weidman to conduct the one held in this case last March 8 in Rochester. He became quite nervous when out of the 21 creditors of the DeLanos, Dr. Cordero was the only one to turn up at the meeting and tried to examine them. But Att. Weidman prevented Dr. Cordero from doing so by terminating the meeting after he had asked only two questions of the DeLanos but would not reveal what he knew when Att. Weidman asked him repeatedly –as if Dr. Cordero were under examination!- what evidence he had that the DeLanos had committed fraud. What did he know that he could not afford Dr. Cordero to find out from the DeLanos under oath? That same day Dr. Cordero complained in open court to Judge Ninfo about this violation, but he unquestioningly adopted Att. Weidman's pretense that he had ran out of time…after just two questions from the only creditor!

B. Indisputable evidence supports the reasonable assumption that other clients of Bank Loan Officer DeLano went bankrupt and were accommodated by the trustees without regard for the Bankruptcy Code and Rules and with Judge Ninfo's approval, so that Mr. DeLano knew that his meritless petition would be approved without examination by Trustee Reiber and the Judge; but Dr. Cordero analyzed the DeLanos' documents and put it together, whereupon the DeLanos moved to disallow his

claim in order to remove him from the case with the assistance of Judge Ninfo, who stayed all bankruptcy proceedings and required him to prove his claim by first trying another case that is on appeal to the Court of Appeals and under consideration by the Judicial Council

5. How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants' financial documents, have thought that it would be deemed in good faith to submit his palpably meritless petition? Did Mr. DeLano put his knowledge and experience as a bank loan officer to good use in living it up with his family and closing down all collection activity of 18 credit card issuers by filing for bankruptcy? Did he have any reason to expect Trustee Reiber not to analyze his petition but just to rubberstamp it 'approved'?
6. There is evidence for the assumption that Mr. DeLano knew how clients of his at M&T Bank had ended up filing for bankruptcy and being accommodated by the trustees and Judge Ninfo. Indeed, one such client was David Palmer, the owner of the moving and storage company Premier Van Lines. On its behalf, Mr. Palmer filed for voluntary bankruptcy under Chapter 11, docket no. 01-20692, precisely on the day when a judgment was going to be enforced against him, which smacks of abuse of bankruptcy law to avoid a single debt. Nevertheless, Judge Ninfo stayed the enforcement. A few months later, Mr. Palmer disappeared from all further proceedings. Although his home address at 1829 Middle Road, Rush, New York 14543, was known, Judge Ninfo would not bring him back into court to face his obligations. His case was converted to one under Chapter 7 and entrusted to Chapter 7 Trustee Kenneth Gordon, who according to PACER, has other 3,382 case before Judge Ninfo.[1]
7. Trustee Gordon was sued by James Pfuntner, the owner of the warehouse where Mr. Palmer abandoned his clients' property, including Dr. Cordero's, which was contained in storage containers bought by Mr. Palmer with a loan made to him by M&T Bank Loan Officer DeLano. Warehouser Pfuntner also sued others, including Dr. Cordero and M&T Bank. Mr. DeLano handled that matter so negligently and recklessly that Dr. Cordero brought him as a third-party defendant into *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, by a complaint served on November 21, *2002*. Since then Mr. DeLano has known the nature of Dr. Cordero's claim against him, but never contested it except by filing together with M&T Bank a general denial.

[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

8. That is why Mr. DeLano included Dr. Cordero as a creditor in his petition of January 26, 2004. He treated Dr. Cordero as a creditor for 6 months and tolerated his requests for documents since so few were actually produced to the point that Trustee Reiber moved on June 15 to dis-miss the case for "unreasonable delay". Even so, Dr. Cordero analyzed those documents and on July 9 filed a statement indicating bankruptcy fraud, particularly concealment of assets. Soon thereafter the DeLanos came up with an idea to eliminate the threat that Dr. Cordero posed.
9. Mr. DeLano, a lending industry insider, knew that by distributing his borrowing among 18 credit cards he would make it cost-ineffective for any issuer to incur the expense of having lawyers object to his repayment plan, let alone travel to the meeting of creditors, or request and analyze documents…but Dr. Cordero, with all his objections, requests, and document analysis, threatened to spoil it all for the DeLanos, his attorney, Trustee Reiber, and Judge Ninfo. So to get rid of him, they moved to disallow his claim. For his part, Judge Ninfo stayed any bankruptcy proceedings to prevent any further discovery of documents, which could have shown their approval of a fraudulent petition and open the door for an investigation that could uncover their judicial misconduct and bankruptcy fraud scheme.

C. A series of inexcusable acts of docket manipulation form part of the pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit

10. At a hearing last July 19, Judge Ninfo asked Dr. Cordero to convert his July 9 requested order for the DeLanos to produce documents into a proposed order and fax it to him so that he could sign and issue it immediately to the DeLanos. Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed. Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received.
11. Judge Ninfo's requests on other occasions of documents, whose contents he likewise knew, for Dr. Cordero to prepare and submit only to do nothing upon receiving them show that the Judge never intended to issue that proposed order. Was it just to up the ante with the DeLanos?

12. The fact is that upon Dr. Cordero's protest, Judge Ninfo issued an order on July 26, one inexcusably watered down by comparison with Dr. Cordero's proposed order. Indeed, despite the evidence of concealment of assets by the DeLanos, the Judge's order failed to require them to produce bank or *debit* account statements that could have revealed their earnings' trail and whereabouts; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could possibly justify preventing document production from being used to ascertain the facts and the petition's good faith?
13. However watered down Judge Ninfo's order of July 26 was, the DeLanos did not comply with it and did so with total impunity! Dr. Cordero complained about it at the hearing on August 25[2] to argue the DeLanos' motion to disallow Dr. Cordero's claim. Judge Ninfo found nothing more revealing to say than that if Dr. Cordero had no claim, he could not ask for documents. Thereby the Judge showed that he accorded priority to the DeLanos' interest in getting rid of Dr. Cordero over his own duty to insure respect for court orders and to protect the benefit that inures to all other creditors as well as to the integrity of the bankruptcy system from Dr. Cordero's work of document analysis and discovery of a bankruptcy fraud scheme.

August 27, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

[2] The transcript of this hearing as well as of that on August 23 to argue Trustee Reiber's motion to dismiss and Dr. Cordero's motion to remove the Trustee must be read by any investigators of this matter, for they are most revealing of how Judge Ninfo argued from the outset the motions of the DeLanos and the Trustee and became Dr. Cordero's opposing counsel, thus abdicating his role as neutral arbiter. But given the manipulation of the transcript of the hearing on December 18, 2002, already complained about, the accuracy of those transcripts must be checked against the stenographer's tapes themselves.

U.S. Bankruptcy Court
Western District of New York (Rochester)
Bankruptcy Petition #: 2-04-20280-JCN

Assigned to: John C. Ninfo II
Chapter 13
Voluntary
Asset

Date Filed: 01/27/2004

David G. DeLano
Mary Ann DeLano
1262 Shoecraft Road
Webster, NY 14580
SSN: xxx-xx-3894
Debtor

represented by **Christopher K. Werner**
Boylan, Brown, Code, Vigdor & Wilson LLP
2400 Chase Square
Rochester, NY 14604
(585) 232-5300
Email: cwerner@boylanbrown.com

08/23/2004	60	Hearing Held (RE: related document(s)42 Chapter 13 Trustee's Motion to Dismiss Case) Motion denied without prejudice. The Court will suspend any and all Court proceedings and involvement in this case until the claim objection, scheduled for 8/25/04, is resolved. Dr. Cordero's motion, dated, 8/14/04, is denied in its entirety without prejudice to renew should the Court determine he has an allowable claim in this case. The Court will prepare and enter an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee.Appearing in opposition: Christopher Werner, Atty. for Debtor; Dr. Richard Cordero, Pro Se.(Parkhurst, L.) (Entered: 08/25/2004)
08/23/2004	61	Confirmation Hearing Held. (RE: related document(s)5 The Confirmation Hearing is suspended until the objection to the claim of Dr. Richard Cordero is resolved. Appearances: Christopher Werner, Atty. for Debtors; George Reiber, Trustee. Appearing in opposition: Dr. Richard Cordero, Pro Se (By telephone).(Parkhurst, L.) (Entered: 08/25/2004)

PACER Service Center

Transaction Receipt

08/27/2004 09:32:28

PACER Login:		**Client Code:**	
Description:	Docket Report	**Search Criteria:**	2-04-20280-JCN Fil or Ent: Fil Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
Billable Pages:	4	**Cost:**	0.28

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 31, 2004

Mr. Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Judge Dennis Jacobs, has forwarded your unopened letter to this office for response.

Your petition for review was received and filed in this office on July 14, 2004. At that time the petition was sent to the review panel, in compliance with the Rules governing this procedure.

You will be notified once a decision is made. Your papers are returned to you without any action taken.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 31, 2004

Mr. Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Judge José Cabranes, has forwarded your unopened letter to this office for response.

Your petition for review was received and filed in this office on July 14, 2004. At that time the petition was sent to the review panel, in compliance with the Rules governing this procedure.

You will be notified once a decision is made. Your papers are returned to you without any action taken.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

C:668 Clerk Allen's return of 8/31/4 to Dr. Cordero without any action taken of his 8/27 letter to CA2 J. Cabranes

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 31, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Your "permissible communication" addressed to Chief Judge John M. Walker, Jr., was forwarded to this office for response.

Your petition for review was received and filed in this office on July 14, 2004. At that time the petition was sent to the review panel, in compliance with the Rules governing this procedure.

You will be notified once a decision is made. Your papers are returned to you without any action taken.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

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

Enclosures

Clerk Allen's return of 8/31/4 to Dr. Cordero without any action taken of his 8/27 letter to CA2 C.J. Walker C:669

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

September 3, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Your "permissible communication" addressed to Judge Guido, has been forwarded to this office for response.

Your petition for review was received and filed in this office on July 14, 2004. At that time the petition was sent to the review panel, in compliance with the Rules governing this procedure.

You will be notified once a decision is made. Your papers are returned to you without any action taken.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

C:670 Clerk Allen's return of 9/3/4 to Dr. Cordero without any action taken his 8/27 letter to CA2 J. Guido Calabresi

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

October 6, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Enclosed please find a copy of the September 30, 2004 Order of the Judicial Council of the Second Circuit denying your petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

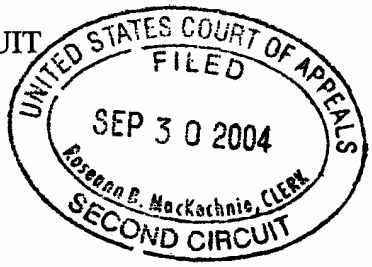
Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 03-8547

Before the Judicial Council of the Second Circuit:

A complaint having been filed on August 8, 2003, alleging misconduct on the part of a Bankruptcy Judge of this Circuit, and the complaint having been dismissed on June 8, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on July 14, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated June 8, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Bankruptcy Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: September 30, 2004
New York, New York

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[C:673-680 reserved]

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ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

DATE: 5/13/04

From the Office of the General Counsel - Jeffrey N. Barr

To: Dr. Richard Cordero

Pursuant to your request, enclosed are the documents of which we discussed.

To: Jeffrey **Barr, Esq**., Gen. Counsel Off; tel. (202)502-1100, fax (202)502-1033 **June 23, July2&15, 04**
From: Dr. Richard **Cordero**, 59 Crescent Street, Brooklyn, NY 11208-1515; tel. (718)827-9521
Re: Request for **(1)** all memoranda and orders of the Judicial Conference of the U.S. Committee to Review Circuit Council Conduct and Disability Orders, having account of those already sent and their incompleteness as shown in the table below; **(2)** all other available misconduct orders of the judicial councils, particularly those of the Court of Appeals for the Second Circuit; and **(3)** the current statistics of cases filed and disposed of in the federal courts.

	In re Complaint of [C:1611]	Docket no.	Status	Circuit Council	
1.	George Arshal	82-372-001	Incomplete after p.3	Court of Claims	
2.	Gail Spilman	82-372-002		6th	
3.	Thomas C. Murphy	82-372-003		2nd	
4.	Andrew Sulner	82-372-004		2nd	
5.			-005 missing?		
6.	John A. Course	82-372-006		7th	
7.	Avabelle Baskett, et al.	83-372-001		Court of Claims	
8.	of bankruptcy judge	84-372-001		9th	
9.	Fred W. Phelps, Sr. et al. v. Hon. Patrick F. Kelly	87-372-001		10th	
10	Petition No. 88-372-001	88-372-001		not stated	
11	Donald Gene Henthorn v. Judge Vela and Magistrate Judges Mallet and Garza	92-372-001		5th	
12	In re: Complaints of Judicial Misconduct	93-372-001		10th	
13	In re: Complaints of Judicial Misconduct	94-372-001		D.C. Ct. of Appeals	
14	In re: Complaints of Judicial Misconduct	95-372-001		9th	
15	In re: Complaints of Judicial Misconduct or Disability [Dist. Judge John H. McBryde]	98-372-001		5th	
16	In re: Complaint of Judicial Misconduct	01-372-001	Incomplete after p.3	D.C. Ct. of Appeals	
17	Agenda E-17, Conduct and Disability; March 2003: no petitions for review pending; Committee "is monitoring the status of Spargo v. NYS Comms. on Judicial Conduct, 244 F.Supp.2d 72(NDNY 2003)		p. 2 is missing or p. 1 and 3 are mismatched		
18	Agenda E-17, Conduct and Disability; September 2003: no petitions for review pending; the Committee "has continued to monitor congressional activity in the area of judicial conduct an disability", p.35				
19	Agenda E-17, Conduct and Disability; March 2004: no petitions for review for received or pending				

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

July 22, 2004

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

Dear Dr. Cordero:

Enclosed, as you requested, are complete copies of the public orders of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders in docket nos. 82-372-001 and 01-372-001.

I have checked into the fact that docket no. 82-372-005 was missing from the public orders I previously sent to you. I have verified that there is no docket no. 82-372-005. For some reason, when they did the numbering of no. 82-372-006, they inadvertently skipped over no. 82-372-005.

I hope that you will find this helpful.

Sincerely,

Jeffrey N. Barr
Assistant General Counsel

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

July 29, 2004

[(202) 502-1900; fax (202)502-1033]

Mr. Jeffrey N. Barr
Assistant General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

Dear Mr. Barr,

Thank you for taking my call last Thursday, July 22.

I also appreciate your sending me the missing pages of decisions of the Judicial Conference. Likewise, I would be grateful if you could send me a copy of the latest version of the following materials, which I cannot find anywhere else:

1. Administrative Office of U.S. Courts, Codes of Conduct for Judges and Judicial Employees, in Guide to Judiciary Policies and Procedures
2. Administrative Office of the United States Courts, Judicial Business of the United States Courts 44 tbl. S-3 (2000)
3. The Judicial Conference Rules for the Processing of Petitions for Review of Conduct Orders of Judicial Councils, the ones based on §351, not on §372

As discussed, I am hereby submitting to the Administrative Office of the United States Courts through you, who under 28 U.S.C. §602(d) perform by delegation functions vested in the Director of the Office, a formal complaint about court administrative and clerical officers of the Court of Appeals for the Second Circuit and their mishandling of judicial misconduct complaints and orders.

The complained-about officers should never have given grounds for complaint, but instead should have been guided by the profound conviction that their work is not simply a job to earn a paycheck, but rather consists in the lofty mission, endowed with public trust and laden with heavy responsibility, to dispense justice to others.

Therefore, despite my deep disappointment in the level of integrity and law-abiding zeal of court officers after dealing with them for years, I hope that the Administrative Office, as well as the entities that supervise it and those to which it reports, has the wholehearted commitment to fairness and the rule of law to do and appear to be doing justice to this complaint.

Hence, I look forward to hearing from you soon.

Sincerely,

C:684 Dr. Cordero's letter of 7/29/4 to Att Barr to file complaint v clerks mishandling misconduct complaint & orders

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

July 28, 2004

Complaint

to the Administrative Office of the United States Courts
about Court Administrative and Clerical Officers and
their mishandling of judicial misconduct complaints and orders
to the detriment of the public at large as well as of Dr. Richard Cordero

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I. Court administrators violated their obligation to make judicial misconduct orders publicly available by shipping them to Missouri

1. This complaint, in so far as it concerns a matter that affects the public at large, is about the Clerk

of Court of the Court of Appeals for the Second Circuit, Ms. Roseann MacKechnie, her Chief Deputy Clerk, Mr. Fernando Galindo, and in his capacity as the top administrator of that Court, the Hon. John M. Walker, Jr., Chief Judge, for their violation of their legal obligation to make publicly available both the orders issued by chief judges and those issued by the Judicial Council of the Second Circuit to dispose of judicial misconduct complaints filed under 28 U.S.C. §351 et seq. and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers thereunder (page 1, infra; collectively hereinafter the Complaint Provisions).

2. The language of the specific provisions that were violated is unequivocal and the obligation that they impose is absolute, for they provide as follows:

> §360**(b) Public availability of written orders**.-Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, ***shall*** be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. *Unless contrary to the interests of justice*, each such order ***shall*** be accompanied by written reasons therefor. *(emphasis added)*
>
> RULE 17. PUBLIC AVAILABILITY OF DECISIONS
>
> (a) General Rule. *A docket-sheet record of orders* of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council *will be made public* when final action on the complaint has been taken and is no longer subject to review. *(emphasis added;* 11, infra)

3. It was despite the interest of justice in a legal system based on precedent and because of the irrelevant allegation of 'lack of space' that, in response to my request of last June 16 to access those orders, and after having been made to wait for two weeks, Chief Deputy Galindo finally told me in person on June 30 in the reading room of the In-take Room 1803 of the Court that, with the exception of three binders containing orders for 2001-03, the orders were not available because they were stored -not in the Court's basement, or in an annex to the building, or in another building in the City of New York, or even elsewhere in the State of New York, not even in another state of the circuit, but rather- in the National Archives in the State of Missouri!
4. Chief Deputy Galindo further told me that if I wanted to consult the archived orders, I would

have to file a formal request, pay a search fee of $45, and wait at least 10 days for those orders to be shipped back from the National Archives in Missouri.

5. For Chief Deputy Galindo, Clerk of Court MacKechnie, and Chief Judge Walker to have failed to keep those orders in the Court building and instead to have sent them some 1,250 miles away is a clear violation of their obligation to keep them publicly available in the Courthouse, as required under the Circuit's Complaint Rules:

> Rule 17(b) The records referred to in paragraph (a) will be made public by placing them in a **publicly accessible file** in the office of the clerk of the court of appeals at the **United States Courthouse, Foley Square, New York, New York 10007**. The clerk will send copies of the publicly available materials to the **Administrative Office of the United States Courts, office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E. Washington, DC 20544**, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published. (emphasis added; 12, infra)

A. The administrators also failed to create and keep up to date the required docket-sheet record of misconduct orders

6. Moreover, in response to my request under Rule 17(a) for "[the] docket-sheet record of [such] orders…", Chief Deputy Galindo told me on that occasion on June 30 that he could not produce it either because there was none. The non-existence of this list, which cannot possibly be explained away by alleging limited filing space, shows that the conduct of these officers is motivated, not by space management considerations, but rather by their sheer disregard for their legal obligation to make those orders publicly available.
7. Indeed, even the orders for 2001-03 that were said to be physically in the Courthouse were not made publicly available when I requested them in person on June 16 at the In-take Room. After I was referred to Chief Deputy Galindo by the Head In-taker, Ms. Harris, he told me on the phone on June 17 that he had to ask Clerk of Court MacKechnie to determine which ones he could show me since some had the names of the judge complained-about and of the complainant, which might not be disclosable. I had to call him the following day, June 18, only to find out that he and Clerk MacKechnie had decided to refer my request to Chief Judge

Walker for him to decide which orders could be made available to me given the names that they disclosed. My argument that it was not at the time of a request that such an issue was to be looked at, thereby making those orders effectively unavailable, got no better response from Chief Deputy Galindo than to tell me to address my complaint in writing to the Chief Judge. I did so by letter of June 19 (14, infra). Till this day it has not been replied to, just as my letters of June 30, July 1 and 13 remain without response (15, 19, and 23, infra). No calls that I made to Mr. Galindo were returned until Tuesday, June 29, when he told me that I could see the orders the following day and that it had taken that long to white out the names that were not supposed to be disclosed. But not even at that time did he tell me that the available orders were merely those for 2001-03.

8. This means that I had to keep pressing for two weeks my request for the orders only to be shocked with the revelation by Chief Deputy Galindo that merely the minute fraction of three years worth of orders were available out of the 24 years during which orders have been issued since the enactment of the Judicial Conduct and Disability Act of 1980. Similarly, I was kept waiting only to be astonished by the non-existence of the docket-sheet record, which rendered it impossible for me to check against it the completeness of the set of orders for each year, assuming, of course, that all orders would have been scrupulously entered in that record. Yet, one must assume that the three top administrative officers of the Court knew all along that they had shipped to Missouri either all orders or those for the more recent years and were not keeping any docket-sheet record. It follows that they could have disclosed those facts to me from the very beginning.
9. Why did these top administrative officers fail to live up to the standard of competence and honesty that the public at large is entitled to expect from public servants, especially from those heading an institution whose mission it is to dispense justice and for whose effective performance it depends on earning the public's trust? Or was it that they did not want me in particular to consult those orders; if so, what motive would they have therefor? Consider the following sections of this complaint and determine whether the conduct of the complained-about administrative and clerical officers was motivated by bias against me or was the normal manifestation of their performance of their duties and dealings with the public…then decide which case is be worse.

II. The administrators' violation in the context of my misconduct complaints, including one about Chief Judge Walker, and the Clerks' mishandling of it

10. When on June 16 I first requested access to the misconduct orders and at every opportunity thereafter, I made all Court officers aware of what they had reason to know (13, infra), namely, that I wanted to consult those orders to prepare my petition for review to the Judicial Council of the dismissal of my misconduct complaint, docket no. 03-8547 (34, 39 infra), and that time was of the essence because pursuant to the Court's letter (13, infra) I only had until July 9 to file a review petition.

11. Although I filed that complaint on August 11, 2003, Chief Judge Walker disregarded the explicit obligation imposed under §352 on the chief judge to handle such a complaint "expeditiously" and "promptly" (40, infra); he even had my statement pointing this out returned to me unfiled (42, infra). The evidence shows that he did not conduct even a §352 and Rule 4(b) "limited inquiry" (4, infra) and did not notify the complained-about judge of any judicial misconduct complaint filed against him (43-44, infra); nor did he appoint a special committee under §353 and Rule 4(e) (5, infra). Yet, it took to do nothing but dismiss that complaint until June 8, 2004, that is 10 months! (13, infra)

12. Hence, I filed a judicial misconduct complaint about Chief Judge Walker himself on March 19, 2004, docket no. 04-8510 (43, 50 infra). I also raised a motion on April 11, 2004, to complain about Clerk of Court MacKechnie and other administrative and clerical officers for repeatedly placing obstacles to my submission of that second complaint (51, infra). No action has been taken so far to dispose of that complaint; but Clerk MacKechnie immediately returned the motion unfiled on April 13, 2004 (73, infra; more in section V, below).[1]

13. Moreover, it was not even Chief Judge Walker who dismissed my complaint of August 11, 2003, but rather the Hon. Dennis Jacob, Circuit Judge (30, infra). This constituted a violation of the non-delegable obligation under §353(b) and Rule 4(f)(1) requiring the chief judge to dispose of misconduct complaints by writing a reasoned order.[2]

14. Given these violations of the Complaint Provisions and my complaints about the Chief Judge

---

[1] For a discussion of how the unavailability of these orders in the context of preparing my petition for review of the dismissal of my first misconduct complaint about judicial officers in Rochester, NY, relates to my second misconduct complaint about Chief Judge Walker himself, see 25-26, infra.

[2] Id., for a discussion of Chief Judge Walker's benefit in violating his non-delegation obligation.

and his top officers, which it was easily foreseeable I would not fail to bring up in my petition, as I did, were there independent efforts by individual officers or a coordinated effort by some or all of them to prevent, hinder, or dissuade me from consulting the orders in preparation of my petition? Let's examine the facts to determine whether they provide prima facie evidence to answer this question.

III. The Head In-taker warns me that she will call in the marshals if she finds me nodding again while reading misconduct orders in the reading room

15. On June 30, the first day when the orders were made available to me, I went to the In-take Room and checked out one of the three binders of orders from Mrs. Harris, the Head In-taker, and stepped into the adjoining reading room. I sat and read for some time the…'There is no sleeping in the reading room', a clerk told me. It appears that I was nodding. I went on reading for several hours and taking notes in my…'You are sleeping and there is no sleeping in the reading room'. This time it was Head In-taker Harris. I told her that I had not gone there to sleep, but rather must have fallen asleep. She replied 'You have already been warned and if you fall asleep again, I will call the marshals.'
16. The marshals!, those security officers in charge of preventing criminals and terrorists from smuggling into the Courthouse guns and bombs to kill and maim federal employees and visitors. Mrs. Harris would call them away from manning the metal detectors in the lobby to catch me as I threatened everybody in the reading and In-take rooms with nodding!
17. Can you assure yourself, let alone others, that you will not nod while you make an effort for hours to concentrate on reading in a noisy room? And noisy that reading room is and was on that occasion. In that approximately 15' x 15' room, people were dropping coins in the copying machines to the right; air conduits vibrated loudly in a ceiling with a missing tile; people chatted while sat by the row of Court computers on the left, which are set against a partition dividing the reading room from an office where there frequently is and was a radio playing music!; and coming and going behind me were document filers talking with clerks and clerks bantering among themselves. If in that environment your brain short-circuited and you nodded, how would you feel if you, a professional and self-respecting person, were taken away in public by the marshals? I did not risk becoming the subject of Ms. Harris' abuse of power and did not go back. My letter of complaint thereabout to Chief Deputy Galindo of July 1 (19, infra) was not replied to.

18. Was Mrs. Harris indulging in such disproportionate exercise of 'discipline' on her own initiative or as an agent in a Courthouse where…madhouse, the nurse! The infamous head nurse in "One Flew over the Cuckoos' Nest"! Did she need specific instructions to apply minute rules so insensitively to mentally ill inmates or was she the product of an institution, imitating top managers that had no respect for the obligations of their profession, psychiatry, and disregarded the rights of the inmates -particularly the one faking mental illness- whose requests they repressed with electroshocks to their brains to quash any sense of self-assertion in their minds? In this lawhouse, are there in effect the laws of trickle down unlawfulness and of power unchecked is power abused? Evidence thereof is that the Head In-taker will call in the marshals to straitjacket a reader dangerously nodding everybody around, while Chief Warden electrocutes his obligation to keep misconduct orders publicly available and sends the body of those orders to the padded room of archival preservation in Missouri. Is this sound, lawful, and unbiased conduct by top officers at a Court of Appeals of the United States?

IV. Chief Deputy Galindo returned unfiled my review petition and Clerk Allen refused to file its exhibits despite no authority in the Complaint Provisions for them to do so and disregarding the Rules authorizing me to do so

19. On July 8, I filed in the Court's In-take Room a 10-page petition for review bound together with exhibits supporting my statements, just as I have done here. However, Chief Deputy Galindo returned everything unfiled with his cover letter of July 9 (22, infra). Therein he emphasized that I should "resubmit ONLY your petition letter…[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." In addition to this heavy-handed warning, his letter invoked "the long-standing practice of this court to use the authority of Rule 2(b) as a guideline and establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages [sic]". (emphasis in the original)
20. However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) (7, infra) in the context of letters of review petition, it would have stated the maximum number of pages allowed. By not doing so, it indicated that "brief" as it qualifies petition letters is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page petition letter, containing a table of contents, headings, and quotations from §351 et seq. and the Rules as well as statements by persons in relevant positions to support my arguments and facilitate their reading. Moreover, Mr. Galindo

was inconsistent in that by analogy he applied to petition letters the Rule 2(b) 5-page limit on complaints but failed to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint (2-3, infra).

21. It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the Court has failed to give petitioners notice thereof. Yet, the Court has had the opportunity to give them notice of its practice when notifying them, as it is required to do under Rule 4(f)(1), of the dismissal and their right to petition for review (5, infra). It should have given such notice in light of the public notice requirement under §358(c), not to mention that a Court that is supposed to be familiar with, and even safeguard, the constitutional requirement of notice and fair hearing should have instinctively applied that requirement to its own conduct. Instead, the Court lets petitioners waste their time, and in any event Clerk Patricia Allen, who sent me the petition notice (13, infra), let me waste my time and effort guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness, which has no place in the administration of justice, for arbitrariness is the antithesis of the rule of law.
22. Similarly, a provision of Rule 8 is directly applicable here:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant. (10, infra)

23. Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed so that they could be made available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" (9, infra). How can the clerk make documents available if she does not even accept them for filing?
24. What harm could conceivably result from filing exhibits with a petition for review? None, yet, Clerk Allen returned my exhibits a second time even though I resubmitted them on July 13 (23, infra) in a *separate bound volume* that she could have kept in file for the event that a council member might ask for any or all the exhibits (cf. 48, infra). Why would the clerk take it upon

herself to deprive me of the right to submit to the Judicial Council exhibits that can lend credence to my petition? Was her conduct motivated by the fact that in the petition I complained about Chief Judge Walker? (25-26, infra)

V. Clerks Allen, MacKechnie, and Galindo imposed arbitrary requirements for filing my complaint about Chief Judge Walker and refused to file my complaint about them

25. This is by no means the first time that Clerk Allen has engaged in arbitrary conduct without even pretending to have any authority therefor. Among the more recent instances of her arbitrariness are her refusal of February 4 to accept an update to my first complaint (42, infra), alleging subsequently that complaints cannot be updated; her refusal of March 24 to accept a whole bound volume of exhibits because it was not titled "Exhibits", but rather "Evidentiary Documents"! (48, infra); and her refusal to accept even a Table of Contents attached to my complaint about Chief Judge Walker (48, infra), which would at least have given readers the opportunity to know what documents I had submitted and select those that they wanted to request.
26. The arbitrariness shown by Clerk Allen trickled down onto her from her superior, Clerk of Court MacKechnie. The latter refused the 25 pages of exhibits attached to my complaint of March 19, 2004 about Chief Judge Walker (43, infra), alleging in her March 29 letter that they were "duplicates", but without citing any Complaint Provision prohibiting "duplicates" and instead disregarding the fact that those exhibits were documents created since my first complaint of August 11, 2003 (49, infra).
27. Likewise, Clerk of Court MacKechnie refused to accept my motion of April 11, 2004, for declaratory judgment that officers of the Court intentionally violated law and rules as part of a pattern of non-coincidental, intentional, and coordinated wrongdoing (51, infra). In her April 13 letter, she alleged without quoting any authority that "the judicial conduct complaint procedure does not allow motion practice" (73, infra) and returned my motion. My request of April 18 for her to review her decisions in light of my legal arguments supporting the conclusion that the Complaint Provisions do allow motions and that it should be judges, not a clerk, to decide such an issue of law (74, infra), was returned to me unfiled by Chief Deputy Galindo with his April 27 letter (90, infra).
28. In that letter, Mr. Galindo just repeated without invoking any authority that:

> The Rules governing the judicial conduct procedure (28 U.S.C. §351) does [sic] not allow motion practice. All [sic] supplemental documents submitted in regard to judicial complaints will not be accepted; [does that mean that 'Some' will be accepted?]. You have not been singled out for disparate [sic, meaning discriminatory, not just different] treatment.

29. If the Clerk of Court and the Chief Deputy Clerk of a U.S. Court of Appeals are unable to write and provide legally sound and unambiguous reasons for their statements and actions, rather than just 'because we say so', they should defer to the judges; (but see 32 and cf. 26, infra, for an example of perfunctory judicial written reasoning that could have trickled down as a model for other officers).
30. To avoid such arbitrary filing refusals, I submitted a motion on May 15, 2004, under the caption of my case in chief in the Court, that is, my appeal in In re Premier Van Lines, docket no. 03-5023. That motion is for judgment declaring that the legal grounds for updating opening and reply appeal briefs and for expanding upon their issues also apply to similar papers under 28 U.S.C. chapter 16, which comprises §§351-364 (91, infra). It discusses the circumstances under which federal law, FRAP, the local rules, and this Second Circuit's Complaint Rules allow the submission of letters, motions, and evidentiary documents to the court, and, consequently, empower the court to act on them. The motion has not been decided yet.
31. When it is, Chief Judge Walker will participate in deciding it as a member of the panel. Under what circumstances did he get appointed to the panel deciding my appeal in the first place? One thing is clear: His attachment to his membership in it is quite strong, for despite all the facts and arguments in my two motions of March 22 and April 18, 2004, for him to disqualify himself (107 and 119, infra), the Chief Judge refused to do so without giving a single reason, actually, without even signing the "it hereby is DENIED" form (141, infra). In the same vein, my motion of May 31, 2004, is still pending, which calls for the Chief Judge either to state his arguments for denying my disqualification motion or disqualify himself, or failing both for the Court to disqualify him.
32. The Chief Judge's refusal to recuse himself without letting a drop of a reason or his signature fall down provides an insight into his attitude toward his power and his use of it: He can disregard his conflict of interests and the obvious appearance of impropriety without having to waste a word. Through his conduct he sets an example that trickles down to other administrative

and clerical officers. The result is a house where the law is not considered the rule of conduct of its members, but rather arbitrary power provides them with the means for them to do what they want because they say so or because they say nothing.

VI. Administrative and clerical officers have participated in a pattern of non-coincidental, intentional, and coordinated acts of disregard for their obligations under the law and Rules

33. It can reasonably be asserted on the basis of the evidence that these administrative and clerical officers of the Court of Appeals have engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard for their statutory and regulatory obligations under the Misconduct Provisions. That constitutes misconduct on their part and warrants investigation by the Administrative Office under 28 U.S.C. §604(a)(1). There is all the more reason to investigate because the Office also has evidence, independent of this complaint and entitled to full credit, pointing to grave problems in the implementation of those Provisions by the courts.
34. Indeed, Chief Justice William Rehnquist has recognized systemic mishandling by judges of judicial misconduct complaints and, consequently, appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee. Last June 10, Justice Breyer held the Committee's first organizational meeting (163, infra). In this vein, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation". (165, infra)
35. The instant complaint shows how top administrators and clerks not only dismissed out of hand the orders from their shelves and banned them to the vaults of an archive half a continent away, but also engaged in a pattern of disregard of other Complaint Provisions that evinces a shared disposition toward unlawfulness and abuse of power. Therefrom follow some pregnant questions; the answers to them can have far reaching implications. Precisely for that reason, such questions should be investigated by those with the legal obligation to supervise the performance of the courts' administrative and clerical personnel, whose conduct at all times should engender public trust and operate toward dispensing justice.

VII. Action requested

36. Therefore, I respectfully request that the Administrative Office of the U.S. Courts:

a) determine whether Clerk of Court MacKechnie and Chief Deputy Galindo, be it on their own or on the instructions of the Court's top administrator, Chief Judge Walker, violated their obligation to keep the orders publicly available that are issued under the Misconduct Provisions;

b) determine whether Head In-taker Harris abused her power when she warned a reader that she would call the marshals on him if he nodded again while reading in the reading room checked-out Court materials; and whether she acted on her own or singled me out upon the instructions of her superiors in an effort to deter me from reading judicial misconduct orders;

c) determine whether Chief Deputy Galindo and Clerk Allen violated their obligation to accept papers for filing and engaged in arbitrary conduct by, among other things:

   1) applying to a 10-page petition for review a 5-page limitation neither provided for in the Rules nor notified to me in advance;

   2) alleging with no authority whatsoever that judicial misconduct complaints can neither be updated nor be the subject of a motion;

   3) refusing to accept exhibits by disregarding the Rules that allow them as a communication to judicial council members in the context of a petition for review; and

   4) imposing meaningless and arbitrary requirements devoid of any legal foundation, such as that exhibits must be expressly identified as "Exhibits", not as "Evidentiary Documents";

d) determine whether these officers have failed to fulfill their administrative duties by their self-interest in preserving their jobs or advancing their careers by assisting judges in their efforts to prevent misconduct complaints from establishing precedents that affect their peers and that one day could be applied against them as subjects of a complaint;

e) require that the complained-about officers respond in writing to the complaint and forward to me a copy of their response or, in the alternative, hold the equivalent of an administrative hearing where they and I can provide testimony in the presence of each other;

f) determine under 28 U.S.C. §604(a)(11) with what moneys the expense of shipping the

orders to, and storing them at, the National Archives in Missouri was defrayed and, if so shipped, since when the orders have actually been stored there;

g) submit a copy of this complaint to:

1) Congress as a matter relevant to the understanding of the summary that the Director is required to file under 28 U.S.C. §604(h)(2) concerning judicial misconduct complaints;

2) both the Chief Justice of the Supreme Court of the United States, who under 28 U.S.C. §601 appoints the Director, and the Judicial Conference, which under 28 U.S.C. §604(a) supervises and gives directions to the Director, as a case illustrating conduct by top court officers that detracts from both the integrity of a court of appeals and the public trust that it must elicit as it performs its mission of dispensing justice; and

3) the Judicial Conduct and Disability Act Study Committee headed by Justice Stephen Breyer for it to examine the elements therein that fall within the scope of its Study.

37. Despite my deep disappointment in the level of integrity and law-abiding zeal of court officers after dealing with them for years, I can only hope that the Administrative Office as well as the entities mentioned above have the wholehearted commitment to fairness and the rule of law to do and appear to be doing justice to this complaint about officers who should never have given grounds for complaint, but instead should have been guided by the profound conviction that their work is not simply a job to earn a paycheck, but rather consists in the lofty mission, endowed with public trust and laden with heavy responsibility, to dispense justice to others.

Respectfully submitted on

July 28, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

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accompanying the complaint of July 28, 2004
to the Administrative Office of the U.S. Courts
about court administrative and clerical officers and
their mishandling of judicial misconduct complaints and orders
to the detriment of the public at large as well as of Dr. Richard Cordero
by
Dr. Richard Cordero

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October 4, 2004

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: Petition for review in judicial misconduct complaint 04-8510

Dear MacKechnie,

I hereby petition the Judicial Council for review of the Chief Judge's order of September 24, 2004, dismissing my judicial misconduct complaint, docket no. 04-8510 (the Complaint).

The Complaint was submitted on March 19, 2004. It states that in violation of 28 U.S.C. §351 et seq. (the Act) and this Circuit's Rules Governing such complaints (the Rules) the Hon. Chief Judge John M. Walker, Jr., failed to act 'promptly and expeditiously' and investigate a judicial misconduct complaint. Indeed, by that time it was already the eighth month since I had submitted my initial complaint of August 11, 2003, docket no. 03-8547, but the Chief Judge had taken no action. That complaint charged that U.S. Bankruptcy Judge John C. Ninfo, II, together with court officers at the U.S. Bankruptcy Court and District Court, WDNY, had disregarded the law, rules, and facts so repeatedly and consistently to my detriment, the sole non-local party, a resident of New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against me. That initial complaint was dismissed by the Hon. Circuit Judge Dennis Jacobs 10 months after its submission although it was not investigated at all. Judge Jacobs alleges that such dismissal has rendered this Complaint moot and warrants that it be dismissed too.

I. Since nothing wrong under the Misconduct Act or Rules was found in the initial complaint, its dismissal cannot amount to "appropriate corrective action" that would render moot this Complaint, which charges a different kind of misconduct

1. The first remark that follows from the paragraph above is that the initial complaint and this Complaint charge misconduct that is different and independent from each other: The former concerns a pattern of wrongdoing by Judge Ninfo; the latter the disregard for the promptness obligation and the duty to investigate a misconduct complaint by Chief Judge Walker. The dismissal of the former does not negate the misconduct of the latter and, consequently, does not render it moot. The Complaint remains to be determined on its own merits.

2. In addition, who ever heard that dismissing a case or a complaint amounts to taking "appropriate corrective action" under the Act or any other legal provision for that matter? It was Judge Jacobs himself who dismissed the initial complaint on the allegations that **a)** Dr. Cordero "has failed to provide evidence of any conduct 'prejudicial to the effective and expeditious administration of the business of the courts'"; **b)** Dr. Cordero's "statements…amount to a challenge to the merits…however '[t]he complaint procedure is not intended to provide a means of obtaining a review'"; **c)** "the allegations of bias and prejudice are unsupported and therefore rejected as frivolous"; and **d)** "The Act applies only to judges of the United States" rather than to other parties complained-about. Since Judge Jacobs found the counts of the complaint unsubstantiated and frivolous, and its issues and other parties outside the Act's scope, how can he possibly have

taken "appropriate corrective action" to correct nothing wrong and in need of no correction!?

3. The dismissal of the Complaint, just as that of the initial complaint, is another glaring example of a quick job rejection of a misconduct complaint where the dismissal grounds have not been given even a substandard amount of reflection. Judge Jacobs not only did not "expeditiously review…and conduct a limited inquiry", as provided under §352(a), much less "promptly appoint…a special committee to investigate the facts and allegations", as provided under §353, but he also did not even review the basis of his instant September 24 dismissal, that is, his own earlier dismissal to the point that he got wrong its date, which is not June 9, but rather June 8.

II. None of the elements of the doctrine of mootness is found in the context of the initial complaint and this Complaint so that the doctrine is inapplicable

4. The quick job dismissal of the Complaint conclusorily jumps to its mootness from the dismissal of the initial complaint without pausing to consider the elements of the doctrine of mootness. It just refers to §352(b)(2) and to "intervening events" without indicating what events those are. Presumably, the dismissal of the initial complaint is meant.

5. However, the earlier dismissal is not final because it is the subject of the petition for review of July 8 -resubmitted on the 13th- to the Judicial Council. That dismissal could be vacated and the mootness allegation would be so fatally undermined that it would fall of its own weight. Thus, it would be utterly premature to allege that the intervening dismissal of the initial complaint has rendered the Complaint moot. The initial complaint is still in play and so is this Complaint.

6. If the Judicial Council calls for an investigation of the initial complaint, it can find that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing. If so, it would have reason to investigate why Chief Judge Walker failed to conduct even a limited inquiry despite not only the abundant evidence of such wrongdoing, but also the high stakes, namely, the integrity of this circuit's judicial system, which should have caused him as the circuit's foremost steward to take the complaint seriously if only out of prudence.

7. The Council's reason to investigate the Chief Judge would be strengthened by the fact that he had knowledge of the evidence of wrongdoing not only because of his duty to review the initial complaint and the many documents submitted in its support, but also because he is a member of the panel reviewing Dr. Cordero's appeal from Judge Ninfo's decisions and in that capacity he must have reviewed Dr. Cordero's numerous briefs, motions, and writ of mandamus describing the pattern of wrongful acts of Judge Ninfo and others. By so investigating the Chief Judge, the Council would be proceeding in line with the Complaint's request for relief. Since the Council could grant, whether implicitly or formally, that relief, the Complaint that asks for it is not moot.

8. Moreover, no other intervening event has changed the issues of the initial complaint and rendered a decision on the merits on this Complaint meaningless and thereby moot. Far from it, intervening events have only provided more evidence of judicial misconduct. In fact, if the Complaint had been read, it should have been noticed that it described the events that took place on March 8, 2004, seven months after the initial complaint, concerning Judge Ninfo's handling of a different type of case, that is, not an adversary proceeding, but rather a Chapter 13 bankruptcy petition filed on January 27, 2004, over five months after the initial complaint, by David and Mary Ann DeLano, docket no. 04-20280.

9. In this vein, on August 27, 2004, Dr. Cordero sent to each member of the Judicial Council an

update to the petition for review of the dismissal of the initial complaint. Its very first paragraph states that:

> …recent events…raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo [out of Trustee Reiber's 3,909[1] cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383[2] cases].

10. Those intervening events have only strengthened the initial complaint by pointing to a powerful motive for the misconduct and bias: money, lots of it generated by *thousands* of cases that each of two trustees has before one judge. If you were a private trustee who is paid a fee percentage from the payments of bankruptcy debtors to their creditors, which means that you are not a federal employee paid by the federal government, could you possibly handle appropriately such an overwhelming workload? Similarly, with whom is it more likely that Judge Ninfo has developed a modus operandi that he would not want to disrupt: with these trustees as well as bankruptcy lawyers that have so many cases before him that they appear before him several times in a single session[3], or with an out of town pro se defendant that dare demand that he apply the law and even challenge his rulings all the way to the Court of Appeals?

11. But Judge Jacobs chose not to read about these events. This is a fact based on the letter of August 30 of Clerk Patricia Chin-Allen, signing for Clerk of Court Roseann MacKechnie, that

> Judge Dennis Jacobs, [sic] has forwarded your unopened letter [sic] to this office for response…Your papers are returned to you without any action taken.

12. This provides factual support to the above statement that in dismissing this Complaint, Judge Jacobs did not bother to read even his earlier order of June 8 dismissing the initial complaint. In forwarding unopened that letter, he disregarded the point made in footnote 1 of the July 8 petition for review of the dismissal of the initial complaint:

> "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant".

13. Just as Rule 8 entitles a complainant to communicate with the members of the Judicial Council, so it engenders the corresponding obligation for the members to read such communications. Those who read the August 27 update must have realized that it described relevant intervening events that raised definite and concrete facts and issues susceptible of judicial determination in their own right; they also provided further grounds for investigating the initial complaint. Thereby the intervening events precluded any allegation that the initial complaint's dismissal, which is challenged and pending review, had rendered this Complaint moot.

14. Likewise, a judicial determination of the Complaint is still appropriate because Dr. Cordero has

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[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

[3] Obviously, Judge Ninfo does not acquire immunity under the Misconduct Act or Rules only because he participates in widespread misconduct together with parties outside their scope of application.

neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

15. Nor has mootness resulted from the relief requested becoming impossible. On the contrary, the update linking judicial misconduct to a bankruptcy fraud scheme has only rendered more necessary for the Council to investigate both complaints with FBI assistance, as requested.

16. The cause for misconduct has not ceased either. Far from it, the DeLano case has provided Judge Ninfo with the need to engage in further disregard for legality and more bias against Dr. Cordero, who is one of the DeLanos' creditors and the one who showed their concealment of assets. Hence, the situation that gave rise to the initial complaint is a continuing one that has not only the probability, but also the likelihood of generating subsequent complaints. Since the same misconduct can recur, it prevents the Complaint from becoming moot; *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.,* 120 S.Ct. 693, 528 U.S. 167, 145 L.Ed.2d 610 (2000). Thus, the Judicial Council should decide the two current complaints, just as a court would decide a case despite its apparent mootness if the dispute is ongoing and typically evades review. *Richardson v. Ramirez,* 94 S.Ct. 2655, 418 U.S. 24 41 L.Ed.2d 551 (1974).

III. The violation of the promptness obligation and the duty to investigate is so capable of repetition that it has been repeated in the handling of this Complaint

17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle 'promptly and expediently' the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.

18. Judge Jacobs's unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is "capable of repetition". The Council should not evade its review as moot precisely because the Chief Judge's violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade,* 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973).

19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Stephen Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.

20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate "conduct prejudicial to the effective and expeditious administration of the business of the courts". What is more, mishandling complaints has severe practical consequences on the complainants and the public's perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero's case, the judges' contempt for these complaints has let

him suffer for over two years Judge Ninfo's arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous amount of effort, time, and money and inflicted upon him tremendous aggravation. It cannot be fairly and justly held that his suffering and cost have been rendered 'moot' because the Chief Judge and Judge Jacobs chose to treat contemptuously their obligations and duties under the law.

IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as "admitting of specific relief through a decree of conclusive character", cf. *Aetna Life Ins. Co. v. Haworth*, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937), and that it:

    a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;

    b. Include in their scope of investigation:

        1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;

            b) what he should have known, as the circuit's foremost judicial officer;

            c) when he should have known it; and

            d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and

        2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;

    c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;

    d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;

    e. Take action on the complaints in light of the results of their investigation;

    f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer's Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

Let the Council take the opportunity afforded by these two complaints and petitions to honor its oath of office and apply the law impartially, blind to who the parties are and concerned only with being seen doing justice, as it proceeds, not to protect its peers, but rather to safeguard the integrity of the judicial system for the benefit of the public at large.

sincerely, Dr. Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 7, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

We hereby acknowledge receipt of your petition for review, dated October 4, 2004 and received in this office on October 5, 2004.

Your petition for review of the September 24, 2004 Order of the Acting Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351.*

You will be notified by letter once a decision has been filed.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

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

[Sample letter to members of the Judicial Council, 2nd Cir.] October 14, 2004

Chief Judge Richard J. Arcara
Member of the Judicial Council
U.S. District Court, WDNY
Olympic Towers, Ste. 250, 300 Pearl St.
Buffalo, NY 14202-2501

Re: Exhibits for review petition concerning complaint 04-8510

Dear Chief Judge Arcara,

This is a communication with the members of the Judicial Council permissible under this Circuit's Rules Governing Misconduct Complaints, which contains "Rule 8, Review by the judicial council of a chief judge's order", where §8(e)(2) refers to "any communications that may be addressed to the members of the judicial council by the complainant".

On August 11, *2003*, I filed a complaint about WBNY Judge John C. Ninfo, II, concerning his disregard together with others for the law, rules, and facts in a series of instances so numerous and consistently detrimental to me (44.II; 48.III, infra), the only non-local party, and favorable to the local ones (22.IV; 50.IV), as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Although intervening events confirmed the charges of the complaint (65-67), eight months later I had still not heard from Chief Judge John M. Walker, Jr., despite his duty under 28 U.S.C. §351 et seq. and the Circuit's Rules to act "promptly" and "expeditiously". Hence, on March 19, I submitted a complaint about the Chief Judge (65) on the grounds of his disregard for that promptness obligation and his duty to investigate a complaint, whereby he allowed Judge Ninfo's wrongdoing and bias to continue to take an enormous toll on my effort, time, and money and inflict upon me tremendous aggravation. That complaint, which was also subject to the promptness obligation, was dismissed over six months later, on September 24; it was not investigated either (7). I submitted a petition for review on October 4 (1; 2).

Because the Clerk of Court refused to accept the first petition if accompanied with exhibits, this communication provides you with some documents that evidence intervening events linking judicial misconduct to a bankruptcy fraud scheme involving the most powerful driver of wrongdoing: lots of money (26.V; 51.V). I trust that if you would examine these documents, you would realize the need to investigate a series of events that undermine the integrity of both the judicial and the bankruptcy systems in WDNY and in the Court of Appeals (cf. 9¶¶1-5).

The perfunctory way in which these complaints have been handled is evidenced not only by their belatedness and lack of investigation: **1)** The Court's letter of July 16 states that a petition for review was received in February; but I submitted the petition concerning my complaint about Judge Ninfo in July (59). **2)** The Judicial Council's denial of last September 30 of my petition refers to a complaint filed on August 8, 2003; but none was filed on that date (60). **3)** The Acting Chief Judge dismissed on September 24 the complaint about the Chief Judge on the basis of his own dismissal of the complaint about Judge Ninfo, stating its dismissal date as June 9, which is wrong (8). If I came to your court and made so many mistakes, would you take me seriously? **4)** The Council in its September 30 letter merely "DENIED" my petition without providing any opinion. Is that the easy way out in which it insures that justice is seen to be done? Therefore, I respectfully request that under Rule 8(a) you cause this petition and the previous one to be placed on the Council's agenda and the respective complaints to be investigated (cf. 63).

Sincerely,

Dr. Richard Cordero

TABLE OF EXHIBITS

for consideration by the members of the Judicial Council, 2nd Cir.
in the context of the petition of October 4, 2004, for review
of the dismissal of the misconduct complaint, no. 04-8510, CA2
against CA2 Chief Judge John M. Walker, Jr.

by

Dr. Richard Cordero

1. Letter of Roseann B. **MacKechnie,** Clerk of Court, CA2, by Deputy Clerk Patricia Chin **Allen** of **October 7,** 2004, **acknowledging** receipt of Dr. Richard Cordero's **petition** of October 4, **to** the Judicial **Council** for review of the dismissal by the Acting Chief Judge Denis Jacobs of his judicial conduct complaint, docket no. 04-8510, against Chief Judge John M. Walker, Jr. .....1 [C:716]
2. Dr. **Cordero**'s **petition** of **October 4**, 2004, **to** the **Judicial Council** for review of the dismissal of his complaint about Chief Judge Walker.....2 [C:711]
3. **Acting Chief Judge Jacobs**' **dismissal** of **September 24**, 2004, **of** Dr. Cordero's misconduct **complaint** of March 19, 2004, reformatted and resubmitted on March 29, **against** Chief Judge **Walker** .....7 [C:391]
4. Dr. **Cordero**'s motion of **September 9**, 2004, in CA2 to **quash** the **order** of Judge John C. **Ninfo**, II, WBNY, of August 30, 2004, to sever a claim from the case on appeal *In re Premier Van et al.*, no. 03-5023, CA2, for the purpose of trying it in *In re DeLano*, no. 04-20280,WBNY .....9 [C:719]
5. Judge **Ninfo**'s **Order** of August 30, 2004, **to sever** a claim from *In re Premier Van et al*, no. 03-5023, CA2, for the purpose of trying it in *DeLano,* no. 04-20280,WBNY .....33 [C:744]
6. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WBNY, for docketing and issue of order, removal, referral, examination, and other relief .....41 [C:752]
7. CA2 Clerk **Allen** of **July 16,** 2004, **acknowledging** receipt of Dr. Cordero's **petition** for review of the **dismissal** of his **complaint** about Judge **Ninfo**.....59 [C:651]
8. **Judicial Council's decision** of **September 30**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his **complaint** against Judge **Ninfo**.....60 [C:672]
9. Clerk **MacKechnie**'s letter by Clerk **Allen** of **September 2**, 2003, **acknowledging** receipt of Dr. Cordero's **complaint against** Judge **Ninfo**, reformatted and resubmitted on August 27, 2003, and assigning it docket no. **03-8547** .....61 [C:73]
10. **Table of Dates** of Key Documents Concerning Dr. Cordero's Judicial Misconduct **Complaints** in the Court of Appeals, docket nos. 03-8547 and 04-8510, and **Petitions** for Review to the Judicial Council of the Second Circuit.....63 [C:771]
11. Dr. **Cordero**'s misconduct **complaint** of **March 19**, 2004, **about** Chief Judge **Walker**, resubmitted on March 29, 2004, to comply with formal requirements imposed by the clerks [C:315, 316; cf C:651, 652] .....65 [C:271]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION TO QUASH
a bankruptcy court's order
to sever a claim from
the case on appeal in this Court
to try it in another case in the bankruptcy court

In re PREMIER VAN et al., case no. 03-5023

JAMES PFUNTNER,
Plaintiff

-v-

KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK,
Defendants

Adversary Proceeding
case no. 02-2230

RICHARD CORDERO
Third party plaintiff

-v-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES,
Third party defendants

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.
2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr.

Cordero to undertake discovery of Mr. David DeLano, a party to the *Premier* case pending before this Court, which stems from *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole *Pfuntner* case, moot; and makes a mockery of the appellate process.

3. Indeed, Judge Ninfo is reopening now *Pfuntner v. Gordon et al.* to sever from it Dr. Cordero's claim against Mr. DeLano and have Dr. Cordero try it in another case, that is, Mr. and Mrs. DeLano's bankruptcy case, dkt. no. 04-20280. The foregone conclusion is that the Judge will grant the DeLanos' motion to disallow that claim, which arose from the *Pfuntner* case, and thus eliminate Dr. Cordero from the bankruptcy case. Judge Ninfo and the DeLanos want to do this now, after treating Dr. Cordero as a creditor for six months, because he is the only creditor that analyzed the DeLanos' January 26 petition and other documents and showed in his July 9 statement evidence of fraud. Consider these few elements, cf. longer list at Exhibit E-page 88 §IV:

    a) Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox ma-chines specialist, yet they cannot account for $291,470 earned in just the last three years!…but declared in their petition only $535 in hand and on account; and household goods worth merely $2,910 at the end of two lifetimes of work!, while they owe $98,092 on 18 credit cards, but made a $10,000 loan to their son, undated and described as "uncollectible". Does one need to be a lending industry insider, like Mr. DeLano, to recognize that these numbers do not make sense or rather to know how and with whom to pull it off?

4. Evidence that the Order's purpose is to eliminate Dr. Cordero and protect the DeLanos is that Judge Ninfo suspended all proceedings in the *DeLano* case until the motion to disallow Dr. Cordero's claim has been finally determined at an evidentiary hearing in 2005, or beyond in case of appeals! (E-155¶2) If the Judge did not suspend the *DeLano* case, **1)** Dr. Cordero would move for Judge Ninfo to force the DeLanos to comply with his pro-forma July 26 order of document production, which he issued at Dr. Cordero's instigation but they disobeyed with impunity (E-95, 105, 107,109); **2)** move to force the DeLanos to comply with his discovery requests, such as production of bank and debit card account statements that can lead to the whereabouts of the concealed assets and thus prove bankruptcy fraud by the DeLanos and others, requests that the DeLanos are likely to respect even less than they did the Judge's order; and **3)** move again for examination of the DeLanos and others under FRBkrP Rule 2004. To ensure that no such action by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!
5. By not allowing the *DeLano* case from moving forward concurrently with the motion to disallow, Judge Ninfo excuses the Trustee from resubmitting for confirmation the DeLanos' debt repayment plan so that Dr. Cordero cannot oppose it by introducing any additional evidence of the DeLanos' bankruptcy fraud that he may discover. By so preventing concurrent progress of the case, Judge Ninfo harms all the 21 creditors, who have an interest in repayment beginning immediately, as well as the public at large, who necessarily bears the cost of fraud and wants it uncovered. Hence, Judge Ninfo has issued his Order with disregard for the law and appellate process, in bad faith, and contrary to the interest of the creditors and the public.

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I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process

6. The case on appeal in this Court originates in the Adversary Proceeding *Pfuntner v. Gordon et al.*, all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and

storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousers, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

> Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank.

8. It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke

collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?

9. The situation would not be better at all if Dr. Cordero were found in the severed proceedings to have a claim against Mr. DeLano in the *Pfuntner* case on appeal here. When the Court remanded the case for trial, the other parties would try to escape liability by pointing to that finding. Either way, whatever justice could have been achieved through the appellate process would have been intentionally thwarted in anticipation by distorting through piecemeal litigation the dynamics among multiple parties and claims within the same series of transactions.

II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. DeLano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim

10. This is how the Bankruptcy Code, at 11 U.S.C., defines a "creditor":

> §101. Definitions
>
> (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…
>
> (15) "entity" includes person…

11. In turn, it defines "claim" thus:

> (5) "claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;[1]

12. These definitions easily encompass Dr. Cordero's claim against Mr. DeLano. Moreover, FRBkrP Rule 3001(a) provides thus:

> (a) Proof of Claim
>
> A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

13. Dr. Cordero's proof of claim of May 15 was so formally correct that it was filed by the clerk of

[1] This definition of a claim was adopted in *United States v. Connery*, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).

court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the benefit provided under FRBkrP Rule 3001(f):

> (f) Evidentiary effect
>
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

14. Dr. Cordero's claim is now legally entitled to the presumption of validity. Hence, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their January 26 petition (E-3 Schedule F). It follows that to overcome that presumption they had to invoke legal grounds on which to mount a challenge to its validity. However, just as Judge Ninfo disregards law and rules so much that he did not cite any to support his Order, so Att. Werner.

A. Mr. DeLano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection on July 19, 2004

15. This is all Att. Werner could come up with in his July 19 Objection to a Claim (E-101):

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

16. To avoid confusion, it should be noted that neither M&T Bank, nor Mr. DeLano, nor Dr. Cordero is a party to "Premier Van Lines (01-20692)". They are parties to the Adversary Proceeding. Thus, its docket no. 02-2230, is the one relevant because that is the case pending before this Court under docket no. 03-5023. But Att. Werner's citation works as an unintended reminder to this Court that it has jurisdiction to decide this motion because the Proceeding on appeal is being disrupted by arbitrary severance of a claim in it to be dragged into the *DeLano* case.

17. Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero's claim against

him, namely, the third party claim of Mr. DeLano's negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano's M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer's clients held in such containers, such as Dr. Cordero's, which ended up lost or damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCivP Rule 8(a) to give "a short and plain statement of the claim". So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

19. It was only after Dr. Cordero's July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). How-ever, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims 'to have been in this business for 28 years', must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the $291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero's insistence the Judge issued on July 26 (E-107, 103).

23. In their desperation, Att. Werner denied Mr. DeLano's liability to Dr. Cordero and even that of his employer, M&T Bank, which is not even a creditor in the *DeLano* case and is not represented by Att. Werner or his law firm (E-130§III). However, an attorney's opinion on his client's lack of liability does not constitute evidence of anything and rebuts no legal presump-

tion, and all the more so a lay man-like opinion unsupported by any legal authority (E-138§I).

24. Then Att. Werner spuriously alleged that Dr. Cordero did not set forth any claim against Mrs. DeLano. Yet he filled out Schedule F (E-3), which requires the debtor to mark each claim thus:

> If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

25. A bankruptcy claim is perfectly sufficient if only against one of the joint debtors! Att. Werner must have known that. Hence, this allegation was spurious and made in bad faith (E-131§IV).

26. With a denial of knowledge belied by the facts, an irrelevant opinion on non-liability, and a spurious allegation Att. Werner cannot do what the claim objection form in capital letters required him to do (E-101):

> DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f)

27. Case law has interpreted this requirement thus:

> The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity. *In re Babcock & Wilcox Co.,* 2002 U.S. Dist. LEXIS 15742, at 6 (E.D.La. 2002).

28. The objector's evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim. *In re Wells,* 51 B.R. 563 (D.Colo. 1985); *Matter of Unimet Corp.,* 74 B.R. 156 (Bankr. N.D. Ohio 1987). See also Collier on Bankruptcy, 15 ed. rvd., vol. 9, ¶3001.09[2]. Denial of liability as an employee is not evidence or proof of anything.

C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount

29. Dr. Cordero stated a legally sufficient claim against Mr. DeLano in a complaint that satisfied the notice pleading requirements of the FRCivP. The claim also satisfied the Bankruptcy Code, for it requires only that notice essentially of the claim's existence and amount be given. In fact, the

Proof of Claim Form B10 provides in 9. Supporting Documents "…If the documents are voluminous, attach a summary." That is precisely what Dr. Cordero did when he mailed his claim against Mr. DeLano on May 15 with three pages out of the 31 pages of the complaint, including the caption page, which was labeled (E-77):

> Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court

30. That only notice of the claim must be given follows from the fact that even the debtor, the trustee, a codebtor, or a surety can file the claim if the creditor fails to do so timely. None of them have to give notice of how the claim arose and what its legal basis is. Even a contingent and disputed claim is a valid claim under 11 U.S.C.§101(5); (¶11, supra). Judge Ninfo had no justification to pierce, as it were, the presumption of validity of Dr. Cordero's claim against Mr. DeLano in the case on appeal here and drag the claim out and into the *DeLano* case so that, as Att. Werner put it (¶15), Dr. Cordero 'substantiate an obligation of Debtors' to him. By doing so the Judge showed again his bias against Dr. Cordero and toward the local parties (E-118§IV).

D. The only legal circumstance for estimating a contingent claim is unavailable because the *DeLano* case is nowhere its closing

31. Section 502(b) of Title 11 provides that if a claim is objected to, the judge:

> …shall determine the amount of such claim…and shall allow such claim in such amount…

32. The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim, whose proof "shall constitute prima facie evidence of the validity and amount of the claim". This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a

reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other words, drowning in debt. It is his challenge that is suspect.

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim "because such claim is contingent or unmatured". It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim's contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

34. If the judge cannot determine the claim's amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

> (c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case…shall be estimated.

35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim's value when liquidating the claim "would unduly delay the closing of the estate".

36. But the *DeLano* case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents,

which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero's claim because Judge Ninfo suspended all proceedings in the *DeLano* case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) "to ensure that the case is handled expeditiously and economically" and under §1325(a)(3), to ascertain whether the DeLanos' 'plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law'. These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public's interest in bankruptcies free of fraud, which trumps a debtor's private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition's good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos' petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero's request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909[2] *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the *DeLano* case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)

39. Intent can be inferred from a person's conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thereby denying him access to judicial process and requiring this Court to step in

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the *Pfuntner v. Gordon et al.* case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

41. Yet, Judge Ninfo knows that the DeLanos are all but certain to fail to produce documents to Dr. Cordero because they already failed to do so pursuant to the Judge's own order of July 26, a failure complained about by Dr. Cordero at the August 25 hearing without being contradicted by Att. Werner. Likewise, the DeLanos so much failed to produce documents at the requests (E-73,82) of Trustee Reiber that on June 15 he moved to dismiss. Moreover, the DeLanos already ignored Dr. Cordero's direct requests for documents of March 30 and May 23 (E-64¶80b, 83). Through denial of judicial assistance, the mission to conduct discovery on the claim against Mr. DeLano is made an impossible one: Judge Ninfo has set up Dr. Cordero to fail!

IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero

42. Contrary to Judge Ninfo's statements, the issues that Dr. Cordero pursues in the *DeLano* case are not "collateral and tangential" (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the $291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero's property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bankruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).

43. If Judge Ninfo 'is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property' (E-150) it is because **1)** the *Pfuntner v. Gordon et al.* case before this Court, though filed in September *2002*, is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

> …[to] address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward….

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

45. By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

> In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction…

46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero' property could also have been stolen or damaged.

47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.

48. While Judge Ninfo blames Dr. Cordero for 'not taking possession and securing his property' (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and protracting the resolution of the case enormously.

49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

> Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano…(E-151)

50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion

to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

51. By contrast, Judge Ninfo put stock on the fact that "DeLano, through his attorney, has adamantly denied: (1) any knowledge…and (2) any…liability if there has been any loss or damage" to Dr. Cordero's property (E-150¶2). Did Dr. Cordero have to assert "adamantly" the evidence of such loss or damage for the Judge not to cast doubt on it with his formulation "if there in fact has been any loss or damage"?; id.

52. While Dr. Cordero's are "collateral and tangential issues" (E-153), the Judge considers that:

> whether the Debtors are honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to the Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00…(E-153-154)

53. Is this the way an impartial arbiter talks before having the benefit of the discovery that he is ordering Dr. Cordero to begin to undertake and who has allowed the DeLanos to conceal information by disobeying his July 26 document production order? Why does Judge Ninfo deem it "much more important" to make 21 creditors bear the loss of 4/5 of the $185,462 in liabilities of Mr. DeLano (E-3 Summary of Schedules) than to hold him, a bank loan officer for 15 years, to a higher standard of financial responsibility because of his superior knowledge? Why does Judge Ninfo deny Dr. Cordero the protection to which he is entitled under the Code? Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

54. Moreover, Judge Ninfo has already prejudged a key issue in controversy:

> …the Court determined that:…(2) the purpose of filing the Claim

> Objection was not to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (E-154-155)

55. How does Judge Ninfo know that the Debtors believe anything "honestly" since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case "for unreasonable delay" in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero's claim now?

56. Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.

57. Do Judge Ninfo's statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero's position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the *DeLano* case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

V. A mechanism for many bankruptcy cases to generate money, lots of it

58. The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, the confirmation of a plan generates a stream of payments from

which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of the statements made in the petition would only be compensated -if at all, for there is no specific provision therefor- to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)

59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos' petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos'.

61. There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy petitioners from having to account for $291,470; **2)** allows them to disobey his document pro-

duction order with impunity; **3)** prejudges in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

VI. Relief requested

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

a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;

b) Refer the *Premier*, the *Pfuntner v. Gordon et al*., and the *DeLano* cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:

1. Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and
2. Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;
3. David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;

c) Disqualify Judge Ninfo from the *Premier, Pfuntner*, and *DeLano* cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

d) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on,

September 9, 2004

Dr. Richard Cordero

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TABLE OF EXHIBITS

accompanying the motion of September 9, 2004
in the Court of Appeals for the Second Circuit
to quash the order of Bankruptcy Judge John C. Ninfo, II
of August 30, 2004, that severs a claim on appeal in
In re Premier Van et al., 03-5023, CA2
to try it in *In re DeLano*, 04-20280, WBNY
by
Dr. Richard Cordero

Exhibits=E

1. Judge **Ninfo**'s letter of **November 19**, 2003, to CA2 Clerk of Court Rosemary **MacKechnie** submitting copies of **his four decisions** of October 16 and 23, 2003, in *Pfuntner v. Trustee Gordon et al.*, no. 04-20280, WBNY, after having **received from an unstated source** a copy of the **CA2 Motion Information Sheet** of October 31, 2003, that accompanied Dr. **Cordero's** motion in **CA2** for leave to file in *In re Premier Van et al.*, no. 03-5023, CA2, an updating **supplement** of evidence of **bias** in Judge **Ninfo**'s **denial** of Dr. Cordero's request for a **trial by jury** ..... 1 [C:743]
2. Chapter 13 **Petition** for Bankruptcy of David **DeLano** and Mary Ann DeLano of **January 26**, 2004, with Schedules ..... 3 [D:27]
    a. Chapter 13 [Debt Repayment] **Plan** of January 26, 2004 ..... 35 [D:59]
    b. **Notice** of February 3, 2004, of Chapter 13 Bankruptcy Case, **Meeting of Creditors**, Deadlines ..... 37 [D:23]
3. Dr. **Cordero**'s **Objection** of **March 4**, 2004, to **Confirmation** of the Chapter 13 Plan of Debt Repayment ..... 41 [D:63]
4. Dr. **Cordero**'s **Memorandum** of **March 30**, 2004, **to the parties** on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY ..... 47 [D:69]
5. Dr. **Cordero**'s letter of **April 15**, 2004, to Trustee **Reiber requesting** that he send the **missing letter** and **state** the nature and scope of his **investigation** of the DeLanos ..... 69 [D:112]
6. Trustee **Reiber**'s letter of **April 20**, 2004, requesting Mr. **Werner** to **provide** him with financial **documents** concerning the DeLanos ..... 73 [D:120]

7. Dr. **Cordero's proof of claim** of **May 15**, 2004, against the DeLanos ..... 75 [D:142]

8. Dr. **Cordero**'s letter of **May 16**, 2004, to Trustee **Reiber requesting** once more the letter(s) that he sent to Att. Werner but not to him and requesting financial **documents** from the DeLanos ..... 80 [D:147]

9. Trustee **Reiber**'s letter of **May 18**, 2004, **to Att. Werner to** inquire about his progress in obtaining the documents requested in the April 20 letter ..... 82 [D:153]

10. **Dr. Cordero**'s letter of **May 23**, 2004, **to Att. Werner requesting**, on the basis of Trustee Reiber's letter of March 12, financial **documents** from the DeLanos ..... 83 [D:159]

11. Dr. **Cordero**'s letter of **June 8**, 2004, to Trustee **Reiber requesting** that he obtain requested **documents from** the **DeLanos**, state whether the meeting adjourned to June 21 will be held, and that he recuse himself from the case ..... 83a [D:161]

12. Trustee **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004 ..... 84 [D:164]

13. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition and containing in the relief the text of a requested order ..... 85 [D:193]

14. Dr. **Cordero**'s letter of **July 19**, 2004, faxed **to** Judge **Ninfo** ..... 95 [D:207]

    a. Dr. Cordero's **proposed order** for production of documents by the DeLanos and Att. Werner, obtained through **conversion of the requested order** contained in Dr. Cordero's Statement of July 9, 2004 ..... 96 [D:208]

15. Att. **Werner**'s **notice** of hearing and order of **July 19**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it ..... 101 [D:218]

16. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, **objecting to** Dr. Cordero's proposed **order** because it "extends beyond the direction of the Court" ..... 103 [D:211]

17. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo, requesting** that he **issue** the proposed **order as agreed** at the hearing on July 19, 2004 ..... 105 [D:217]

18. Judge **Ninfo**'s order of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" ..... 107 [D:220]

19. Dr. **Cordero**'s motion of **August 14**, 2004, for **docketing** and issue of order, **removal**, referral, examination, and other relief, noticed for August 23 and 25, 2004 ..... 109 [D:231]

20. Dr. **Cordero**'s reply of **August 17**, 2004, in opposition **to Debtor**'s objection to claim and **motion to disallow** it ..... 127 [D:249]

21. Dr. **Cordero**'s **motion** of **August 20**, 2004, for sanctions on and compensation from Christopher **Werner**, Esq. and his law firm for violation of FRBkrP Rule 9011(b) ..... 136 [D:258]

22. Judge **Ninfo**'s Interlocutory **Order** of **August 30**, 2004, requiring Dr. **Cordero** to **take discovery** of his claim against Debtor **DeLano** arising **from** the *Pfuntner v. Gordon et al.* **case on appeal** in the Court of Appeals for the Second Circuit ..... 149 [D:272]

23. Dr. **Cordero**'s letter of **August 31**, 2004, **to** U.S. Attorney in Charge Bradley E. **Tyler**, Esq., to **send back** to him the **files** that were returned to Dr. Cordero by Assistant U.S. Attorney Richard Resnik ..... 157 [C:1508]

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by fax or United States Postal Service on the following parties copies of my motion to quash the Order of WBNY Judge John C. Ninfo, II, of August 30, 2004:

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September 9, 2004

Dr. Richard Cordero

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Brooklyn, NY 11208

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

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

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

November 19, 2003

United States Court of Appeals for the Second Circuit
United States Courthouse
40 Foley Square
New York, New York 10007
Attn: Roseann B. MacKechnie, Clerk of Court

Re: In re: Premier Van Lines
Docket Number: 03-5023

Dear Ms. MacKechnie:

Today we received the attached Motion Information Statement in connection with the above matter.

Enclosed please find a copy of this Court's October 23, 2003 Scheduling Order in connection with the remaining claims of the Plaintiff, James Pfuntner, and the cross-claims, counter-claims and third-party claims of the Third-Party Plaintiff, Richard Cordero, which has attached to it the following additional orders:

1. An October 16, 2003 Order Denying Recusal and Removal Motions and Objection of Richard Cordero to proceeding with any hearings and a trial on October 16, 2003;

2. An October 16, 2003 Order Disposing of Causes of Action; and

3. An October 23, 2003 Decision & Order Finding a Waiver of a Trial by Jury.

Since Dr. Cordero may refer to all or parts of these additional Orders in connection with the above matter, I thought that it would be helpful for the Circuit Court to have copies of them.

Respectfully,

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

JCN/ams

cc: Dr. Richard Cordero (w/ enc.)

J Ninfo's letter of 11/19/3 to CA2 Clerk volunteering copies of orders upon receiving CA2 motion info sheet C:743

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, on January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case"); and

WHEREAS, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692(the "Premier Case"); and

WHEREAS, prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

WHEREAS, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

WHEREAS, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

WHEREAS, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

WHEREAS, on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which* is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

WHEREAS, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

WHEREAS, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

WHEREAS, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

WHEREAS, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

WHEREAS, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

WHEREAS, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

WHEREAS, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

WHEREAS, at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) the Claim Objection on its face is compelling, because the Cordero Claim and its attachments

set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

WHEREAS, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

WHEREAS, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED**, that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

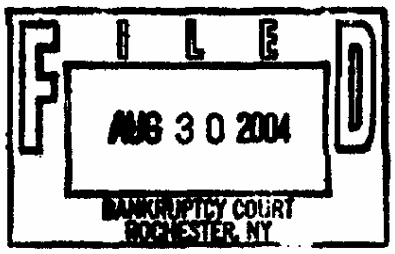
3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no. 04-20280

NOTICE OF MOTION AND SUPPORTING BRIEF FOR DOCKETING and ISSUE of PROPOSED ORDER, REMOVAL, REFERRAL, EXAMINATION, AND OTHER RELIEF

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, NY, 14614, at the next two hearings scheduled in this case for August 23 and 25, 2004, or as soon thereafter as he can be heard, to request the docketing and issue of his proposed order of July 19, 2004, for document production by the Debtors; the docketing of his July 21, 2004; the removal of Trustee George Reiber and Att. James Weidman from this case; the referral of the case to the U.S. Attorney and the FBI; the examination of the Debtors, Trustee Reiber, and Att. Weidman under FRBkrP Rule 2004; and for other relief on the factual and legal grounds stated below.

I, Dr. Richard Cordero, Creditor in this case, state under penalty of perjury the following:

TABLE OF CONTENTS

I. At a hearing on July 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received 753

II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit 755

III. Judge Ninfo's requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the DeLanos that he requested of Dr. Cordero on July 19, 2004 760

IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of attorney for the Delanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud 763

V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud.....765

VI. Relief requested.....767

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I. At a hearing on July 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received

1. Trustee George Reiber filed a motion of June 15, 2004, to dismiss this case and I filed a statement of July 9, 2004, to oppose it. My statement contained a detailed request for the issue of an order for production of documents by the Debtors and their attorney, Christopher Werner, Esq. The request specified which documents were to be produced as well as when, how, and by whom.
2. At the hearing of Trustee Reiber's motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21,

you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.

3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format "page # of 5". I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.
4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER[1] already contained the description of the hearing on July 19, which included the statement in capital letters:

> Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.
6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

07/20/2004	53	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)

When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

7. By contrast, the entry for Att. Werner's objection of July 19, 2004, to my claim as creditor of

[1] PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

his clients reads thus.

07/22/2004	51	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)

8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded,

they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.

14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:

    a) The most egregious instance of failure to docket concerns case 02-2230, Pfuntner v. Gordon et al, where Debtor David DeLano is a defendant and the bank *loan* officer who made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829 Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

    b) Even a paper concerning me but filed by another person has been withheld without docketing: The transcript that I first requested from Court Reporter Mary Dianetti on January 8, 2003, and that in violation of 28 U.S.C. §753(b) she did not deliver directly to me, was filed by her only on March 12, 2003, in violation of FRBkrP Rule 8007(a), and was not entered in docket 02-2230 until March 28, 2003, in violation of FRBkrP Rule 8007(b). Much worse yet, it was not mailed to me until March 26! Who withheld it from me, with whose authorization, and for what purpose?

    c) Moreover, the dates of docketing have been altered: I timely mailed a notice of appeal from your dismissal of my claims against Trustee Kenneth Gordon in case 02-2230, Pfuntner v. Gordon et al, on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and I timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that my motion had been timely filed on January 29, you surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! So you

denied my motion. You did not want to consider the fact that Trustee Gordon had checked the docket and the filing date of my notice of appeal and had claimed with your approval in disregard of FRBkrP Rules 8001, 8002, and 9006(e) and (f) that my notice, though timely mailed, had been untimely filed. Likewise, Trustee Gordon checked the filing date of my motion to extend for the same purpose of escaping through a technicality accountability for his recklessness and negligence as a trustee. He would hardly have made a mistake in such a critical matter. For your part, you would not investigate the discrepancy. Shedding light on why you would protect him so, PACER replied on page https://ecf.nywb.uscourts.gov/cgi-bin/login.pl to a query on June 26, 2004, of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". More revealing yet, in all but one of those 3,383 cases you, Judge Ninfo, have been the judge. You and Trustee Gordon go back a long way. When it came time for you to choose between protecting him and ascertaining the facts, I did not stand a chance. No wonder now the docket appears as if I had untimely filed my motion to extend on January 30, 2003.

d) What is more, docketed papers have been withheld: To perfect my appeal to the Court of Appeals in case 02-2230, I had to comply with F.R.A.P Rule 6(b)(2)(B)(i) by submitting my Redesignation of Items on the Record and Statement of Issues on Appeal. Suspicious of another docket manipulation, I sent originals of that critical paper to both your Court and the District Court on May 5, 2003…only to be utterly shocked upon finding out on May 24 that although the District Court had transferred the record on May 19, to the Court of Appeals, the latter's docket for my appeal, no. 03-5023, showed no entry for my Redesignation and Statement. Worse still, I checked the dockets of both the Bankruptcy and the District Court and neither had entered it! The absence of this paper from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

e) Documents filed by me are not docketed although they are clearly intended to be entered

and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.

f) Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:

1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY
2) Objection of March 29, 2004, to a Claim of Exemptions
3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

f.i. However, as of April 13, docket 04-20280 read like this in pertinent part:

04/08/2004	19	Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # 1 Appendix)(Tacy, K.) (Entered: 04/08/2004)
04/09/2004	20	Deficiency Notice (RE: related document(s)19 Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timeless of an objection to a claim of exempltions and for a written statements on and of Local Practice, filed by Interested Party Richard Cordero) (Finucane, P.) (Entered: 04/09/2004)

f.ii. These entries have many mistakes and reflected poorly on me as a filer…or as an

"Interested Party" although I am a creditor listed as such in Schedule F of the DeLanos' petition and in the Court's Register of Creditors. Was somebody in the Court already prejudging my status after having informally gotten wind of Att. Werner's intention to challenge it in future? I had to write to Clerk of Court Warren on April 13 to point out to him that:

4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:…; otherwise, the title used in 1) above, could be used.
5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.
6) For its part, entry 20 contains jarring mistakes:
   a) it is not "timeless", but rather "timeliness";
   b) it is not "exempltions", but rather "exemptions";
   c) it is not "a written statements", but rather "a written statement".

f.iii. I wrote to Mr. Warren: "I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed." Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano's petition even cursorily;
8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;
9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;
10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the

petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,

11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under "local practice" and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance… *mindboggling statements indeed!*

12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:

    a) how "local practice" can invalidate federal law,

    b) how a non-local finds out reliably what "local practice" is, and

    c) why I should waste any more time, effort, and money doing legal research that will be trumped by whatever "local practice" is said to be.

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.

16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

> The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk.

17. Also inscribed in that pattern is the failure to docket my letter faxed on July 22, which is compounded by the pretense that it was never received, though acknowledged by a clerk to be in chambers and its transmission is recorded on my telephone bill.

III. Judge Ninfo's requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the DeLanos that he requested of Dr. Cordero on July 19, 2004

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber's motion to dismiss the DeLanos' petition; whether your knowledge was actual or constructive is indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: "Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED." But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not issue it, actually you would not even transmit it to the clerks for docketing!
19. This is not the first time either that you ask me to prepare and submit a document that you never intended to act upon. Here are the most blatant instances:
    a) At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano's attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep you word it all redounded to my detriment.
    b) At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on

December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.

c) Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.

20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore "local practice" (see para. 14.f.11) and 12))

and challenge your rulings on appeal.

21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, "the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004", why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!
22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of Attorney for the DeLanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.
24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).
25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:

a) Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;

b) Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;

c) Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;

d) Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and

e) Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.

26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim…but is there any point in doing so?

27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).

28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake![2]

[2] For other instances of your bias against me and toward the local parties and the description of

V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:

    a) Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.

    b) He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.

    c) He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.

    d) His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded $5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases", reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.

    e) He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then

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other acts of disregard of the law, the rules, and the facts that form part of a pattern of non-coincidental, intentional, and coordinated wrongdoing to my detriment, see in docket 02-2230, entry 111, my motion of August 8, 2003, for you to remove that case to a presumably impartial court, such as the U.S. Bankruptcy Court in Albany, and recuse yourself from that case.

he moved on June 15 to dismiss the petition for their' "unreasonable delay" in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.

f) He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them…yet he has $3,909 *open* cases, according to PACER. Was there never a case in such a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?

g) Whether such tremendous workload caused him to operate by dismissing cases that required investigation, or his failure to give petitions even a cursory review allowed him to rubberstamp such a huge number of cases, the fact is that he failed to detect the glaring indicia that something was wrong with the DeLanos' petition, such as these:

    1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.
    2) While a bank officer would be expected to carry the bank's credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention 'sticking' their employer with a bankruptcy debt.
    3) Mr. DeLano and his working wife declared earnings of $291,470 in only the three years from 2001-2003.
    4) Nevertheless, they declared having only $535.50 in cash or in bank accounts…with M&T and in credit, of course;
    5) two cars worth together merely $6,500;
    6) equity in their house of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;

7) household goods worth only $2,910…that's all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years…unbelievable!
8) Yet, they have accumulated $98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,…
9) Wait a moment! Where did their $291,470 go?

30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos' earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.
31. But if Trustee Reiber did review the DeLanos' documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.
32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?
33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:
    a) enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket's electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;
    b) issue that order, modified by the remark that insofar compliance therewith is still owing,

the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;

c) enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;

d) remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;

e) report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:

1) Mr. Lawrence A. Friedman, Director
2) Donald F. Walton, Acting General Counsel
3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

f) report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;

g) order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:

13) the Debtors under 11 U.S.C. §341; and
14) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);

h) enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;

i) allow me to present my arguments by phone at the two upcoming hearings; not cut off the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the next scheduled public event;

j) reply to my motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

August 14, 2004

Dr. Richard Cordero

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13 bankruptcy

case no. 04-20280

Order

FOR DOCKETING and ISSUE of ORDER, REMOVAL, REFERRAL, and EXAMINATION

Having reviewed the history of the above-captioned case and the papers submitted by the several parties, and in light of the provisions of the United States Code and Rules applicable to it, the Court orders as follows:

a. the proposed order of July 19, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 20, 2004, in entry 53 of docket 04-20280 and uploaded into the docket's electronic version to make it publicly available through it, forthwith by the clerk;

b. said order is incorporated herein and effective immediately; and insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date of this order;

c. the letter of July 21, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 22, 2004, in docket 04-20280 and uploaded into its electronic version to make it publicly available through it, forthwith by the clerk

d. Trustee George Reiber is removed under 11 U.S.C. §324 forthwith from this case; James Weidman, Esq., is to terminate forthwith any and all relation to this case, whether as a professional person employed under §327 or otherwise; and any payment to them or disbursement by them of funds in connection with this case is forthwith prohibited until otherwise ordered by a competent authority;

e. the clerk will forthwith send a copy of both this order and the above-described order of July 19, 2004, with a pertinent report by this Court to follow shortly, to the following officers:

    1) for review, investigation, and reconstruction of this case as appropriate, and the subsequent appointment of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the Debtors:

        a) Mr. Lawrence A. Friedman, Director

        b) Donald F. Walton, Acting General Counsel

        c) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

        Executive Office of the United States Trustees
        20 Massachusetts Ave., N.W., Room 8000F
        Washington, D.C. 20530

2) under 18 U.S.C. §3057(a) for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.:

   a) Mr. John Ashcroft
   Attorney General
   U.S. Department of Justice
   950 Pennsylvania Av., NW
   Washington, DC 20530-0001

   b) Bradley E. Tyler, Esq.
   Attorney in Charge
   620 Federal Building
   100 State Street
   Rochester, NY 14614

   c) Rochester Resident Agent
   Federal Bureau of Investigations
   300 Federal Building
   100 State Street
   Rochester NY 14614

f. the following persons are to produce and make themselves available for examination under FRBkrP Rule 2004 by Dr. Richard Cordero, whether as creditor or party in interest, and for the official record, in room _____at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September _____, 2004, and, if necessary for further examination, the following day:

   1) the Debtors, Mr. David DeLano and Mrs. Mary Ann DeLano; and

   2) Trustee George Reiber and James Weidman, Esq.

SO ORDERED
THIS DAY OF_____ _____
HONORABLE JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

https://www22.verizon.com/foryourhome/mysmarttouch/statementview/GenerateStatement.aspx

Today is Sun, 1 Aug 2004

verizon

Long Distance Home | Products & Services | Customer Support | About Verizon Long Distance

Directory Contact us

Online Activity Statement for all your SmartTouch℠ calls and purchases

Account: **718-827-9521**
Statement Period: **Jul1, 2004 - Aug1, 2004**

Important Numbers

If you have any questions about the long distance service provided by Verizon Long Distance, please call 1-888-599-0107.
Thank you for using SmartTouch from Verizon.

New for SmartTouch customers! Make your account even smarter with our new Rapid Recharge feature. We'll automatically "recharge" your account for you from your check card or credit card account .
International calls that terminate to wireless phones may incur additional charges

Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
Ending Balance	**$14.32cr**

Purchases Activity

no.	*date*	*Description*	*amount*
1.	07/19/2004	SmartTouch Purchases	20.00cr
Total Purchase Activity			**$20.00cr**

Direct Dialed Calls

In-State Calls: 718-827-9521

no	*date*	*time*	*place*	*number*	*min.*	*amount*
2.	07/06/2004	15:14 PM	ROCHESTER NY	585-263-5706	23.0	1.84
3.	07/10/2004	12:53 PM	ROCHESTER NY	585-427-7804	9.0	0.72
4.	07/10/2004	13:02 PM	ROCHESTER NY	585-232-3528	9.0	0.72
5.	07/10/2004	13:12 PM	ROCHESTER NY	585-263-5862	9.0	0.72
6.	07/15/2004	11:54 AM	ROCHESTER NY	585-613-4200	6.0	0.48
7.	07/19/2004	14:25 PM	BUFFALO NY	716-841-4506	1.0	0.08
8.	07/19/2004	15:39 PM	ROCHESTER NY	585-613-4281	1.0	0.08
9.	07/20/2004	09:41 AM	ROCHESTER NY	585-613-4200	2.0	0.16
10.	07/20/2004	09:46 AM	ROCHESTER NY	585-613-4299	5.0	0.40
11.	07/20/2004	10:06 AM	ROCHESTER NY	585-427-7804	5.0	0.40
12.	07/20/2004	10:10 AM	ROCHESTER NY	585-263-5862	5.0	0.40
13.	07/20/2004	10:15 AM	ROCHESTER NY	585-232-3528	5.0	0.40
14.	07/20/2004	13:15 PM	ROCHESTER NY	585-613-4200	3.0	0.24
15.	07/21/2004	07:46 AM	BUFFALO NY	716-841-1207	13.0	1.04
16.	07/21/2004	09:47 AM	BUFFALO NY	716-841-6813	3.0	0.24
17.	07/21/2004	11:55 AM	ROCHESTER NY	585-546-1980	56.0	4.48
18.	07/21/2004	16:14 PM	ROCHESTER NY	585-613-4200	5.0	0.40
19.	07/22/2004	08:41 AM	ROCHESTER NY	585-613-4299	2.0	0.16
20.	07/22/2004	11:25 AM	BUFFALO NY	716-	4.0	0.32
21.	07/26/2004	12:02 PM	ROCHESTER NY	585-613-4200	8.0	0.64

C:772 Dr. Cordero's phone bill showing faxes sent by him on 7/20&22/4 to J Ninfo's fax no. (585)613-4299

Dates of Key Documents

as of October 14, 2004 [updated at ToEC:3]

concerning the judicial misconduct complaints in the Court of Appeals
docket nos. 03-8547 and 04-8510, CA2
and the petitions to the Judicial Council of the Second Circuit
for review of the dismissals of those complaints

by

Dr. Richard Cordero

Judicial misconduct complaint about WDNY Bankruptcy Judge John C. Ninfo, II, docket no. 03-8547

Judicial misconduct complaint				Petition for review					
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Resubmission	Acknow-ledgment	Letter to Jud. Council	Update to Jud. Council	Denial
August 11, 03	August 27, 03	Septem. 2, 03	June 8, 04	July 8, 04	July 13, 04	July 16, 04	July 30, 04	August 27, 04	Septem. 30, 04

Judicial misconduct complaint about CA2 Chief Judge John M. Walker, Jr., docket no. 04-8510

Judicial misconduct complaint				Petition for review		
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Acknow-ledgment	Exhibits to Jud. Council
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04

Received	Title	FirstName	LastName	AppendedTitle	Court	Address1	Address2	City	State	PostalCode	WorkPhone
1.	Madam Justice		Ginsburg		Supreme Court of the United States	U.S. Supreme Court Building, 1 First Street, N.E.		Washington	D.C.	20543	202-479-3000
2.	Chief Judge	John M.	Walker	, Jr.	U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street	40 Foley Square, Room 1802	New York	NY	10007	12-857-8500
3.	Circuit Judge	Jose A.	Cabranes		U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street	40 Foley Square, Room 1802	New York	NY	10007	212-857-8500
4.	Circuit Judge	Guido	Calabresi		U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street	40 Foley Square, Room 1802	New York	NY	10007	212-857-8500
5.	Circuit Judge	Dennis	Jacobs		U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street	40 Foley Square, Room 1802	New York	NY	10007	212-857-8500
6.	Circuit Judge	Rosemary S.	Pooler		U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street	40 Foley Square, Room 1802	New York	NY	10007	212-857-8500
7.	Circuit Judge	Robert D.	Sack		U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street		New York	NY	10007	212-857-8500
8.	Circuit Judge	Chester J.	Straub		U.S. Court of Appeals	U.S. Courthouse, 40 Centre Street	40 Foley Square, Room 1802	New York	NY	10007	212-857-8500
9.	Chief Judge	Edward R.	Korman		U.S. District Court for the Eastern District of N.Y.	225 Cadman Plaza East		Brooklyn	NY	11201	718-330-2188
10.	Chief Judge	Michael B.	Mukasey		U.S. District Court for the Southern District of N.Y.	500 Pearl Street, Room 2240		New York	NY	10007-1312	212-805-0136; 212-805-0234
11.	Chief Judge	Frederick J.	Scullin	, Jr.	U.S. District Court for the Northern District of N.Y.	James T. Foley U.S. Courthouse	445 Broadway, Suite 330	Albany	NY	12207-2948	518-257-1800 or -1661
12.	Chief Judge	Richard J.	Arcara		U.S. District Court for the Western District of N.Y.	Olympic Towers, Suite 250	300 Pearl Street	Buffalo	NY	14202-2501	716-551-4130
13.	Chief Judge	Robert N.	Chatigny		U.S. District Court for the District of Connecticut	Richard C. Lee U.S. Courthouse	141 Church Street	New Haven	Ct	06510-2030	203-773-2140
14.	Chief Judge	William	Sessions	, III	U.S. District Court for the District of Vermont	P.O. Box 945		Burlington	VT	05402-0928	802-951-6350

Table of names, addresses, and telephone numbers of the members of the Judicial Council of the Second Circuit

(See also this data as block addresses at C:112)

http://www.ca2.uscourts.gov/

Judicial Council of the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2904
New York, New York 10007
(212) 857-8700

Council Members:

1.	Chief Judge John M. Walker, Jr.	Court of Appeals for the Second Circuit
2.	Judge Jose A. Cabranes	Court of Appeals for the Second Circuit
3.	Judge Guido Calabresi	Court of Appeals for the Second Circuit
4.	Judge Dennis Jacobs	Court of Appeals for the Second Circuit
5.	Judge Rosemary S. Pooler	Court of Appeals for the Second Circuit
6.	Judge Robert D. Sack.	Court of Appeals for the Second Circuit
7.	Judge Chester J. Straub	Court of Appeals for the Second Circuit
8.	Chief Judge Edward R. Korman	Eastern District of New York
9.	Chief Judge Michael B. Mukasey	Southern District of New York
10.	Chief Judge Richard J. Arcara	Western District of New York
11.	Chief Judge Frederick J. Scullin, Jr.	Northern District of New York
12.	Chief Judge Robert N. Chatigny	District of Connecticut
13.	Chief Judge William Sessions, III	District of Vermont

The Judicial Council of the Second Circuit is the regional governing body of the judiciary within this circuit, pursuant to 28 U.S.C. ?332. The business of the Council includes such matters as proceedings on allegations of judicial misconduct. The Council frequently reviews submissions of highly specific matters that require their action from each court within the circuit. Matters such as space and facility requirements of the several courts of the circuit. Additionally the Council is the governing authority to approve jury plans, Employment Dispute Resolution Plans and Criminal Justice Act Plans circuit wide.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 20, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

The "Exhibits for review petition concerning complaint . . . " has been forwarded to this office by Chief Judge John M. Walker, Jr. for response.

You cannot supplement the file in the judicial complaint procedure. There is no motion practice in this procedure

Once a decision has been filed concerning your petition for review you will be notified by letter.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 20, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Your petition for review, dated October 4, 2004 and received in this office on October 5, 2004 was filed at that time.

Because you cannot supplement the record I am returning the enclosed "exhibits for review petition" sent to Judge Dennis Jacobs.

You will be notified by letter once a decision has been filed in the above matter.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures -

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 20, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Your petition for review, dated October 4, 2004 and received in this office on October 5, 2004 was filed at that time.

Because you cannot supplement the record I am returning the enclosed "exhibits for review petition" sent to Judge Chester J. Straub.

You will be notified by letter once a decision has been filed in the above matter.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures -

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

November 10, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed please find a copy of the November 10, 2004 Order of the Judicial Council of the Second Circuit denying the above-referenced petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

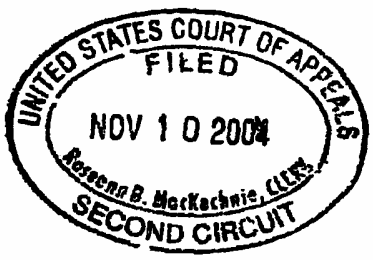
By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

C:780 Clerk Allen's notice of 11/10/4 to Dr. Cordero of Jud. Council's denial of petition re complaint v CJ Walker

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 04-8510

Before the Judicial Council of the Second Circuit:

A complaint having been filed on March 29, 2004, alleging misconduct on the part of Circuit Judge of this Circuit, and the complaint having been dismissed on September 24, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on October 5, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated September 24, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Circuit Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: November 10, 2004
New York, New York

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

[Sample of letters sent to circuit and district judges of 2nd Cir.]

November 29, 2004

Circuit Judge Robert A. Katzmann
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Dear Judge Katzmann,

I am addressing you, as a judge with responsibility under 18 U.S.C. §3057(a) for the integrity of the judiciary and as a judge to whom I have previously submitted evidence of judicial wrongdoing linked to a bankruptcy fraud scheme, to respectfully request that you, in compliance with that provision, make a report of that evidence to the Acting U.S. Attorney General so that he may investigate it.

Indeed, the evidence reveals a series of instances for over two years of disregard for the law, rules, and facts by U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY, so numerous and consistently to my detriment, the only non-local and pro se litigant, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Then evidence emerged of the operation of the most powerful driver of corruption: money!, a lot of money in connection with fraudulent bankruptcy petitions. This results from the concentration of *thousands* of bankruptcy cases in the hands of each of the private standing trustees appointed by the U.S. trustee. They have a financial interest in rubberstamping the approval of all petitions, especially those with the least merits, since petitions confirmed by the court produce fees for the trustees, even a fee stream as a percentage of the debtors' periodic payments to the creditors.

This poses the obvious question of who and what else are being paid by the schemers and what parties outside the scheme, such as myself, are being denied due process of law and caused enormous loss of effort, money, and time, as well as tremendous aggravation as the schemers run their operation for illicit gain or advantage. The accompanying statement shows that under §3057(a) a judge, such as you, need not have evidence that another judge or trustee has committed a crime. Rather, he only needs to have "reasonable grounds for believing that any violation under…laws of the United States relating to insolvent debtors…has been committed." Actually, far from needing any evidence, the judge does not even need a belief in the commission of a violation, for it suffices that he or she may believe "that an investigation should be had in connection with laws of the United States relating to insolvent debtors, [and then the judge] ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed…." [emphasis added]

Just as money corrupts, a lot of money made available when lots of fraudulent bankruptcy petitioners are allowed to repay mere pennies on the dollar corrupts a lot. Hence, to avoid even the appearance of any undue influence and insure the integrity of the investigation, it should not be conducted by U.S. attorneys or FBI agents that are even acquainted, as a result of working in the same area, let alone the same building, with the parties that may be investigated. Thus, I respectfully request that you address your §3057(a) report to the Acting U.S. Attorney General with the recommendation that he appoint investigators from outside Rochester or Buffalo. Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

List of Judges

of the Judicial Council and the Court of Appeals, Cir. 2
to whom was sent the request of November 29, 2004
for a report to the U.S. Attorney General under 18 U.S.C. §3057(a) of
evidence of bankruptcy fraud
by
Dr. Richard Cordero

Circuit Judge Jose A. Cabranes
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Circuit Judge Guido Calabresi
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Circuit Judge Rosemary S. Pooler
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Circuit Judge Robert D. Sack
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Circuit Judge Chester J. Straub
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Circuit Judge James L. Oakes
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Circuit Judge Robert A. Katzmann
U.S. Court of Appeals for the 2nd Circuit
U.S. Courthouse, 40 Centre Street
New York, NY 10007

Chief Judge Michael B. Mukasey
U.S. District Court, SDNY
500 Pearl Street, Room 2240
New York, NY 10007-1312

Chief Judge Edward R. Korman
U.S. District Court, EDNY
225 Cadman Plaza East
Brooklyn, NY 11201

Chief Judge Robert N. Chatigny
U.S. District Court
for the District of Connecticut
450 Main Street
Hartford, Ct 06103

Chief Judge Richard J. Arcara
U.S. District Court, WDNY
Olympic Towers, Suite 250
Buffalo, NY 14202-2501

Chief Judge William Sessions, III
U.S. District Court
for the District of Vermont
P.O. Box 945
Burlington, VT 05402-0945

Blank

Dr. Richard Cordero

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

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

November 29, 2004

[Sample of personalized caption]

REQUEST

TO THE Hon. Robert A. Katzmann

Circuit Judge of the U.S. Court of Appeals for the Second Circuit

TO MAKE A REPORT TO THE ACTING U.S. ATTORNEY GENERAL UNDER 18 U.S.C. §3057(a) THAT AN INVESTIGATION SHOULD BE HAD IN CONNECTION WITH OFFENSES AGAINST UNITED STATES BANKRUPTCY LAWS

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I. Judges' obligation to act on their reasonably grounded belief that an investigation should be had

1. Every United States judge is under an obligation to contribute to the integrity of the judicial system. This obligation flows, among others, from 18 U.S.C. §3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…[emphasis added]

2. Judges remain under this obligation regardless of their disposition of an appeal or motion, and thus, regardless of whether they had jurisdiction over the appeal or a non-final order was the subject of the motion. It follows that they must fulfill that obligation independently of their attitude toward the particular appellant or movant before them, for the obligation is not so conditioned and, in any event, the benefit of fulfilling it inures to the general public. Indeed, judges enhance the public's trust in the importance of and respect for the rule of law when they care to act on their reasonable belief that a violation of federal law has been committed and report their grounds for such belief to the U.S. Attorney or his assistants for investigation.
3. In the case at hand there are reasonable grounds for such belief…and that is all the law requires a judge to have in order for him to make such report: not incontrovertible evidence of the commission of a crime; actually, no evidence at all is required, much less that each individual fact or circumstance of the case constitute a violation of the law. Indeed, §3057(a) does not require any violation of the law to be set out, but it is satisfied if the judge simply have "reasonable grounds for believing…that an investigation should be had". Certainly, the section does not demand the objectivity necessary to meet the standard of probable cause, but merely a subjective belief that rests on grounds that are reasonable.
4. That little is what the law requires of judges for a §3057(a) report to the U.S. Attorney, although given their legal training and experience, they could have been used as filters to assess the sufficiency of evidence to support an indictment and asked that they report only evidence that would survive at arraignment. What is more, judges have both authority to compel a person

before them to answer questions and power to compel a litigant and even others to produce evidence and witnesses. Nevertheless, §3057(a) only requires judges to have a reasonably grounded belief in order to report that an investigation should be had. If that is all the law requires of judges, why should they impose any other requirement on a litigant, such as that his claims meet criminal evidence sufficiency standards, let alone that he submit concrete evidence that a crime was committed, before they would even consider granting a litigant's request for a §3057(a) report?

5. It would be all the more incomprehensible and unwarranted to impose a higher than the §3057(a) requirement on Dr. Cordero, for he has complained from the beginning –in the statement of issues on appeal of May 5, 2003, and the appeal brief of July 9, 2003- and since then in many of his papers submitted to this Court –as in his recent motion to quash of September 9, 2004, an order of Judge Ninfo- that the judges, trustees, parties, and debtors in this case have unjustifiably denied him the discovery and documentary evidence that he is entitled to. Nevertheless, Dr. Cordero has submitted to this Court detailed descriptions, supported by any documents available, of the many instances in which those people have disregarded legality, concealed or misrepresented the facts, and shown bias against him, the only pro se party and a non-local one to boot.
6. The low threshold set by §3057(a) to trigger a judge's obligation to report his belief in the need for an investigation is not an exception for the benefit of the judges to a normally higher requirement imposed on others. Rather, it is a means for the benefit of the public to satisfy the requirement that justice not only must be done, but must also be seen to be done. Hence, when judges do not have all the evidence to do justice, but have reason to belief that injustice may have been done by somebody's offense or violation of the law, they must ask for an investigation that may gather the necessary evidence for justice to be seen to be done.
7. When judges fail to acquit themselves of their §3057(a) reporting obligation and in so doing give even as little as the appearance of partiality, whether toward their peers or against a litigant, then they trigger another obligation: that of disqualifying themselves so as to make room for another judge that will do justice and be seen to do justice.
8. By contrast, for judges that want to acquit themselves of their §3057(a) reporting obligation, this case presents enough grounds from which their belief can reasonably arise that it should be investigated by the U.S. Attorney General. To that end, it should be sufficient for those judges

to look in the most favorable light at the following statement of those grounds in order to see how the totality of circumstances support the belief that at least one offense, or even more offenses, may have been committed and warrant investigation. Where §3057(a) only requires judges to ask for an investigation, judges should not ask a private citizen to submit the results of an investigation. And just as judges hold litigants to their obligations under the law, judges should hold themselves bound by their obligations under the law, such as that under §3057(a) requiring that they "shall" report their belief that an investigation of offenses against bankruptcy laws should be had.

II. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated

9. The evidence of judicial wrongdoing linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been referenced, many of which have already been submitted so that only those updating them have been attached hereto as exhibits; however, all of those included in the Table of Exhibits (19, infra) but not attached, and those referred to in the ones attached are available on request.
10. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to call for an investigation and conduct it. Although intertwined, that evidence can be described in a few principal categories:
    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, **a)** a trustee sued for negligence and recklessness who had before the Judge some 3,000 cases! –how many do you have?-; **b)** an already defaulted bankrupt defendant against whom an application for default judgment was brought; **c)** parties who have disobeyed his orders, even those that they sought or agreed to; and **d)** debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.
    2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but

they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the fraud scheme.

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial

11. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (Exhibit page 1=E-1)[1] in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY docket no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

12. By that time, Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2§II)

a) Indeed, the statistics on PACER as of November 3, 2003[2,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[3] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

13. Could you handle competently such an overwhelming number of cases, increasing at the rate of 1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to

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[1] Exhibits from pages E-1 through E-134 have already been submitted and their titles appear in the Table of Exhibits, at 19, infra; even so, any of them or the whole set is available on demand. However, exhibits E-83 through E-108 just as E-135 et seq. are provided herewith and are easily identifiable because their references are in bold, i.e. (**E-#**).

[2] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.

[3] Id.

carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3§B-E; **E-86§II**).

14. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY docket no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Thus, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Plaintiff Pfuntner!
    a) Judge Ninfo would not compel Bankrupt Owner Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4§§C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4§§C-D).
15. At the instigation of Mr. Pfuntner, who said that property had been found in his warehouse that might belong to Dr. Cordero, Judge Ninfo ordered Dr. Cordero to travel from New York City all the way to Avon, outside Rochester, to conduct an inspection of it within a month or the Judge

would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less!

16. Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5§E; E-90§III)
17. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets

18. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; WBNY docket no. 04-20280 (E-153). The values declared in their schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:
    a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when

troubleshooting a problem.

b) The DeLanos incurred scores of thousands of dollars in credit card debt;

c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F (**E-153 et seq.**);

f) owe also a mortgage of $77,084;

g) but have near the end of their work lives equity in their house of only $21,415;

h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (**E-185**);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65§III).

19. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64§II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64§III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117§B) How extraordinary! given that:

a) The DeLanos had treated Dr. Cordero as a creditor for six months;

b) They were the ones who listed Dr. Cordero's claim in Schedule F (**E-153 et seq**.)…for

good reason because

c) Mr. DeLano has known of that claim against him since November 21, 2002, when Dr. Cordero brought him into Pfuntner v. Gordon et al. as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115§A)

20. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33§II)
21. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's claim is a desperate attempt to remove belatedly from their case Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; **E-185**) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80**; E-190**). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92§IV), he refused to even docket it (E-80; **E-84§I; 90§III**) and only issued a watered down version on July 26 of Dr. Cordero's proposed order (E-76; E-81) that he then allowed the DeLanos to disobey by not producing the documents requested in the Judge's order! If not for leverage, what was it issued for?
22. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (**E-98**) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (**E-107**; E-121§III) That could take years! during which the other 20 creditors are prejudiced by not receiving any payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interests of creditors and the public so as to protect the DeLanos needs to be investigated.
23. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest,

even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. (cf. E-231¶2) To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121§§III-IV) The stakes must be very high!

24. Thus, in his August 30 order (E-101) Judge Ninfo required Dr. Cordero to prove his claim against Mr. DeLano, though he cited no legal basis therefor and ignored the legal basis for not doing so. (E-109) Yet, to comply with it, Dr. Cordero requested Mr. DeLano to produce documents (E-190; E-211). Mr. DeLano alleged that they were irrelevant to Dr. Cordero's claim against him and produced none. (E-216). Dr. Cordero raised a motion (E-220) where he discussed the scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1). (E-223§II) He argued that he can request discovery not only to prove his claim against Mr. DeLano, but also to defend against the DeLanos' motion to disallow it by showing that it is a blatant attempt to remove him from the case before he can demonstrate that the DeLanos' petition is fraudulent and masks, among other things, concealment of assets.

25. The response to that motion of November 4 was ever so swift: On November 9, Mr. DeLano filed a response denying production of every document requested, alleging them to be irrelevant or not in his possession (E-228) and on November 10, without any hearing, Judge Ninfo entered an order stating that "The Cordero Discovery Motion is in all respects denied". (E-230) Neither the Judge nor the attorney for Mr. DeLano, Att. Werner, engaged in any legal discussion, much less cited any legal provision, (cf. E-40-42) for why waste time and effort researching and discussing the law, rules, and facts when the judge is on your side and he has no inhibition about resorting to conclusory statements to achieve his objective: to prevent at all costs Dr. Cordero from discovering information that can link judicial misconduct (E-1) to a bankruptcy fraud scheme. Would you feel proud of having written that order or rather, for standing up for your belief that just and fair process and the integrity of the judiciary require that an investigation should be had?

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

26. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (**E-149**). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[4] *open* cases! He cannot be all the time where he should be.

27. So at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-42)

28. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65§III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64§II) and perfunctorily (E-66§IV).

29. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F (**E-153 et seq**.) that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66§IV; E-153 et seq.)

30. Despite Dr. Cordero's repeated requests that Trustee Reiber hold an adjourned meeting of creditors (E-187; E-205; E-214**)** The Trustee has refused alleging that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally

[4] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

determined (**E-199**). What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo. (E-201)

31. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of the U.S. Trustees Schmitt and Martini (E-71¶32; E-93§V; E-210), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. No wonder he has been so flagrantly disingenuous in pretending that he cannot hold a §341 examination of the DeLanos because Judge Ninfo's order does not allow him to. (E-204; E-205; cf. E-200)
32. So has been Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Private Trustees Reiber and Gordon. Dr. Cordero asked her in writing (E-210) and in messages left on her voice mail and with her assistants that she instruct Trustee Reiber to hold a §341 examination of the DeLanos or state why neither she or he will do so. She has failed to return his calls or write to him. Instead, she had an assistant state that she "is planning to contact George Reiber, Esq., so they can coordinate setting up an adjourned meeting of creditors in the [DeLano case]…and will contact you [when she will be in] the office on November 17 to handle court appearances…or prior to it". (E-213) However, although she has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI (cf. 16§IV, infra), and she did appear in court on November 17, according to her assistants, and can get a hold of Trustee Reiber there and on the phone, and summon him to her office, she failed to contact Dr. Cordero on that date, prior to it or thereafter, and will not return his messages.
33. Trustee Schmitt has an interest in not letting that examination take place. If Dr. Cordero, as a creditor, examined the DeLanos and found out that their petition was fraudulent, not to mention that Trustee Reiber knew it, and Trustee Reiber were investigated, she too could be investigated for having allowed her Supervisee Reiber –just as she did her Supervisee Gordon- to accumulate

thousands of bankruptcy cases that he cannot possibly handle competently, but from each of which he receives a fee. Why? How does she figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases –and Trustee Gordon his 3,383 cases-, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? How could she expect those trustees to have time to do anything more than rubberstamp petitions and cash in? (14§IIIA, infra) What was she thinking!? Certainly, what she has been doing with those trustees needs to be investigated.

34. So does the kind of supervision that U.S. Trustee for Region 2 Deirdre A. Martini has been or not been exercising over Assistant U.S. Trustee Schmitt. (E-68§V) Dr. Cordero has served on her every paper that he has written in the DeLano case since the unlawful termination of the March 8 meeting of creditors by Trustee Reiber and his attorney, Mr. Weidman; in addition, he has written to her specifically. She has actual and constructive knowledge of the details of this case. In fact, as early as March 17 and without any investigation of the motives for preventing Dr. Cordero from examining the DeLanos, she stated categorically to him that she would not remove Trustee Reiber from the DeLano case, as Dr. Cordero had requested, and that instead she just wanted "closure". How odd, for the case had just gotten started! Then she engaged in deception to avoid sending him information that could allow him to investigate the case on his own. (E-139¶10)

35. More recently, Trustee Martini has failed to state, as requested by Dr. Cordero, whether she will ask Trustee Schmitt to instruct Trustee Reiber to hold an examination of the DeLanos at an adjourned meeting of creditors. She too has failed to write to Dr. Cordero thereon as promised in their phone conversation on November 1, the second one that she has deigned to take from him (E-210; E-233), just as Trustee Schmitt failed to contact Dr. Cordero on that subject (E-213).

36. Something is not right here…or rather a lot. Why none of them wants Trustee Reiber to investigate the DeLanos and all have countenanced his failure to do so calls for an investigation. No doubt, Mr. DeLano, a loan officer for 15 years, knows and could say too much under examination.

III. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme

A. How a bankruptcy fraud scheme works

37. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.
38. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.
39. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.
40. As for a standing trustee, who is a private professional, not a federal employee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the debt repayment plan of each debtor'. Thus, after receiving a petition, the trustee is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves his plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

41. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

42. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme

43. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:

    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;

    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document;

    c) chose to dismiss the case rather than subpoena the documents requested but not produced;

    d) has refused to trace the substantial earnings of the DeLanos'; and

    e) after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.

44. Moreover, there is something fundamentally suspicious when:

    a) a bankruptcy judge protects bankruptcy petitioners from a default judgment and from

having to account for $291,470;

b) allows the local parties to disobey his orders with impunity;

c) before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (**E-106**), although he is the only creditor that threatens to expose their bankruptcy fraud scheme (E-121§IV); and

d) yet shields them from discovery by suspending all further process until their motion to disallow Dr. Cordero's claim is finally determined (**E-107**) and agreeing that they may not produce any documents at all, not even those that he ordered them to produce! (E-81)

45. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had.

IV. The need for investigators to be unacquainted with any party that may be investigated

46. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building, as do the U.S. attorneys and FBI agents, or live in the same small community in Rochester or Buffalo, NY. (**E-135-147**) They too may fear the consequences of admitting that right under their noses such a scheme developed. Let out-of-towners conduct all aspects of the investigation…starting by subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

V. Relief requested

47. Therefore, Dr. Cordero respectfully requests that you:

a) report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:

1) Premier Van Lines, CA2 docket no. 03-5023;

2) Mr. Palmer's Premier Van Lines case, WBNY docket no. 01-20692;

3) Pfuntner v. Gordon et al., WBNY docket no. 02-2230; and

4) David and Mary Ann DeLano, WBNY docket no. 04-20280;

b) address the report to the Acting U.S. Attorney General with the recommendation that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties that may be investigated in order to insure that they can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way and that to that end, they be from U.S. Attorney or FBI Offices other than those in Rochester and Buffalo, NY, such as those in Washington, D.C. or Chicago.

Respectfully submitted on,

November 29, 2004

Dr. Richard Cordero

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TABLE OF EXHIBITS

in support of the request of November 29, 2004
to judges of the 2nd Circuit Court of Appeals and Judicial Council
to make a report to the Acting U.S. Attorney General
under 18 U.S.C. §3057(a)
that an investigation should be had in connection with offenses
against United States bankruptcy laws

by

Dr. Richard Cordero

SUMMARY

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C. The bankruptcy petition of David and Mary Ann DeLano 805

II. Documents provided herewith 806

A. Basis for requesting that the FBI and DoJ investigators be from outside the Buffalo and Rochester offices..... 806

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1. Documents resubmitted for background..... 808

2. Updates on preventing the meeting of creditors and eliminating Dr. Cordero before he can prove fraud..... 808

****

I. Documents already submitted, but available on demand

A. Judicial misconduct complaint against Judge John C. Ninfo, II

1. Dr. Richard **Cordero**'s judicial misconduct **complaint against** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on **August 11**, and reformatted and resubmitted on August **27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit..... 1 [C:1]

2. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence ..... 7 [C:105]

3. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made ..... 9 [C:109]

4. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** against Judge **Ninfo** ..... 10 [C:144]

5. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** against Judge **Ninfo**, docket no. 03-8547, CA2 ..... 11 [C:145]

6. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review ..... 15 [C:530]

7. **Rule 17(a) and (b)** of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers ..... 16 [C:531]

8. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints ..... 19 [C:533]

9. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando **Galindo**, Chief Deputy of the Clerk of Court, **concerning** the warning to him by **Mrs. Harris**, Head of the In-take Room, that **if he nodded** a third time in the reading room while reading misconduct orders, **she** would **call** the **marshals on him** ..... 21a [C:537]

10. **Acting Clerk** of Court Fernando Galindo's letter of July 9, 2004, **returning** Dr. Cordero's **10-page petition for review** of July 8, 2004, because the Court's "long-standing practice…[is to] establish the definition of brief as applied to the statement of grounds for petition to **five pages**" ..... 22 [C:621]

11. Dr. **Cordero**'s **petition to** the **Judicial Council** of the Second Circuit of July 8, reformatted and resubmitted **on July 13**, 2004, for review of the

dismissal of his **complaint** against Judge **Ninfo**, and addressed to Acting Clerk Galindo **with** a separate **volume of exhibits** after the exhibits attached to the July 8 petition were not accepted ..... 23 [C:551]

12. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **July 16,** 2004, to Dr. Cordero **acknowledging** receipt of his **petition** for review to the Judicial Council, wrongly dating it as of February 13, and **returning** the also unaccepted separate **volume** of exhibits ..... 28 [C:651]
13. Dr. **Cordero**'s letter of **July 30**, 2004, to the **members** of the **Judicial Council** to let them know that neither the **volume** of exhibits nor the **table of exhibits** accompanying the petition for review was accepted but instead were **returned unfiled** and sending each a copy of the table as well as of the 5-page petition ..... 29 [C:652]
14. Clerk **MacKechnie**'s letter by Deputy **Allen** of **August 13**, 2004, accompanying the **return** of Dr. Cordero's copies of July 30, 2004, to Chief Judge **Walker** of the table of exhibits and the 5-page petition ..... 30 [C:657]
15. Dr. **Cordero**'s letter of **August 27**, 2004, **to** the Judicial **Council updating** the petition to review with information pointing to **money** generated by fraudulent bankruptcy petitions as the force **driving** the complained-about **judicial misconduct** ..... 31 [C:660]
16. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **October 6**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review of his complaint against Judge Ninfo, docket no. 03-8547, CA2 ..... 36 [C:671]
17. **Judicial Council**'s **order** of **September 30**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his complaint against Judge Ninfo, docket no. 03-8547, CA2 ..... 37 [C:672]

B. Judicial misconduct complaint against Chief Judge Walker, CA2

18. Dr. **Cordero**'s judicial misconduct **complaint** of March 19, 2004, as reformatted and resubmitted on March 29, against the Hon. John M. **Walker**, Jr., Chief Judge of the Court of Appeals, CA2, to the judge next eligible to become the next judge ..... 39 [C:271]
19. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **September 28**, 2004, to Dr. Cordero accompanying the order of **dismissal** of his **complaint against** CA2 Chief Judge **Walker** ..... 44 [C:390]
20. Acting Chief Judge **Jacobs**' **order** of **September 24**, 2004, dismissing Dr. Cordero's misconduct **complaint against** Chief Judge **Walker**, docket no. 04-8510, CA2 ..... 45 [C:391]

21. Dr. **Cordero**'s **petition** of **October 4,** 2004, **to** the **Judicial Council** of the Second Circuit, for **review** of the **dismissal** of his judicial misconduct **complaint** against Chief Judge **Walker**, addressed to Clerk MacKechnie ..... 47 [C:711]

22. Dr. **Cordero**'s letter of **October 14**, 2004, **to** the **Judicial Council submitting exhibits** in support of the petition to review the dismissal of the complaint against Chief Judge **Walker and requesting** an **investigation** ..... 52 [C:717]

23. Clerk **MacKechnie**'s **letter** by Deputy **Allen** of **October 20**, 2004, **returning** to Dr. Cordero the **exhibits** submitted on October 14 and stating that complaints cannot be supplemented ..... 53 [C:777]

24. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **November 10**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker**..... 54 [C:780]

25. **Judicial Council**'s **order** of **November 10**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker**..... 55 [C:781]

C. The bankruptcy petition of David and Mary Ann DeLano

26. Dr. **Cordero**'s **Objection** of **March 4**, 2004, to **Confirmation** of the Chapter 13 Plan of Debt Repayment of David and Mary Ann DeLano..... 57 [**D**:*63]

27. Trustee **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004..... 62 [D:164]

28. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLanos' petition and containing in the relief the text of a **requested order** ..... 63 [D:193]

29. Att. **Werner**'s **notice** of hearing and order of **July 19**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it..... 73 [D:218]

30. Dr. **Cordero**'s cover letter of **July 19**, 2004, faxed **to** Judge **Ninfo** and accompanying: ..... 75 [D:207]

a) Dr. **Cordero**'s **Proposed order** for production of documents by the DeLanos and Att. Werner, obtained through conversion of the

*D:=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY; see accompanying D files in D folder.

requested order contained in Dr. Cordero's Statement of July 9, 2004 ..... 76 [D:208]

31. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, objecting to Dr. Cordero's proposed order because it "extends beyond the direction of the Court" ..... 79 [D:211]

32. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 ..... 80 [D:217]

33. Judge **Ninfo**'s **order** of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" ..... 81 [D:220]

34. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WDNY, for docketing and issue the order, removal, referral, examination, and other relief ..... 83 [D:231]

    a) **Proposed Order** For Docketing and Issue, Removal, Referral, and Examination ..... 98 [D:246]

35. Judge **Ninfo'**s **Order** of **August 30**, 2004, to **sever** Dr. **Cordero's claim** against Mr. DeLano arising in *Pfuntner v. Trustee Gordon et al.*, which is on appeal (*In re Premier Van et al.*, docket no. 03-5023, CA2) and require Dr. Cordero to take discovery of Debtor David **DeLano** for the purpose of determining the motion to **disallow that claim** raised in the *In re DeLano* case (docket no. 04-20280, WBNY) ..... 101 [D:272]

36. Dr. **Cordero**'s motion of **September 9**, 2004, in CA2 to **quash** Judge **Ninfo's** O**rder** of **August 30**, 2004 ..... 109 [D:440]

37. **Order** of the **Court of Appeals** of **October 13**, 2004, **denying** Dr. Cordero's motion to **quash** Judge **Ninfo's** O**rder** of **August 30**, 2004, and stating that **Chief Judge** Walker **recused himself** from further consideration of *In re Premier Van et al.*, docket no. 03-5023, CA2 ..... 127 [D:312]

38. Dr. **Cordero**'s **motion** of **November 2**, 2004, in the Court of Appeals to **stay** the **mandate** following denial of the motion for panel rehearing and **pending** the filing of a **petition** for a writ of certiorari in the **Supreme Court** ..... 128 [**C:**395]

II. Documents provided herewith

A. Basis for requesting that the FBI and DoJ investigators be from outside the Buffalo and Rochester Offices

39. Letter of Richard **Resnick**, Esq., Assistant U.S. Attorney, of **August 24**, 2004, stating that the **U.S. Attorney's Office** in Rochester **will not**

investigate Dr. Cordero's "allegations of bankruptcy fraud and judicial misconduct" and returning to him all the files ..... 135 [C:1507]

40. Dr. **Cordero**'s cover letter of **September 18**, 2004, to Michael A. **Battle**, Esq., U.S. Attorney for WDNY, accompanying: ..... 136 [C:1513]

    a) Dr. **Cordero**'s **appeal** of **September 18**, 2004, **to** Att. Battle **from** the **decision** taken **by** Att. **Tyler** not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made ..... 137 [C:1514]

41. Dr. **Cordero**'s letter of **October 7**, 2004, **to** Jeannie **Bowman**, Executive Assistant to U.S. Att. Battle, accompanying the **resubmission of the appeal** to Att. Battle from the decision of Att. Tyler and stating that the latter was to have forwarded Dr. Cordero's files to Att. Battle and why he should not investigate the case ..... 142 [C:1519]

42. Dr. **Cordero**'s letter of **October 19**, 2004, **to** Mary Pat **Floming**, Esq., Assistant U.S. Attorney at the U.S. Attorney's Office in Buffalo, requesting that she sees to it that the accompanying appeal to Mr. Battle gets to him and requesting her assistance ..... 143 [C:1520]

43. Dr. **Cordero**'s letter of **October 25**, 2004, **to** Att. **Floming** with an update about why Trustee Reiber is refusing to hold an examination of the DeLanos and stating that just as Mr. Tyler cannot investigate Dr. Cordero's appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme, but instead, they should be investigated ..... 144 [C:1521]

44. U.S. Att. **Battle**'s letter of **November 4**, 2004, to Dr. Cordero stating that he **reviewed** the **documentation** and **found no** basis for Dr. Cordero's claim of bankruptcy **fraud** and closing the matter ..... 145 [C:1522]

45. Dr. **Cordero**'s letter of **November 15**, 2004, **to** U.S. Att. Battle showing that as of November 1 Mr. Battle did **not have the documentation** and **could not** have **retrieved it** from the Rochester office **and reviewed** over 315 pages by November 4, and requesting that he obtain the files and assign the case to skilled bankruptcy fraud investigators as he had said on November 1 that he would do ..... 146 [C:1523]

B. The bankruptcy petition of David and Mary Ann DeLano

46. **Notice** of the 11 U.S.C. §341 **Meeting of Creditors** for March 8, 2004, in the Chapter 13 case of the **DeLanos**, filed on February 6, 2004 ..... 149 [C:1395]

47. **Petition for Bankruptcy,** with Schedules, under Chapter 13 of the Bankruptcy Code, 11 U.S.C., filed by David and Mary Ann **DeLano**, on **January 27**, 2004, in Bankruptcy Court, docket no. 04-20280, WBNY ..... 153 [C:1399]

48. The DeLanos' Chapter 13 **Plan of Debt Repayment**, dated January 26, 2004, providing for the repayment of only 22¢ on the dollar ..... 185 [C:1431]

C. Updates on the efforts to cover up a bankruptcy fraud scheme

1. Documents resubmitted for background

49. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WBNY, for docketing and issue of proposed order, removal, referral, examination, and other relief ..... 83 [C:752]

a) **Proposed order** for docketing and issue of document production order, removal, referral, and examination ..... 98 [C:770]

50. Judge **Ninfo's Order** of **August 30**, 2004, to **sever** Dr. **Cordero's claim** against Mr. David DeLano arising in *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY, which is on appeal (*In re Premier Van et al.*, docket no. 03-5023, CA2) and **require** Dr. **Cordero** to **take discovery** of Mr. **DeLano** for the purpose of determining the motion **to disallow** that **claim** raised in the *DeLano* case (docket no. 04-20280, WBNY) ..... 101 [C:744]

2. Updates on preventing the meeting of creditors and eliminating Dr. Cordero before he can prove fraud

51. Dr. **Cordero**'s letter of **September 22**, 2004, **to** Trustee **Reiber** proposing dates to **examine** the **DeLanos** under §341 and describing the broad scope of the examination as provided under FRBkrP Rule 2004(b) ..... 187 [D:283]

52. Att. **Werner**'s letter of **September 28**, 2004, **to** Trustee **Reiber** informing him that he would **not submit dates for the examination** of the DeLanos in response to Dr. Cordero's September 22 letter until the Trustee instructs him to do so ..... 189 [D:286]

53. Dr. **Cordero**'s letter of **September 29**, 2004, **to** Att. **Werner** requesting **production of documents** pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals ..... 190 [D:287]

54. Trustee **Reiber**'s letter of **October 1**, 2004, **to** Dr. **Cordero** stating that he does **not** think that he has **authority** under Judge Ninfo's bench order **to examine the DeLanos** until the matter of the allowability of Dr. Cordero's claim has been resolved ..... 199 [D:296]

55. Trustee **Reiber**'s letter of **October 1**, 2004, **to CA2 Motions Attorney Arthur Heller** stating that he is not aware of any notice of appeal filed in the Second Circuit and that and that he does **not** believe that Judge Ninfo's Bench Order is **appealable** because it is **not a final order** ..... 200 [D:297]

56. Dr. **Cordero**'s letter of **October 12**, 2004, **to** Trustee **Reiber** setting out the factual and legal reasons why Judge Ninfo's order does not prevent the Trustee from conducting a §341 examination of the DeLanos ..... 201 [D:298]

57. Trustee **Reiber**'s letter of **October 13**, 2004, **to** Dr. **Cordero** stating that he only had Judge Ninfo's bench order, not the August 30 written version and that the latter has nothing to do with the appeal of the Premier case to the Court of Appeals ..... 204 [D:301]

58. Dr. **Cordero**'s letter of **October 20**, 2004, **to** Trustee **Reiber** showing that the Trustee's letter of October 13 belies his statement that he did not have Judge Ninfo's written order of August 30 and once more requesting the §341 examination of the DeLanos ..... 205 [D:302]

59. Dr. **Cordero**'s letter of **October 21**, 2004, **to** Trustee **Martini** and to Trustee **Schmitt** requesting each to instruct Trustee Reiber to hold a §341 examination of the DeLanos ..... 210 [D:307]

60. Dr. **Cordero**'s letter of **October 27,** 2004, **to** Att. **Werner** to make a good faith effort under FRCivP 37(a)(2) to **obtain discovery** from Mr. David DeLano before moving for an order to compel such and for sanctions ..... 211 [D:310]

61. Trustee **Reiber**'s letter of **October 27**, 2004, **to** Dr. **Cordero** requesting a copy of the order by which the Chief Judge of the Court of Appeals recused himself from *Premier Van et al.*, docket no. 03-5023, CA2 ..... 212 [D:308]

62. Ms. Christine **Kyle**'s letter of **October 27**, 2004, stating that Trustee **Schmitt will contac**t Dr. **Cordero** on November 17 when she comes back to the office or before concerning her discussion with Trustee Reiber on the request that the Trustee hold the §341 examination of the DeLanos ..... 213 [D:309]

63. Dr. **Cordero**'s letter of **October 28**, 2004, **to** Trustee **Reiber** providing Trustee Reiber with **dates for** holding the §341 **examination** of the DeLanos and accompanying a ..... 214 [D:311]

64. Statement of **Chief Judge** Walker's **recusal** from *Premier Van et al.* ..... 215 [D:312]

65. Att. **Werner**'s letter of **October 28**, 2004, **to** Dr. **Cordero** stating that Dr. Cordero's **discovery** demands are largely **irrelevant** to his alleged claim against Mr. DeLano, that Mr. DeLano objects thereto, and that the **DeLanos object** to the demand for discovery of their finances ..... 216 [D:313]

66. Att. **Werner**'s Response of **October 28**, 2004, to **discovery** demand of Richard Cordero-Objection to Claim of Richard Cordero, denying as

not relevant all documents requested and stating that the item concerning Mr. Palmer is **not in** Mr. DeLano's **possession** ..... 217 [D:314]

67. Trustee **Reiber**'s letter of **November 2**, 2004, **to** Dr. **Cordero** stating that he has **nothing to add** to his position concerning Dr. Cordero's request that the Trustee hold the §341 **examination** of the **DeLanos** ..... 219 [D:316]

68. Dr. **Cordero**'s notice of **motion** and supporting brief of **November 4**, 2004, **to enforce** Judge Ninfo's **Order** of August 30, 2004, by ordering Mr. **DeLano** to **produce** the requested documents and declaring that the Order does not and cannot prevent Trustee **Reiber** from holding a §341 **examination of the DeLanos** ..... 220 [D:317]

69. Att. **Werner**'s **statement** of **November 9**, 2004, to the court on behalf of "the DeLanos to oppose Cordero [sic] motion regarding **discovery** and request that it **be denied in all respects"** ..... 228 [D:325]

70. Judge **Ninfo's Order** of **November 10**, 2004, **denying** in all respects Dr. **Cordero's motion** of November 4 and holding the hearing, noticed for November 17, to be moot ..... 230 [D:327]

71. Dr. **Cordero**'s letter of **November 14**, 2004, **to** Trustee **Martini requesting** that she **send** him the **letter** that she agreed to send him to confirm her position that she will not remove Trustee Reiber and requesting that she **instruct** Trustee **Reiber** to conduct a §341 **examination** of the **DeLanos** ..... 233 [D:330]

SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE-ROOM 2904
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE

JOHN M. WALKER, JR.
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

December 13, 2004

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

Re: Docket Numbers 03-8547 and 04-8510

Dear Dr. Cordero:

I am responding to your communications of October 14, 2004 and November 29, 2004. Circuit Judge José A. Cabranes forwarded them to me, in my capacity as Secretary to the Judicial Council.

I reviewed the matters referenced above, which you filed pursuant to 28 U.S.C. § 351. I understand that you are not satisfied with the rulings received; however, you have exhausted your remedies and therefore, you have no further recourse to pursue those matters before the Judicial Council. As I am unable to provide the assistance you request, the papers you submitted to Judge Cabranes are enclosed herein. I advise you to direct your inquiries to other agencies if you feel that they may be of assistance to you.

I trust this information is of assistance to you.

Very truly yours,

Karen Greve Milton
Circuit Executive

KGM/jdk
cc: Hon. José A. Cabranes (w/o encl.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

CHAMBERS OF
EDWARD R. KORMAN
CHIEF JUDGE

January 27, 2005

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

Dear Dr. Cordero:

I have your letter of November 29, 2004. The subject matter of your complaint relates to proceedings in the Western District of New York and as to which I have no personal knowledge. Nevertheless, if you feel the law has been violated, you are free to file a complaint with the United States Attorney Office for the Western District of New York.

Very truly yours,

Edward R. Korman

C:812 EDNY C.J Korman's reply of 1/27/5 to Dr. Cordero's 11/29/4 letter, referring him to US Att's Off, WDNY

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[C:813-820 reserved]

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JUDICIAL CONFERENCE OF THE UNITED STATES

PETITION FOR REVIEW

under 28 U.S.C. §357(a)

of the actions of

the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

submitted on

November 18, 2004

by

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

	Last name	Members of the Judicial Conference of the United States to whom of copy of the petition of 11/18/4 for review was sent•
1.	Boggs	Chief Judge Danny J. Boggs, U.S. Court of Appeals for the **Sixth** Circuit
2.	Boudin	Chief Judge Michael Boudin, U.S. Court of Appeals for the **First** Circuit
3.	Edmondson	Chief Judge J. L. Edmondson, U.S. Court of Appeals for the **Eleventh** Circuit
4.	Ezra	Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii
5.	Feldman	Judge Martin L. C. Feldman, U.S. Dis. Court for the Eastern District of Louisiana
6.	Flaum	Chief Judge Joel M. Flaum, U.S. Court of Appeals for the **Seventh** Circuit
7.	Forrester	Senior Judge J. Owen Forrester, U.S. Dis. Court for the Northern Dis. of Georgia
8.	Ginsburg	Chief Judge Douglas H. Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit
9.	Hogan	Chief Judge Thomas F. Hogan, U.S. District Court for the District of Columbia
10.	King	Chief Judge Carolyn Dineen King, U.S. Court of Appeals for the **Fifth** Circuit
11.	Laffitte	Chief Judge Hector M. Laffitte, U.S. District Court for the District of Puerto Rico
12.	Loken	Chief Judge James B. Loken, U.S. Court of Appeals for the **Eighth** Circuit
13.	Mayer	Chief Judge Haldane Robert Mayer, U.S. Court of Appeals for the **Federal** Circuit
14.	Norton	Judge David C. Norton, U.S. District Court for the District of South Carolina
15.	Rehnquist	Mr. Chief Justice William Rehnquist
16.	Restani	Chief Judge Jane A. Restani, U.S. Court of **International** Trade
17.	Rosenbaum	Chief Judge James M. Rosenbaum, U.S. Dis. Court for the District of Minnesota
18.	Russell	Judge David L. Russell, U.S. District Court for the Western District of Oklahoma
19.	Schroeder	Chief Judge Mary M. Schroeder, U.S. Court of Appeals for the **Ninth** Circuit
20.	Scirica	Chief Judge Anthony J. Scirica, U.S. Court of Appeals for the **Third** Circuit
21.	Scullin	Chief Judge Frederick J. Scullin, Jr., U.S. District Court for the NDNY
22.	Stadtmueller	Judge J. P. Stadtmueller, U.S. District Court for the Eastern District of Wisconsin
23.	Tacha	Chief Judge Deanell R. Tacha, U.S. Court of Appeals for the **Tenth** Circuit
24.	Vanaskie	Chief Judge Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania
25.	Wilkins	Chief Judge William W. Wilkins, U.S. Court of Appeals for the **Fourth** Circuit
26.	Zatkoff	Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan

•See also the list of these members of the Judicial Conference with addresses, phone numbers, Internet links to their courts, and information on how to obtain the list of current members, at C:852 below.

JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

I. Questions Presented for Review

1. On August 11, 2003, Dr. Richard Cordero submitted a judicial misconduct complaint under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351-364. (hereinafter the Misconduct Act or the Act) about WBNY U.S. Bankruptcy Judge John C. Ninfo, II, concerning his participation together with other court officers and parties in a series of acts of disregard for the law, the rules, and the facts so numerous and consistently detrimental to Dr. Cordero, the only non-local party as well as the only pro se one, and favorable to the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias against Dr. Cordero. During the following year, Dr. Cordero addressed to the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., and then the Judicial Council of that Circuit, updating evidence showing how that pattern of illegality and bias continued to develop and was linked to a bankruptcy fraud scheme that generated the most powerful drive for wrongdoing: money, lots of money! (see infra Exhibit, page 31=E-31)
2. Nevertheless, the Chief Judge did not conduct even a limited inquiry of the complaint under §352(a), let alone appoint a special committee under §353 to investigate it, and even refused updating evidence (E-7; E-9), exhibits (E-28), and even a table of exhibits! (E-29-30) As a result, no report by a special committee was filed under §353(c) with the Judicial Council of the Second Circuit. Yet, it took 10 months for the complaint to be dismissed by Acting Chief Judge Dennis Jacobs on June 8, 2004 (E-10, 11). Dr. Cordero submitted on July 8 his petition for review and resubmitted it reformatted on July 13 (E-23). The Council denied it on September 30. (E-36-37; Table of Key Documents and Dates in the Procedural History, page i after this brief)
3. Dr. Cordero filed a misconduct complaint about Chief Judge Walker on March 19, 2004, reformatted and resubmitted on March 29 (E-39). It was dismissed also belatedly six months later on September 24 (E-44-45) and without any investigation, as was the petition for review of October 4 (47), dismissed by the Judicial Council on November 10, 2004 (E-54-55).

a) Since action by a judicial council under §354 is expressly predicated "upon receipt of a report filed under section 353(c)", did the Judicial Council lack jurisdiction to deny and dismiss the complaint under §354(a)(1)(B)?;

b) Did it fail to discharge its duty under §354(a)(1)(C) requiring that it "shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit" by failing to take either of the two actions otherwise open to it, namely, to conduct an investigation of its own or to refer the complaint together with the record and its recommendations to the Judicial Conference under §354(b)(1)?;

c) Did the Judicial Council show dereliction of its duty, generally, by failing to investigate as part of a pattern of systematic dismissals of complaints and denials of petitions without investigation (E-24), and in particular, by failing to remove a bankruptcy judge for misconduct under §354(a)(3)(B) and 28 U.S.C. §152(e), whereby it showed partiality toward one of its peers to the detriment of a complainant and the integrity of the business of the courts in its circuit? (E-128-I);

d) Did the Chief Judge and the Acting Chief Judge err by not handling the complaint 'promptly and expeditiously' (E-39), as required by the Misconduct Act (cf. E-7) and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (E-16-18; hereinafter the Complaint Rules or the Rules)?

e) Did the Chief Judge show lack of good judgment and due diligence in informing himself of the 'totality of circumstances' as they continued to develop in the complained-about court during the long period of inaction on his part when he refused updates although not required by law to do so (E-52, E-53), thus forcing complainants to file them as successive complaints and making it easier for himself and the Judicial Council to dismiss them piecemeal?

f) Did he thereby fail both to render justice to a complainant that was being denied due process of law and to safeguard the integrity of the business of the Court and the courts in his circuit?

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II. The Judicial Conference has jurisdiction over this appeal because the complainant was "aggrieved" by the Judicial Council

4. The Misconduct Act's jurisdictional provision for the Judicial Conference applicable to this petition provides as follows:

> **28 U.S.C. §357. Review of orders and actions**
>
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.
>
> **(b) Action of Judicial Conference.**- The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

5. In turn, section 354 provides as follows:

> **§354. Action by judicial council**
>
> **(a) Actions upon receipt of report.-**
>
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-
>
> **(A)** may conduct any additional investigation which it considers to be necessary;
>
> **(B)** may dismiss the complaint; and
>
> **(C)** if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

6. Dr. Cordero was aggrieved by the Judicial Council because it dismissed his petition for review:

a) without jurisdiction for the reason that it had not received any report of a special committee under §353(c) given that the chief judge of the Court of Appeals for the Second Circuit failed

to appoint any such committee under §353(a) or even conduct a §352(a) "limited inquiry";

b) conducted no investigation of its own and since the chief judge had conducted none either, it was not in a position to determine the merits of his complaint and in light thereof, what action could be considered necessary;

c) by dismissing his complaint without any investigation having been conducted at all, it failed its legal obligation under §354(a)(1)(C) that it "**shall** take…action…to assure the effective and expeditious administration of the business of the courts" (emphasis added) intended for the benefit of the public at large, including Complainant Dr. Cordero; and

d) thereby, it has further aggrieved Dr. Cordero by knowingly and indifferently leaving him at the mercy of the complained-about Judge Ninfo and other court officers and parties that have engaged in a series of acts of disregard for legality so long, for more than two years!, and so consistently against Dr. Cordero, the only non-local and the only pro se party, and to the benefit of the local parties that no reasonable observer informed of the facts could deem them coincidental and unbiased, but instead a responsible Council would have discharged its duty to investigate whether, as claimed, they were intentional and coordinated and formed part of a bankruptcy fraud scheme involving judicial misconduct.

7. The CA2 Judicial Council considered that Dr. Cordero was "a complainant…aggrieved by a final order of the chief judge" under §352(c) so that it took jurisdiction of his petitions for review and affirmed the chief judge's dismissals (E-37, E-55). The Judicial Conference can likewise consider Dr. Cordero "a complainant…aggrieved by an action of the judicial council" under §357(a) since the grounds for this petition contain, among others, the same grounds as the petition to the Council, namely, a dismissal of the complaint without any investigation in disregard of the Council's duty under the Misconduct Act and the Complaint Rules and knowing that by so proceeding it was leaving Dr. Cordero exposed to the same abuse and bias at the hands of the same judge and other court officers and parties.

A. The reasonable construction of "aggrieved" in light of the statutory purpose of the Misconduct Act

8. The appointment last May 25, by U.S. Supreme Court Chief Justice William Rehnquist of Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee because of the history of disfunctionality of its complaint mechanism supports the likelihood that the chief judge and the Judicial Council also failed to deal with the instant complaint properly.

Indeed, when applauding this appointment, the Chairman of the Judiciary Committee of the House of Representative, F. James Sensenbrenner, Jr., stated that:

> Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation.[1]

9. At the Committee's first organizational meeting on June 10, 2004, Justice Breyer stated when commenting on the importance of the Misconduct Act that:

> The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability.[2]

10. It follows that the integrity of the judiciary is a public good and in safeguarding it Justice Breyer puts the Act at a par with the Constitution. When its complaint procedures and remedies are rendered ineffective by the failure of those charged with investigating whether there is an instance of judicial misconduct, it is reasonable to hold that a complainant is aggrieved just as he is aggrieved when deprived of his constitutional right to judicial process independent from interference from officers of either of the other two branches of government.

11. In going about his task of fixing a broken complaint mechanism, it is likely that Justice Breyer will steer the Committee to examine the Misconduct Act by applying the same principles of statutory construction that he advocated in a 2001 speech and that are applicable here to determine the meaning that Congress intended for the term "aggrieved" as an element of the jurisdictional basis for the Judicial Conference:

> How are courts, which must find answers, to interpret these silences [in statutes]? Of course, courts will first look to a statute's language, struc-ture, and history to help determine the statute's purpose, and then use that purpose, along with its determining factors, to help find the answer. [3]

12. Justice Breyer applied such principles even to the construction of the Constitution. In its First Amendment the Constitution enshrines the right of 'the people to petition the government for a redress of grievances'. Similarly, the Misconduct Act gives the right to petition one branch of government, the judiciary, to "any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". The purpose of the petition is to obtain relief through disciplinary action. This is reflected in the non-fortuitous fact, even if not legally compelling, that the Act appears in Title 28, enacted into law by Congress, of the

U.S. Code under the Chapter 16 title, "Complaints Against Judges and Judicial Discipline".

13. The key means for achieving that purpose is the investigation of complaints. Such investigation is conducted by each of the three levels of the judiciary charged with the duty to achieve such purpose, namely, the chief judges, the judicial councils, and the Judicial Conference. Whether they appoint special committees or investigate themselves, they have the manpower and subpoena power to go behind what the complainant at the receiving end of the misconduct can ever find out and state in his complaint. Hence, the investigation of complaints is the indispensable means to achieve the Congressional purpose of ascertaining judicial misconduct and taking disciplinary action.
14. Only through the investigation of complaints can the Misconduct Act ensure the accomplishment of "the business of the courts", which is to "administer justice without respect to persons …under the Constitution and laws of the United States", 28 U.S.C. §453. When the law is disregarded, justice is not administered, but is rather denied, especially where the law is systematically disregarded, whether by judges complained-about or by chief judges, judicial councils, or the Judicial Conference who systematically fail to investigate judicial misconduct complaints.
15. It is reasonable to assume that when Congress drafted and passed the Misconduct Act it did not want the Act to become dead letter: useless to curb misconduct on the part of judges and ineffective as a source of judicial discipline for the protection of complainants and the public. It is also reasonable to conclude that any complainant denied such protection would be aggrieved by the failure of a chief judge or a judicial council, not to mention by the failure of both, to investigate his complaint. His grievance would not only consist in the frustration of his legitimate expectation that judges, of all people, would "faithfully and impartially discharge and perform all [their] duties…under the Constitution and laws", §453. The complainant would also be aggrieved by the practical consequence that by so disregarding their duties, those judges would knowingly and indifferently leave him exposed to further abuse and bias at the hands of the judge complained-about. Such grievance renders the complainant an "aggrieved" one within the meaning of §357(a) and provides the basis for the Judicial Conference to take jurisdiction of his complaint.
16. Indeed, it is only reasonable to assume that Congress did not want to see its Act eviscerated by the failure to investigate of all those to whom it entrusted its application upon considering them capable of self-policing. Consequently, where the chief judge and the judicial council have failed to discharge their duty to investigate a complaint as a prerequisite to disposing of it,

Congress would expect at least the Judicial Conference to rise to its self-policing duty by taking the opportunity of a petition by a complainant aggrieved by such failure and investigate the judge and the acts complained about.

17. This expectation is particularly reasonable with respect to the instant complaint because its gravamen is not only that one judge misconducted himself in his dealings with one litigant – which in any event should constitute enough ground for the Judicial Conference to take jurisdiction and investigate the complaint-. It is also that the available evidence shows that the judge is participating with others in a bankruptcy fraud scheme motivated by the most powerful driver of wrongdoing: money! Hence, Congress would expect the purpose of the Act to be pursued in the final instance by the Judicial Conference especially where the aggrieved complainant stands for the general public that can reasonably be deemed aggrieved by widespread judicial and extra-judicial misconduct that undermines the integrity of the process of law and the bankruptcy system. (E-128I-II)
18. Such stakes are large enough to justify the Judicial Conference in taking jurisdiction and conducting an investigation where none has been conducted. To do so it is entitled to give §357 an expansive interpretation, for the alternative to doing so is for the Judicial Conference to join the chief judge and the judicial council in their failure to discharge their duty to give effect to the Misconduct Act. That cannot be what Congress intended. Whatever different interpretation was given to §357 in the past was wrong, as shown by the fact that "the practical tendency" of dismissing complaints without investigation has been to insulate peer judges from responsibility for their misconduct to the detriment of complainants. That constitutes a breach per se of the duty to "administer justice without respect to persons". The need to appoint the Breyer Commit-tee is confirmation that such dismissals are tendentious and contrary to the Act's purpose.
19. The defeat so far of the Act's purpose warrants that now §357 be interpreted differently, if need be. The reinterpretation can be justified by the principle illustrated by Justice Breyer when he stated in the context of the Fourteenth Amendment that it "uses the word "reasonable," -- a word that permits different results in different circumstances"[4]. Likewise, terms such as "aggrieved" and "action" in §357 can be given a different construction so that the Judicial Conference may breathe life into the dead letter of the Act in order to achieve its Congressional purpose: to ascertain misconduct and enforce discipline for the protection of the complainant and the public's confidence in the judiciary.

20. Just as in *Brown v. Board of Education*, "the Court began to enforce a law that strives to treat every citizen with equal respect", as Justice Breyer stated in a speech[5], the Judicial Conference can take jurisdiction of this petition to send a clear message that instead of systematically giving peer judges the benefit of the doubt, thus holding in practice that a judge can do no harm, it will 'do equal right by judges and any other person', cf. §453, because in practice judges are just as susceptible to human frailties as anybody else. Hence, they will not be spared investigation when the evidence reasonably expected from and submitted by a complainant casts suspicion of their having engaged in wrongdoing.
21. The instant complaints contain enough evidence to cast reasonable suspicion over Judge Ninfo and other court officers and parties of having engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing as part of a bankruptcy fraud scheme. Therefore, they should have investigated. Chief Judge Walker should have done so 'promptly and expeditiously'. Despite his failure to do so, the Judicial Council too failed to investigate both and left Dr. Cordero to suffer more abuse and bias. How could the Complainant not be aggrieved by their actions and the Judicial Conference not have the duty to step in to investigate?

III. Statement of facts

A. The categories of evidence that raise reasonable suspicion of wrongdoing that should be investigated

22. The evidence of judicial misconduct linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been attached as exhibits, though all others referred to therein are available on request. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to pursue that evidence to collect more and evaluate it under the standard of the preponderance of the evidence applied by the Judicial Conference, as it stated in its misconduct Memorandum and Order No. 98-372-001, at 18. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, a trustee sued for negligence and recklessness who had before him some 3,000

cases! –how many do you have?-; an already defaulted bankrupt defendant against whom an application for default judgment was brought; parties who have disobeyed his orders, even those that they sought or agreed to; and debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the scheme.

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

1) Judge Ninfo and others have protected parties from incriminating discovery and trial

23. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (E-1) in *Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al*, WBNY dkt. no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

24. By that time Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2:II)

a) Indeed, the statistics on PACER as of November 3, 2003[6,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[7] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

25. Could you handle competently such an overwhelming number of cases, increasing at the rate of

1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3:B-E; E-86:II).

26. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY dkt. no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Mr. Pfuntner!

    a) Judge Ninfo would not compel Mr. Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4:C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4:C-D).

27. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet,

for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5:E; E-90:III)

28. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

2) The DeLano Debtors have engaged in bankruptcy fraud

29. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; docket no. 04-20280, WBNY (E-153). The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

b) The DeLanos incurred scores of thousands of dollars in credit card debt;

c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

f) owe also a mortgage of $77,084;

g) but have near the end of their work lives equity in their house of only $21,415;

h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-185);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65:III).

30. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64:II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underre-porting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64:III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117:B) How extraordinary! given that:

a) The DeLanos had treated Dr. Cordero as a creditor for six months;

b) They were the ones who listed Dr. Cordero's claim in Schedule F…for good reason because

c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into the Pfuntner case as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115:A)

31. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33:II)

32. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr.

Cordero's claim is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; E-185) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69:¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92:IV), he refused to even docket it (E-80; E-84:I; 90:III) and only issued a watered down version of Dr. Cordero's proposed order on July 26 (E-76; E-81) that he then allowed the DeLanos to disobey! If not for leverage, what was it issued for?

33. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (E-107; E-121:III) That could take years! during which the other 20 creditors are prejudiced because they cannot begin to receive payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interest of creditors and the public so as to protect the DeLanos needs to be investigated.

34. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121:III-IV) The stakes must be very high indeed!…and all the trustees know it.

3) Trustee Reiber & Att. James Weidman have violated bankruptcy law

35. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-149). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[8] *open* cases! He cannot be all the time where he should be. This raises questions:

36. Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? (E-68:V) They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamp petitions? Something is not right here.

37. Actually, nothing is right. Thus, at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-41)

38. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65:III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64-II) and perfunctorily (E-65:III).

39. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their

financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66:IV)

40. Trustee Reiber has refused to hold an adjourned meeting of creditors. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo.
41. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini (E-71:¶32; E-93:III), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate and all have countenanced his failure to investigate needs to be investigated.

B. How a bankruptcy fraud scheme works

42. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.
43. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have

imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

44. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

45. As for a standing trustee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, after the trustee receives a petition, she is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that the debtor deserves bankruptcy relief from his debt burden, the trustee approves his debt repayment plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

46. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

47. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

48. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;
    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document;
    c) chose to dismiss the case rather than subpoena the documents requested but not produced;
    d) has refused to trace the substantial earnings of the DeLanos'; and
    e) after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.
49. Moreover, there is something fundamentally suspicious when:
    a) a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for $291,470;
    b) allows the local parties to disobey his orders with impunity;
    c) before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud (E-121:IV); and
    d) yet shields them from discovery by suspending all further process until their motion to disallow is finally determined.
50. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That warrants an investigation.
51. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building or live in the same small community in Rochester or Buffalo, NY. (E-135-147) They too may fear the consequences of admitting that right under their noses such a scheme developed. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation…starting by subpoenaing the bank account

and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

IV. The actions by the Chief Judge and the Judicial Council

52. The Judicial Council limited itself to responding to Dr. Cordero's petitions (E-23; E-47) with forms dated September 30 (E-37) and November 10 (E-55) that carry the boilerplate DENIED for the reasons stated in the order dated June 8 (E-11) and September 24, 2004 (E-45). By so doing, not only did it fail to give even the appearance that justice was being done, but it also did not provide any reasons for its action that could be discussed here.

53. As for the dismissals, both by Acting Chief Judge Jacobs, whereby the Chief Judge was insulated from §359 restrictions (E-24-25) although he recused himself (E-127), his reasons are discussed in the petitions of July 13 (E-23) and October 4 (E-47). However, to the discussion of his reason that Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling (E-13), it is pertinent to add the following passage from a Judicial Conference memorandum:

> Although a judge indeed may not be sanctioned out of disagreement with the merits of rulings, a judge certainly may be sanctioned for a consistent pattern of abuse of lawyers appearing before him. The fact that that abuse is largely evidenced by the judge's rulings, statements, and conduct on the bench does not shield the abuse from investigation under the Act. To the contrary, allegations that the judge has been habitually abusive to counsel and others may be proven by evidence of conduct on the bench, including particular orders or rulings, that appears to constitute such abuse.[at 15] …The sanctions are not based upon the legal merits of the judge's orders and rulings on the bench, but on the pattern of conduct that is evidenced by those orders and rulings.…If a judge's behavior on the bench, including directives to counsel and litigants, were wholly beyond the reach of the Act, the Act would be gutted. at 16, *In re: Complaints of Judicial Misconduct or Disability*, No. 98-372-00.

54. Judge Jacobs also wrote that Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…(E-13). Dr. Cordero rebutted that other court officers, trustees, attorneys, and judges that work for or with Judge Ninfo or appear before him in that small federal building in Rochester (E-86:II), and all the more so if they also participate in the bankruptcy fraud scheme, have followed his example of disregard for legality and bias against Dr. Cordero (E-25). The common sense likelihood that others joined in and compounded judicial misconduct is implicit in the following passage from another memorandum of the Judicial Conference:

> While the identity of the complainant will necessarily become known to the judge complained against, a complainant may also fear retaliation from the judge's judicial colleagues, former law clerks, and other associates, as well as other adverse consequences, such as acquiring a reputation as a malcontent; at 8 in No. 94-372-001.

55. Copies of these memoranda had to be obtained from the Administrative Office of the U.S. Courts. The Judicial Conference should know this because, by contrast, the Chief Judge of the Court of Appeals for the Second Circuit impaired Dr. Cordero's preparation of his petition to the Circuit's Judicial Council by making it impossible to consult precedent constituted by orders and supporting memoranda of Second Circuit chief judges and the Judicial Council disposing of other complaints. (E-15, E-19) Although Rule 17(b) of the Circuit's Complaint Rules provides that such materials and dissenting opinions, statements, and the docket-sheet record thereof "will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals" (E-18), the Chief Judge kept them, except those for the last three years, not in the clerk's office, not stored elsewhere in the Court's building, not stored in any annex to the building, not stored in any building in the City of New York, not even stored in the State of New York, or in any other state of the Circuit, but rather shipped them away to the State of Missouri to be kept in the vaults of the National Archives! And there was no docket-sheet record at all. (E-20)
56. Moreover, if while reading the few materials available at the Court you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.
57. One thing is sure: Chief Judge Walker creates an institutional climate of disrespect for the law when he shows contempt for the Misconduct Act and his own Circuit's Rules and 1) fails to make and keep complaint materials publicly available, 2) fails to deal with complaints 'promptly and expeditiously', 3) arbitrarily refuses updates to complaints, 4) fails to investigate complaints, 5) fails to safeguard the "business of the courts" of dispensing justice, 6) fails to discipline biased judges who abuse parties, 7) fails to protect complainants and indifferently lets them continue suffering enormous waste of effort, time, and money (E-90:III) and tremendous emotional distress (E-43) due to his peers' misconduct. Can a complainant be "aggrieved" when he makes the Circuit's Judicial Council aware of this situation, but it takes no action other than to

rubberstamp **DENIED** on his plea for relief? Will the Judicial Conference tolerate self-policing by the judiciary that degenerates into arrogant self-immunity and disregard for duty? (E-128-II)

V. Relief requested

58. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

a) construe 28 U.S.C. §357(a) so as to grant this petition for review;

b) investigate the complained-about judicial misconduct and its link to a bankruptcy fraud scheme;

c) include in the investigation the following cases:

1) Mr. Palmer's *Premier Van Lines*, Chp. 7 bankruptcy case, dkt. no. 01-20692, WBNY;
2) *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, WBNY; adversary proceeding appealed in:
   i. *Cordero v. Gordon*, dkt. no. 03-CV-6021, W***D***NY and
   ii. *Cordero v. Palmer*, dkt. no. 03-MBK-6001, District Judge David Larimer presiding;
3) *Premier Van et al.*, dkt. no. 03-5023, in the Court of Appeals for the Second Circuit; and
4) *In re David and Mary Ann DeLano*, Chp. 11 bankruptcy case, dkt. no. 04-20280, WBNY;

d) appoint investigators from outside the Rochester and Buffalo area, who are unacquainted with those that may be investigated and who can investigate zealously, efficiently, and exhaustively regardless of who is participating in wrongdoing or just looking the other way;

e) make a simultaneous report to the Acting U.S. Attorney General, such as under 18 U.S.C. §3057(a), and request that the Department of Justice join its investigation and also appoint investigators from outside the DoJ and FBI offices in Rochester and Buffalo (E-135-147);

f) take a position on whether:

1) the appearance of impartiality on the part of Judge Ninfo and District Judge Larimer (E-4:D) no longer obtains so that they should be disqualified from the cases in c) above; and
2) the three cases assigned to Judge Ninfo –c)1), 2) and 4) above- and the appeals therefrom assigned to Judge Larimer –c)2)i) and ii)- should be removed in the interest of justice under 28 U.S.C. §1412 to an impartial court for trial by jury, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;

g) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted, under penalty of perjury,

Dr. Richard Cordero

on November 18, 2004

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[1] News Advisory released on May 26, 2004; www.house.gov/judiciary; Contact: Jeff Lungren/Terry Shawn, 202-225-2492.

[2] http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html; For Further Information Contact: Public Information Office of the U.S. Supreme Court at 202-479-3211.

[3] "Our Democratic Constitution", Stephen Breyer, Associate Justice, Supreme Court of the United States, The Fall 2001 James Madison Lecture, New York University Law School, New York, NY, October 22, 2001; http://www.supremecourtus.gov/publicinfo/speeches/sp_10-22-01.html.

[4] Associate Justice Stephen G. Breyer, "Liberty, Security, and the Courts", Association of the Bar of the City of New York, New York, NY, April 14, 2003; http://www.supremecourtus.gov/publicinfo/speeches/sp_04-15-03.html.

[5] "Brown: One Constitution.....One People.....One Nation", Stephen Breyer, Associate Justice, Supreme Court of the United States, 50th Anniversary of Brown v. Board of Education, Topeka, Kansas, May 17, 2004; http://www.supremecourtus.gov/publicinfo/speeches/sp_05-17-04b.html.

[6] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.

[7] Id.

[8] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

Key Documents and Dates in the Procedural History [updated at ToEC:3]

of the judicial misconduct complaints and review petitions filed under 28 U.S.C. §351 et seq. with the CA2 Chief Judge and the Judicial Council of the Second Circuit
dockets no. 03-8547 and no. 04-8510
submitted in support of a petition for review to
the Judicial Conference of the United States
by

Dr. Richard Cordero

Judicial misconduct complaint about WBNY Bankruptcy **Judge** John C. **Ninfo**, II, docket no. 03-8547

Judicial misconduct complaint				**Petition for review**					
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Resubmission	Acknow-ledgment	Letter to Jud. Council	Update to Jud. Council	Denial
August 11, 03	August 27, 03	Septem. 2, 03	June 8, 04	July 8, 04	July 13, 04	July 16, 04	July 30, 04	August 27, 04	Septem. 30, 04
-	1	-	10 & 11	-	23	28	29	31	36 &37
page numbers of documents included among the exhibits									

Judicial misconduct complaint about CA2 **Chief Judge** John M. **Walker**, Jr., docket no. 04-8510

Judicial misconduct complaint				**Petition for review**				
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Acknow-ledgment	Exhibits to Jud. Council	Rejection of exhibits	Denial
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04	October 20, 04	November 10, 04
39	-	-	44 & 45	47	-	52	53	54 & 55
page numbers of documents included among the exhibits								

TABLE OF EXHIBITS

submitted on November 18, 2004
to the Judicial Conference of the United States
in support of a petition for review of
the denials by the Judicial Council of the Second Circuit of
petitions for review of dismissals of judicial misconduct complaints
no. 03-8547 and no. 04-8510, CA2
by
Dr. Richard Cordero

I. Complaint against WBNY Judge J.C. Ninfo, no. 03-8547, CA2 845

II. Complaint against CA2 Chief Judge J.M. Walker, Jr., no. 04-8510, CA2 847

III. Descriptive and evidentiary documents supporting both complaints and pointing to a judicial misconduct and bankruptcy fraud scheme 848

IV. Basis for requesting that the FBI and DoJ investigators be appointed from outside the Buffalo and Rochester Offices 849

V. The DeLanos' bankruptcy petition 850

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Exhibits=E

I. Complaint against WBNY Judge J.C. Ninfo, no. 03-8547, CA2

1. Dr. Richard **Cordero**'s judicial misconduct **complaint against** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on **August 11**, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit ..... 1 [C:63]

2. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence ..... 7 [C:105]

3. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made ..... 9 [C:109]

4. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** against Judge **Ninfo** ..... 10 [C:144]

5. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** against Judge **Ninfo**, docket no. 03-8547, CA2 ..... 11 [C:145]

6. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review ..... 15 [C:530]

7. **Rule 17(a) and (b)** of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers ..... 16 [C:531]

8. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints ..... 19 [C:533]

9. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando **Galindo**, Chief Deputy of the Clerk of Court, **concerning** the warning to him by **Mrs. Harris**, Head of the In-take Room, that if he nodded a third time in the reading room while reading misconduct orders, she would **call the marshals on him** ..... 21a [C:537]

10. Acting Clerk of Court Fernando **Galindo**'s letter of **July 9**, 2004, **returning** Dr. **Cordero'**s 10-page **petition** for review **of July 8**, 2004, because the Court's "long-standing practice…[is to] establish the definition of brief as applied to the statement of grounds for petition to five pages" ..... 22 [C:621]

11. Dr. **Cordero**'s **petition to** the **Judicial Council** of the Second Circuit of July 8, reformatted and resubmitted **on July 13**, 2004, for review of the dismissal of his **complaint** against Judge **Ninfo**, and addressed to Acting Clerk Galindo **with** a separate **volume of exhibits** after the exhibits attached to the July 8 petition were not accepted ..... 23 [C:623]

12. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **July 16,** 2004, to Dr. Cordero **acknowledging** receipt of his **petition** for review to the Judicial Council, wrongly dating it as of February 13, and **returning** the also unaccepted separate **volume** of exhibits ..... 28 [C:651]

13. Dr. **Cordero**'s letter of **July 30**, 2004, to the **members** of the **Judicial Council** to let them know that neither the **volume** of exhibits nor the **table of exhibits** accompanying the petition for review was accepted but instead were **returned unfiled** and sending each a copy of the table as well as of the 5-page petition ..... 29 [C:652]

14. Clerk **MacKechnie**'s letter by Deputy **Allen** of **August 13**, 2004, accompanying the **return** of Dr. Cordero's copies of July 30, 2004, to Chief Judge **Walker** of the table of exhibits and the 5-page petition..... 30 [C:657]

15. Dr. **Cordero**'s letter of **August 27**, 2004, **to** the Judicial **Council updating** the petition to review with information pointing to **money** generated by fraudulent bankruptcy petitions as the force **driving** the complained-about **judicial misconduct**..... 31 [C:660]

16. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **October 6**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review ..... 36 [C:671]

17. **Judicial Council**'s **order** of **September 30**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his complaint against Judge Ninfo, CA2 docket no. 03-8547..... 37 [C:672]

II. Complaint against CA2 Chief Judge J.M. Walker, Jr., no. 04-8510, CA2

18. Dr. **Cordero**'s judicial misconduct **complaint** of **March 19**, 2004, as reformatted and resubmitted on March 29, **against** the Hon. John M. **Walker**, Jr., Chief Judge of the Court of Appeals for the Second Circuit..... 39 [C:271]

19. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **September 28**, 2004, to Dr. Cordero accompanying the order of **dismissal** of his **complaint against** CA2 Chief Judge **Walker** ..... 44 [C:390]

20. Acting Chief Judge **Jacobs**' **order** of **September 24**, 2004, dismissing Dr. Cordero's misconduct **complaint against** Chief Judge **Walker**, docket no. 04-8510, CA2 ..... 45 [C:391]

21. Dr. **Cordero**'s **petition** of **October 4,** 2004, **to** the **Judicial Council** of the Second Circuit, for **review** of the **dismissal** of his judicial misconduct **complaint** against Chief Judge **Walker**, addressed to Clerk MacKechnie..... 47 [C:711]

22. Dr. **Cordero**'s letter of **October 14**, 2004, **to** the **Judicial Council submitting exhibits** in support of the petition to review the dismissal of the complaint against Chief Judge Walker **and requesting** an **investigation** ..... 52 [C:717]

23. Clerk **MacKechnie**'s **letter** by Deputy **Allen** of **October 20**, 2004, **returning** to Dr. Cordero the **exhibits** submitted on October 14 and stating that complaints cannot be supplemented ..... 53 [C:777]

24. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **November 10**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker** ..... 54 [C:780]

25. **Judicial Council**'s **order** of **November 10**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker** ..... 55 [C:781]

III. Descriptive and evidentiary documents supporting both complaints and pointing to a judicial misconduct and bankruptcy fraud scheme

26. Dr. **Cordero**'s **Objection** of **March 4**, 2004, to **Confirmation** of the Chapter 13 Plan of Debt Repayment ..... 57 [D:♦63]

27. Trustee **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004 ..... 62 [D:164]

28. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition and containing in the relief the text of a **requested order** ..... 63 [D:193]

29. Att. **Werner**'s **notice** of hearing and order, filed on **July 22**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it ..... 73 [D:218]

30. Dr. **Cordero**'s cover letter of **July 19**, 2004, faxed **to** Judge **Ninfo** and accompanying: ..... 75 [D:207]

    a) Dr. **Cordero**'s **Proposed order** for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004 ..... 76 [D:208]

31. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, objecting to Dr. Cordero's proposed order because it "extends beyond the direction of the Court" ..... 79 [D:211]

♦**D:**=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY. These items as well as the transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005, are in the PDF files in the D Add Pst folder on the accompanying CD.

32. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 ..... 80 [D: 217]

33. Judge **Ninfo**'s **order** of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" ..... 81 [D:220]

34. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WDNY, for docketing and issue of order, removal, referral, examination, and other relief ..... 83 [D:231]

    a) **Proposed Order** For Docketing and Issue of Order, Removal, Referral, and Examination ..... 98 [D:246]

35. Judge **Ninfo**'s **Order** of **August 30**, 2004, to sever a claim from the case on appeal in the Court of Appeals (docket no. 03-5023) for the purpose of trying it in the DeLano case in the Bankruptcy Court (docket no. 04-20280) ..... 101 [D:272]

36. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** Judge **Ninfo's Order** of **August 30**, 2004 ..... 109 [D:440]

37. **Order** of the **Court of Appeals** of **October 13**, 2004, **denying** Dr. Cordero's motion to **quash** Judge **Ninfo's Order** of **August 30**, 2004, and stating that **Chief Judge** Walker **recused himself** from further consideration of the Premier Van Lines case ..... 127 [D:312]

38. Dr. **Cordero**'s **motion** of **November 2**, 2004, in the Court of Appeals to **stay** the **mandate** following denial of the motion for panel rehearing and **pending** the filing of a **petition** for a writ of certiorari in the **Supreme Court** ..... 128 [**C**:395]

IV. Basis for requesting that the investigators be appointed from outside the Buffalo and Rochester Offices

39. Letter of Richard **Resnick**, Esq., Assistant U.S. Attorney, of **August 24**, 2004, stating that the **U.S. Attorney's Office** in Rochester **will not investigate** Dr. Cordero's "allegations of bankruptcy fraud and judicial misconduct" and returning to him all the files ..... 135 [C:1507]

40. Dr. **Cordero**'s cover letter of **September 18**, 2004, to Michael A. **Battle**, Esq., U.S. Attorney for WDNY, accompanying: ..... 136 [C:1513]

    a) Dr. **Cordero**'s **appeal** of **September 18**, 2004, **to** Att. Battle **from** the **decision** taken **by** Att. **Tyler no**t to open an **investigation** into

the complaint about a judicial **misconduct** and bankruptcy fra**ud scheme** and statement of the questionable circumstances under which that decision was made ..... 137 [C:1514]

41. Dr. **Cordero**'s letter of **October 7**, 2004, **to** Jeannie **Bowman**, Executive Assistant to U.S. Att. Battle, accompanying the **resubmission of the appeal** to Att. Battle from the decision of Att. Tyler and stating that the latter was to have forwarded Dr. Cordero's files to Att. Battle and why he should not investigate the case ..... 142 [C:1519]

42. Dr. **Cordero**'s letter of **October 19**, 2004, **to** Mary Pat **Floming**, Esq., Assistant U.S. Attorney at the U.S. Attorney's Office in Buffalo, requesting that she sees to it that the accompanying appeal to Mr. Battle gets to him and requesting her assistance ..... 143 [C:1520]

43. Dr. **Cordero**'s letter of **October 25**, 2004, **to** Att. **Floming** with an update about why Trustee Reiber is refusing to hold an examination of the DeLanos and stating that just as Mr. Tyler cannot investigate Dr. Cordero's appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme, but instead, they should be investigated ..... 144 [C:1521]

44. U.S. Att. **Battle**'s letter of **November 4**, 2004, to Dr. Cordero stating that he **reviewed** the **documentation** and **found no** basis for Dr. Cordero's claim of bankruptcy **fraud** and closing the matter ..... 145 [C:1522]

45. Dr. **Cordero**'s letter of **November 15**, 2004, **to** U.S. Att. Battle showing that as of November 1 Mr. Battle did **not have the documentation** and **could not** have **retrieved it** from the Rochester office **and reviewed** over 315 pages by November 4, and requesting that he obtain the files and assign the case to skilled bankruptcy fraud investigators as he had said on November 1 that he would do ..... 146 [C:1523]

V. The DeLanos' bankruptcy petition

46. **Notice** of the §341 **Meeting of Creditors** for March 8, 2004, in the Chapter 13 case of **DeLanos**, filed on February 6, 2004 ..... 149 [D:23]

47. **Petition for Bankruptcy,** with Schedules, under Chapter 13 of the Bankruptcy Code, 11 U.S.C., filed by David and Mary Ann **DeLano**, on **January 27**, 2004, in the WDNY Bankruptcy Court, docket no. 04-20280 ..... 153 [D:27]

48. The DeLanos' Chapter 13 **Plan of Debt Repayment**, dated January 26, 2004 ..... 185 [D:59]

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

[Sample of letters to 26 members of the Jud. Conference] November 20 [and 27], 2004

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

I have submitted to the Judicial Conference a formal petition for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. In addition, I am sending you herewith a copy of my petition so that you take cognizance of the facts and legal issues and move your colleagues on the Conference to consider it and grant my request for relief. The high stakes warrant your attention.

Indeed, the petition concerns the evidence that I submitted of judicial misconduct linked to a bankruptcy fraud scheme. It involves U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY. The evidence thereof has been developing for over two years and keeps mounting since the underlying cases are still pending. I submitted it to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, but he did not conduct even a §352(a) limited inquiry of the complaint, let alone appoint a §353(a) special committee to investigate the evidence. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions by the CA2 Judicial Council.

As a result of taking action without any report of a special committee or conducting any investigation, the Judicial Council both "aggrieved" me under §357(a) and lacked jurisdiction under §354(a)(1). It denied me the legal benefit of protection from judicial misconduct to which I am entitled under §§351 et seq. and its own Complaint Rules. To afford such protection by administering judicial discipline through self-policing was the intent of both Congress and the Council when enacting their respective act and rules. By disregarding its own legal obligations, the Council knowingly left me to suffer further abuse of my legal rights and bias at the hands of Judge Ninfo, who has caused me to spend an enormous amount of effort, time, and money and has inflicted on me tremendous aggravation, for I am a the only pro se party and non-institutional non-local party in two cases before him. Those very concrete and personal consequences of the CA2 Council's disregard for its legal obligations have also "aggrieved" me under §357(a). All this provides the legal basis for the Judicial Conference to take jurisdiction of this petition.

Doing so would allow the Conference to review the systematic denial of petitions by judicial councils, which is so indisputable as to have justified the appointment by Chief Justice Rehnquist of Justice Breyer to head a committee to review it. To its members I am also submitting this matter as a test case because the Council's denials are particularly egregious given the compelling evidence that supports reasonable suspicion of corruption. I trust that you will take your duty to safeguard the integrity of the judiciary seriously enough to review the accompanying documents carefully and move the Conference to consider the petition formally. I also respectfully request that you make a report of this evidence to the Acting U.S. Attorney General under 18 U.S.C. 3057(a). Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

Members of the Judicial Conference of the United States

to whom were addressed the letters of November 20 and 27, 2004
for review of the denials by the Judicial Council, 2nd Cir.,
of the petitions for review of the dismissals of the misconduct complaints
against Judge John C. Ninfo, II, WBNY, and Chief Judge John M. Walker, Jr., CA2
by
Dr. Richard Cordero

For general information on the Judicial Conference go to
http://www.uscourts.gov/judconf.html

For the latest list of members of the Judicial Conference, see the latest Report of the Proceedings of the Judicial Conference of the U.S. at http://www.uscourts.gov/judconfindex.html >Proceedings

The proceedings reported on take place twice a year in March and September. The latest Report available as of early March 2006 is the one for the meeting of the Conference on September 20, 2005, which is accessible at http://www.uscourts.gov/judconf/sept05proc_final.pdf .

However, modification in the membership of the Conference takes effect on October 1 of every year. To check the membership list, contact the Secretariat of the Judicial Conference at (202) 502-2400, located at the Administrative Office of the U.S. Courts (202)502-1100, fax (202)502-1033.

See a circuit map at http://www.uscourts.gov/courtlinks/; and find links to all courts at http://www.ca9.uscourts.gov/ca9/links .nsf/887fdfc55d68593b882567fa00657794?OpenView&ExpandView

Chief Justice William **Rehnquist**
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543
(202) 479-3000

Chief Judge Michael **Boudin**
U.S. Court of Appeals for the **First Circuit**
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
(617) 748-4431; (617) 748-9057

Chief Judge Hector M. Laffitte
U.S. District Court
for the District of Puerto Rico
150 Carlos Chardon Street
Clemente Ruiz-Nazario U.S. Courthouse
& Federico Degetau Federal Building
150 Carlos Chardon Street
Hato Rey, P.R. 00918
(787) 772-3131

(Second Circuit, ftnt. •)

Chief Judge Frederick J. Scullin, Jr.
U.S. District Court
for the Northern District of New York
U.S. Courthouse, 445 Broadway
Albany, NY 12207-2924
(518) 257-1800

Chief Judge Anthony J. **Scirica**
U.S. Court of Appeals for the **Third Circuit**
22614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
(215) 597-2995

Chief Judge Thomas I. **Vanaskie**
U.S. District Court
for the Middle District of Pennsylvania
William J. Nealon Federal Building &
U.S. Courthouse
235 N. Washington Avenue
P.O. Box 1148
Scranton, PA 18501
(570) 207-5720

Chief Judge William W. **Wilkins**
U.S. Court of Appeals for the **Fourth Circuit**
Lewis F. Powell, Jr., U. S. Courthouse Annex
1100 East Main Street, Annex, Suite 501
Richmond, Virginia 23219-3517
(804) 916-2700

Judge David C. **Norton**
U.S. District Court
for the District of South Carolina
Post Office Box 835
Charleston, SC 29402
(843) 579-1450

Chief Judge Carolyn Dineen **King**
U.S. Court of Appeals for the Fifth Circuit
600 Camp Street
New Orleans, LA 70130
(504) 310-7700

Judge Martin L. C. **Feldman**
U.S. District Court
for the Eastern District of Louisiana
500 Poydras Street, Room C555
New Orleans, LA 70130
(504) 589-7550

Chief Judge Danny J. **Boggs**
U.S. Court of Appeals for the **Sixth Circuit**
Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988
(513) 564-7000

Chief Judge Lawrence P. **Zatkoff**
U.S. District Court
for the Eastern District of Michigan
Theodore Levin U.S. Courthouse, Rm. 703
231 W. Lafayette Blvd.
Detroit, MI 48226
(313) 234-5110

Chief Judge Joel M. **Flaum**
U.S. Court of Appeals for the **Seventh Circuit**
Dirksen Federal Building, Room 2702
219 S. Dearborn Street
Chicago, IL 60604
(312) 435-5850

Judge J. P. **Stadtmueller**
U.S. District Court
for the Eastern District of Wisconsin
United States Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-3372

Chief Judge James B. **Loken**
U.S. Court of Appeals for the **Eighth Circuit**
Federal Court Building
316 North Robert Street
St. Paul, MN 55101
(651) 848-1300

Chief Judge James M. **Rosenbaum**
U.S. District Court
for the District of Minnesota,
15E U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415
(612)664-5050

Chief Judge Mary M. **Schroeder**
U.S. Court of Appeals for the **Ninth Circuit**
Post Office Box 193939
San Francisco, CA 94119-3939
(415) 556-9800

Chief Judge David Alan Ezra
U.S. District Court for District of Hawaii
300 Ala Moana Boulevard, Rm C338
Honolulu, HI 96850
(808) 541-1301

Chief Judge Deanell R. **Tacha**
U.S. Court of Appeals for the **Tenth Circuit**
Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257
(303) 844-3157

Judge David L. Russell
U.S. District Court
for the Western District of Oklahoma
U.S. Courthouse, Room 3309
200 NW 4th Street
Oklahoma City, OK 73102
(405) 609-5000; (405) 609-5100

Chief Judge J. L. **Edmondson**
U.S. Court of Appeals for the **Eleventh Circuit**
56 Forsyth Street., N.W.
Atlanta, GA 30303
(404) 335-6100

Senior Judge J. Owen Forrester
U.S. District Court
for the Northern District of Georgia
1921 Richard B. Russell Federal Building
and United States Courthouse
75 Spring Street, S.W.
Atlanta, GA 30303-3309
(404) 215-1310

Chief Judge Douglas H. **Ginsburg**
U.S. Court of Appeals
for the District of **Columbia Circuit**
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001
(202) 216-7280; (202) 216-7190

Chief Judge Thomas F. Hogan
U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3420

Chief Judge Haldane Robert **Mayer**
U.S. Court Appeals for the **Federal Circuit**
717 Madison Place, N.W
Washington, D.C. 20439
(202) 312- 5527

Chief Judge Jane A. **Restani**
U.S. Court of **International Trade**
One Federal Plaza
New York, NY 10278-0001
(212) 264-2018

Madam Justice **Ginsburg**
Circuit Justice for the Second Circuit
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543
(202) 479-3000

---

* The Second Circuit is also represented in the Judicial Conference by its chief judge:

Chief Judge John M. Walker, Jr.
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007
(212) 857-8500

Dr. Richard Cordero

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

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

November 26, 2004

Madam Justice Ginsburg
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Madam Justice,

I am submitting hereby to you as the Circuit Justice for the Second Circuit a copy of my petition for review to the Judicial Conference in the context of the dismissals by the chief judge of the court of appeals and the judicial council of that circuit of my two complaints under the Judicial Conduct and Disability Act. It deserves your consideration because of the particularly egregious implications that these dismissals have for the integrity of judicial process given that despite the compelling evidence that supports reasonable suspicion of judicial corruption linked to a bankruptcy fraud scheme, the complaints were dismissed without any investigation at all.

Indeed, this case concerns the evidence that I submitted of a series of instances for over two years of disregard for the law, rules, and facts by U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY, so numerous and consistently to my detriment, the only non-local and pro se litigant, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Then evidence emerged of the operation of the most powerful driver of corruption: money!, a lot of money in connection with fraudulent bankruptcy petitions. This results from the concentration of *thousands* of bankruptcy cases in the hands of each of the private standing trustees appointed by the U.S. trustee. They have a financial interest in rubberstamping the approval of all petitions, especially those with the least merits, since petitions confirmed by the court produce fees for the trustees, even a fee stream as a percentage of the debtors' payments to the creditors. Who and what else is being paid?

That question was not even looked at, which follows from the fact that although I submitted the evidence that I had and that which kept emerging, for the underlying cases are still pending, to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, he neither conducted a limited inquiry nor appointed a special committee. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions to the CA2 Judicial Council.

Therefore, given your responsibility for the integrity of judicial process in your circuit and the egregiousness of this case, which illustrates the systematic dismissal of complaints and review petitions under study by Justice Breyer's Committee, I respectfully request that you:

1. intimate to the Judicial Conference or its members the advisability of both taking jurisdiction of the petition herewith, on grounds such as those set forth therein, and investigating the complaints for the purpose, among others, of insuring just and fair process free from the corruptive influence of money and personal advantage;
2. suggest to the Committee to include this case in its study and investigate it; and
3. if you believe that Judge Ninfo or any of the others has committed an offense, make a report of this case to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Meantime, I look forward to hearing from you.

sincerely, Dr. Richard Cordero

OFFICE OF THE CLERK

MARCIA M. WALDRON
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

TELEPHONE
215-597-2995

December 3, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 113208-1515

Re: Complaint of Judicial Misconduct

Dear Dr. Cordero:

The document which you submitted to the Chief Judge of this Circuit has been referred to this office for response. No action may taken in regard to your submission.

If a special committee was appointed by the Second Circuit and you are aggrieved by the action taken by the Circuit's Judicial Council after the committee has acted, you may file the appropriate request for review with the Office of General Counsel of the Administrative Office of the United States Courts as provided by 28 U.S.C. § 357. Only submissions accepted for filing by that office may be considered. Otherwise, the members of the Judicial Conference have no authority to informally intervene in regard to the matters addressed in your submission.

Very truly yours,

Marcia M. Waldron, Clerk

By:
/s/ Bradford A. Baldus
Bradford A. Baldus
Senior Legal Advisor to the Clerk

Enclosure

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

December 6, 2004

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

RE: Letter

Dear Mr. Cordero:

In reply to your letter or submission referred to this office by Justice Ginsburg on December 6, 2004, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. The Court does not give advice or assistance or answer legal questions on the basis of correspondence.

Your papers are herewith returned.

Sincerely,
William K. Suter, Clerk
By:

M. Blalock
(202) 479-3023

Enclosures

United States Court
of International Trade
OFFICE OF THE CLERK
One Federal Plaza
New York,NY 10278-0001

December 9, 2004

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

Dear Dr. Cordero:

This is to acknowledge receipt of your letter of November 27, 2004 to Chief Judge Jane A. Restani.

The Judicial Conference of the United States may take action with respect to complaints of judicial misconduct or disability under two sets of circumstances. The first is pursuant to 28 U.S.C. § 355, which requires the referral or certification of a matter based on the action taken by a judicial council under 28 U.S.C. § 354(b). The second is pursuant to 28 U.S.C. § 357, which permits a complainant or judge aggrieved by the action taken by a judicial council under 28 U.S.C. § 354 to petition the Judicial Conference for review of that action.

Under either scenario, Chief Judge Restani, while a member of the Judicial Conference, is not authorized to take any action on her own on such matter unless it is referred to her directly by the Conference. That has not occurred, and accordingly, I am returning your letter and the accompanying materials to you.

Sincerely,

Leo M. Gordon
Clerk of the Court

cc: Chief Judge Jane A. Restani

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

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

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel

ADMINISTRATIVE OFFICE
OF THE
U.S. COURTS

John K. Rabiej
Chief, Rules Committee
Support Office

Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Telefacsimile Transmission Cover Sheet

Date: _____

To: 718 827-9521

Facsimile No.: _____

Office No.: _____

FROM: JOHN K. RABIEJ

FTS Fax No.....(202) 502-1755 or 502-1766
Voice Mail No.....(202) 502-1820

PAGE _____ OF _____ (Including Cover Sheet)

Comments As requested

_____

_____

Transmitted by: _____

EXHIBIT B-2

RULES OF THE JUDICIAL CONFERENCE OF THE UNITED STATES FOR THE PROCESSING OF PETITIONS FOR REVIEW OF CIRCUIT COUNCIL ORDERS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

[As revised by the Judicial Conference of the United States, September 20, 1989]

The Judicial Conference of the United States prescribes these rules under the authority of section 372(c)(11) of title 28, United States Code, with respect to the processing of petitions for review submitted to the Conference under 28 U.S.C. § 372(c)(10), seeking review of circuit council actions taken under 28 U.S.C. § 372(c)(6) upon complaints of judicial conduct or disability:

1. Petition for review may be made by the filing of a written submission to the Judicial Conference addressed as follows:

Leonidas Ralph Mecham
Secretary, Judicial Conference
of the United States
Administrative Office of the
United States Courts
Washington, D.C. 20544
Attention: Office of the General Counsel

2. No form is prescribed for the filing of a petition for review.

3. Such petition shall consist of a written submission in typewriting on plain paper of 8-1/2 by 11 inch dimensions.

4. No formal limitation is imposed upon the length of the petition, but it is suggested that such petition should not normally exceed 20 pages in addition to the attachments required by Rule 8.

5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

6. No absolute time limitation exists upon the filing of a petition for review. Nevertheless the petition should be submitted seasonably following final action by the circuit judicial council and issuance of its implementing order under 28 U.S.C. § 372(c)(15).

7. Five copies of the petition for review shall be submitted, at least one of which shall bear the original ink signature of the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office shall then accept the original petition alone and shall undertake necessary reproduction of copies at its expense.

8. The petition for review shall have attached thereto a copy of each of the following documents:

- the order of the circuit judicial council issued under 28 U.S.C. § 372(c)(15), of which review is sought;
- the original complaint of judicial misconduct or disability that commenced the proceeding;
- any other documents or correspondence arising in the course of the proceeding before the judicial council or its special committee which the petitioner deems essential or useful to the prompt disposition of the review petition.

9. Upon receipt of a petition for review that appears on its face to be coherent, in compliance with these rules, and appropriate for present disposition, the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. § 331.

10. Unless otherwise directed by the Executive Committee of the Judicial Conference, the Committee to Review Circuit Council Conduct and Disability Orders shall assume the consideration and disposition of all petitions for review, in conformity with the Judicial Conference statement of the Committee's jurisdiction.

11. The Administrative Office shall then distribute the petition and its attachment to the members of the Committee to Review Circuit Council Conduct and Disability Orders for their deliberation. The petition shall receive an eight-digit identifying number of which the initial two digits shall refer to the year of filing, the next three digits shall be "372," and the final three shall identify each individual petition. Unless otherwise directed by the chairman, the Administrative Office shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record of circuit council consideration of the complaint for distribution to the Committee.

12. In recognition of the review nature of petition proceedings under 28 U.S.C. § 372(c)(10), no additional investigation shall ordinarily be undertaken by the Judicial Conference or the Committee. If such investigation is deemed necessary, the Conference or Committee may remand the matter to the circuit judicial council that considered the complaint, or may undertake any investigation found to be required. If such investigation is undertaken by the Conference or Committee, (a) adequate prior notice shall be given in writing to the judge or magistrate whose conduct is the subject of the complaint, (b) such judge or magistrate shall be afforded an opportunity to appear at any investigative proceedings which might be conducted and to present argument orally or in writing, and (c) the complainant shall be afforded an opportunity to appear at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information.

13. Except where additional investigation is undertaken as provided in Rule 12, there shall be no arguments or personal appearances before the Committee. Unless the petition for review is

amenable to disposition on the face thereof, the Committee may determine to receive written argument from the petitioner and from the other party to the complaint proceeding (the complainant or judge/magistrate complained against).

14. The decision on the petition shall be made by written order as provided by 28 U.S.C. § 372(c)(15). Such order shall be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman. In accordance with section 372(c)(15), orders of the Committee shall be maintained as public documents by the Administrative Office and by the clerk of the United States court of appeals for the circuit in which the complaint arose.

15. In conformity with 28 U.S.C. § 372(c)(10), all orders and determinations of the Judicial Conference or of the Committee on its behalf, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

Dr. Richard Cordero

Ph.D., University of Cambridge, England **59 Crescent Street**
M.B.A., University of Michigan Business School **Brooklyn, NY 11208-1515**
D.E.A., La Sorbonne, Paris **tel. (718) 827-9521; CorderoRic@yahoo.com**

December 18, 2004

[Sample of letters sent to members of the Judicial Conference]

Chief Judge Haldane Robert Mayer
Member of the Judicial Conference of the U.S.
U.S. Court Appeals for the Federal Circuit [(202) 312- 5527]
717 Madison Place, N.W
Washington, D.C. 20439

Dear Chief Judge Mayer,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel. Contemporaneously, I sent you a copy, dated November 20.

I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

1. Yesterday I received a letter (2nd set of Exhibits, page 1, infra=2E-1) from the Assistant General Counsel, Mr. Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting him-self to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States."
2. Who ever heard that a clerk is allowed to pass judgment on a precise jurisdictional argument made to the court, particularly in the absence of any authority to do so?! Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" be-cause it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

…the Administrative Office shall promptly acknowledge receipt of the petition and

> advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

3. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".
4. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).
5. This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

6. That "argument", which may bear on jurisdiction, is a legal brief and it is for the Commit-tee to request and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amena-

ble to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

7. Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of a judicial body to dispose singlehandedly of a petition addressed to the Judicial Conference of the United States.
8. Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdic-tion, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his actions.

II. Statement of facts showing the Administrative Office's Rule-noncomplying handling of, and negative attitude toward, the petition for review

9. It is quite strange that Mr. Deyling was in such rush to 'dispose' of my petition although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the peti-tion". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference put in context Mr. Deyling's boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office's normal conduct of business, or pursuant to instructions for this specific case.
10. Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks; cf. 2E-3. The acts of disregard have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges

and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition and the exhibits (E-page number) accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

11. The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.
12. My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.
13. Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.
14. However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to do so. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for

the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself. Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if even those in its General Counsel's Office do not even know the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed.

15. I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?
16. In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.
17. On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I

wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

18. I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel's Office. Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.
19. I was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that it was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.
20. But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.
21. What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?
22. I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.
23. On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Of-

fice and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

24. I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been at 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).
25. I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.

III. Requested action

26. Thus, I respectfully request that you, as a Conference member, and the Conference itself:
    a) declare Mr. Deyling's letter to be devoid of any effect as ultra vires and/or have him withdraw it;
    b) require the Administrative Office to forward to the Conference the copies of my petition;
    c) review my petition based on those copies or the ones that I sent to Conference members;
    d) investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office's handling of this matter and treating of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
    e) make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

List of Members of the Judicial Conference
to whom was addressed the letter of December 18, 2004
objecting to the Administrative Office of the U.S. Courts
making a jurisdictional judgment on a petition for review and
refusing to file and forward it to the Judicial Conference
by
Dr. Richard Cordero

Mr. Chief Justice William **Rehnquist**
Member of the Judicial Conference of the U. S.
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Chief Judge Michael **Boudin**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **First Circui**t
1 Courthouse Way
Boston, MA 02210

Chief Judge Hector M. Laffitte
Member of the Judicial Conference of the U. S.
U.S. District Court
for the District of Puerto Rico
150 Carlos Chardon Street
Hato Rey, P.R. 00918

[See footnote *.]

Chief Judge Frederick J. Scullin, Jr.
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Northern District of New York
445 Broadway
Albany, NY 12207-2924

Chief Judge Anthony J. **Scirica**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Third Circuit**
601 Market Street, Rm. 22614
Philadelphia, PA 19106

Chief Judge Thomas I. Vanaskie
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Middle District of Pennsylvania
235 N. Washington Ave., P.O. Box 1148
Scranton, PA 18501

Chief Judge William W. **Wilkins**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Fourth Circuit**
1100 East Main Street, Annex, Suite 501
Richmond, Virginia 23219-3517

Judge David C. Norton
Member of the Judicial Conference of the U. S.
U.S. District Court
for the District of South Carolina
Post Office Box 835
Charleston, SC 29402

Chief Judge Carolyn Dineen **King**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Fifth Circuit**
600 Camp Street
New Orleans, LA 70130

Judge Martin L. C. Feldman
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Eastern District of Louisiana, Rm. C555
500 Poydras Street
New Orleans, LA 70130

Chief Judge Danny J. **Boggs**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Sixth Circuit**
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

Chief Judge Lawrence P. Zatkoff
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Eastern District of Michigan
231 W. Lafayette Blvd., Rm. 703
Detroit, MI 48226

Chief Judge Joel M. **Flaum**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Seventh Circuit**,
Rm. 2702
219 S. Dearborn Street
Chicago, IL 60604

Judge J. P. Stadtmueller
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, WI 53202

Chief Judge James B. **Loken**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Eighth Circuit**
316 N. Robert Street
St. Paul, MN 55101

Chief Judge James M. Rosenbaum
Member of the Judicial Conference of the U. S.
U.S. District Court for the District of
Minnesota, Rm. 15E
300 S. 4th Street
Minneapolis, MN 55415

Chief Judge Mary M. **Schroeder**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Ninth Circuit**
Post Office Box 193939
San Francisco, CA 94119-3939

Chief Judge David Alan Ezra
Member of the Judicial Conference of the U. S.
U.S. District Court for District of Hawaii
300 Ala Moana Boulevard
Honolulu, HI 96850

Chief Judge Deanell R. **Tacha**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Tenth Circuit**
1823 Stout Street
Denver, CO 80257

Judge David L. Russell
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Western District of Oklahoma
200 NW 4th Street
Oklahoma City, OK 73102

Chief Judge J. L. **Edmondson**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals for the **Eleventh Circuit**
56 Forsyth St., N.W.
Atlanta, GA 30303

Senior Judge J. Owen Forrester
Member of the Judicial Conference of the U. S.
U.S. District Court
for the Northern District of Georgia
75 Spring Street, S.W.
Atlanta, GA 30303-3309

Chief Judge Douglas H. **Ginsburg**
Member of the Judicial Conference of the U. S.
U.S. Court of Appeals
for the District of **Columbia Circuit**
333 Constitution Ave., N.W.
Washington, D.C. 20001

Chief Judge Thomas F. Hogan
Member of the Judicial Conference of the U. S.
U.S. District Court for the District of Columbia
333 Constitution Ave., NW
Washington, DC 20001

Chief Judge Haldane Robert **Mayer**
Member of the Judicial Conference of the U. S.
U.S. Court Appeals for the **Federal Circuit**
717 Madison Place, N.W
Washington, D.C. 20439

Chief Judge Jane A. **Restani**
Member of the Judicial Conference of the U. S.
U.S. Court of **International Trade**
One Federal Plaza
New York, NY 10278-0001

	Last name	Members of the Judicial Conference of the United States to whom the letter of December 18, 2004, was sent*
1.	Boggs	Chief Judge Danny J. Boggs, U.S. Court of Appeals for the Sixth Circuit
2.	Boudin	Chief Judge Michael Boudin, U.S. Court of Appeals for the First Circuit
3.	Edmondson	Chief Judge J. L. Edmondson, U.S. Court of Appeals for the Eleventh Circuit
4.	Ezra	Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii
5.	Feldman	Judge Martin L. C. Feldman, U.S. District Court for the Eastern District of Louisiana
6.	Flaum	Chief Judge Joel M. Flaum, U.S. Court of Appeals for the Seventh Circuit
7.	Forrester	Senior Judge J. Owen Forrester, U.S. District Court for the Northern District of Georgia
8.	Ginsburg	Chief Judge Douglas H. Ginsburg, U.S. Court of Appeals for the Dis. of Columbia Circuit
9.	Guinsburg	Madam Justice Guinsburg
10.	Hogan	Chief Judge Thomas F. Hogan, U.S. District Court for the District of Columbia
11.	King	Chief Judge Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit
12.	Laffitte	Chief Judge Hector M. Laffitte, U.S. District Court for the District of Puerto Rico
13.	Loken	Chief Judge James B. Loken, U.S. Court of Appeals for the Eighth Circuit
14.	Mayer	Chief Judge Haldane Robert Mayer, U.S. Court of Appeals for the Federal Circuit
15.	Norton	Judge David C. Norton, U.S. District Court for the District of South Carolina
16.	Rehnquist	Mr. Chief Justice William Rehnquist
17.	Restani	Chief Judge Jane A. Restani, U.S. Court of International Trade
18.	Rosenbaum	Chief Judge James M. Rosenbaum, U.S. District Court for the District of Minnesota
19.	Russell	Judge David L. Russell, U.S. District Court for the Western District of Oklahoma
20.	Schroeder	Chief Judge Mary M. Schroeder, U.S. Court of Appeals for the Ninth Circuit
21.	Scirica	Chief Judge Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit
22.	Scullin	Chief Judge Frederick J. Scullin, Jr., U.S. District Court for the Northern District of NY
23.	Stadtmueller	Judge J. P. Stadtmueller, U.S. District Court for the Eastern District of Wisconsin
24.	Tacha	Chief Judge Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit
25.	Vanaskie	Chief Judge Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania
26.	Wilkins	Chief Judge William W. Wilkins, U.S. Court of Appeals for the Fourth Circuit
27.	Zatkoff	Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan

* CA2 Chief Judge John M. Walker, Jr., is also a member of the Judicial Conference.

United States Court
of International Trade
OFFICE OF THE CLERK
One Federal Plaza
New York, NY 10278-0001

December 23, 2004

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

Dear Dr. Cordero:

This is to acknowledge receipt of your letter of December 18, 2004 to Chief Judge Jane A. Restani.

As was noted in my letter to you of December 9, 2004, the Judicial Conference of the United States may take action with respect to complaints of judicial misconduct or disability under two sets of circumstances. The first is pursuant to 28 U.S.C. § 355, which requires the referral or certification of a matter based on the action taken by a judicial council under 28 U.S.C. § 354(b). The second is pursuant to 28 U.S.C. § 357, which permits a complainant or judge aggrieved by the action taken by a judicial council under 28 U.S.C. § 354 to petition the Judicial Conference for review of that action.

Again, as indicated in my prior letter, under either scenario, Chief Judge Restani, while a member of the Judicial Conference, is not authorized to take any action on her own on such matter unless it is referred to her directly by the Conference. That has not occurred. Moreover, as Mr. Deyling of the Office of the General Counsel at the Administrative Office explained to you in his letter of December 9, 2004, you have not met the conditions set forth in the governing statute to permit review of your matter by the Judicial Conference. Accordingly, I am returning your letter and the accompanying materials to you.

Sincerely,

Leo M. Gordon

Leo M. Gordon
Clerk of the Court

cc: Chief Judge Jane A. Restani

United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Mark J. Langer
Clerk

December 27, 2004

General Information
(202) 216-7000

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Dear Dr. Cordero:

Chief Judge Ginsburg referred your letter of December 18, 2004 to me for a response. Chief Judge Ginsburg does not have the authority to grant you the relief you seek in this matter.

Sincerely,

Mark J. Langer
Clerk

C:876 Letter for CJ Ginsburg, D.C., of 12/27/4 to Dr. Cordero: the judge lacks authority to grant the relief sought

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

[Sample of letters sent to several officers]

January 8, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall U.S. Courthouse, 40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

1. Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

2. Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General

Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

3. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".
4. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).
5. This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

6. That "argument", which may bear on jurisdiction, is a legal brief and it is for the Commit-tee to re-

quest and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

7. Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.
8. Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his actions.

II. Action requested

9. Therefore, I respectfully request that you, as Chair of the Judicial Conference Misconduct Committee:
    a. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
    b. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
        1) forwarded to the Conference for review;
        2) otherwise, provide me with the names and addresses of the other members of the Committee to Review Circuit Council Conduct and Disability Orders;
    c. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
    d. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

III. Table of the Accompanying Document and Exhibits

1. Dr. Richard Cordero's **Statement of facts of December 18, 2004**, and Request for an Investigation into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero.....5 [C:881]

    2. Dr. Cordero's **Petition of November 18, 2004**, to the Judicial Conference of the United States for review of the actions of the Judicial Council of the Second Circuit In re: Judicial Misconduct Complaints CA2 docket no. 03-8547 and no. 04-8510,.....E-1 [C:823]

    3. **Key Documents and Dates** in the procedural history of the judicial misconduct complaints filed with the Chief Judge and the Judicial Council of the Second Circuit, docket nos. 03-8547 and 04-8510, submitted in support of the petition for review to the Judicial Conference of the United States ..... E-xxiii [C:844]

    4. Table of Exhibits of the Petition ..... E-xxv [C:845]

5. **Letter** of **December 9**, 2004, of Assistant General Counsel Robert P. **Deyling** at the Office of the General Counsel of the Administrative Office of the U.S. Courts .....E-31 [C:859]

6. Dr. **Cordero**'s letter of **July 29**, 2004, **to** Assistant General Counsel Jeffrey N. **Barr** at the Office of the General Counsel **Administrative Office** of the U.S. Courts, accompanying his complaint against clerks .....E-33 [C:684]

7. Dr. **Cordero**'s **Complaint** of **July 28**, 2004, **to** the Administrative Office of the United States Courts against court **administrative and clerical officers** and their mishandling of judicial misconduct complaints and orders to the detriment of the public at large as well as of Dr. Richard Cordero .....E-35 [C:685]

8. Table of Exhibits of the Complaint..... E-xlv [C:685]

9. Dr. **Cordero**'s **motion** of **April 11**, 2004, for **declaratory judgmen**t that **officers** of the Court of Appeals for the Second Circuit intentionally **violated law** and rules as part of a pattern of wrongdoing **to complainant's detriment** and for this court to launch an investigation.....E-49 [C:442]

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

[Sample of individualized caption]

STATEMENT OF FACTS
of December 18, 2004

Accompanying the letter of January 8, 2005, to

The Hon. Judge Ralph K. Winter, Jr.

Chair of the Committee to Review Circuit Council Conduct and Disability Orders
of the Judicial Conference of the United States

and

REQUEST FOR AN INVESTIGATION

into both the Administrative Office of the U.S. Courts' rules-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq., submitted to the Judicial Conference on November 18, 2004,
and the Office's treatment of Petitioner Dr. Richard Cordero
by

Dr. Richard Cordero

1. It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to 'dispose' of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling's boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office's normal conduct of business, or pursuant to instructions for this specific case.
2. Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct

Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

3. The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

4. The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.
5. My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.
6. Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.
7. However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the

petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

8. Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel's Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".
9. I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?
10. In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.
11. On Monday, December 6, I called the Office of the General Counsel and told the anonymous

receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

12. I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel's Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.
13. It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.
14. But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.
15. What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?
16. I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

17. On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.
18. I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).
19. I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.
20. Therefore, I respectfully request that you, as the Chair of the Misconduct Committee, and the Conference itself:
    a. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office's handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
    b. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),
        1) consider it hereby resubmitted;
        2) and cause its original, which is both bound with a file of supporting documents (cf. E-xlv), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on: January 8, 2005

Dr. Richard Cordero

59 Crescent Street,
Brooklyn, NY 11208

Dr. Richard Cordero
(7180827-9521

Key Documents and Dates in the Procedural History

as of January 8, 2005 [updated at ToEC:3]
of the judicial misconduct complaints filed with
the CA2 Chief Judge and the Judicial Council of the Second Circuit
dockets no. 03-8547 and 04-8510
submitted in support of a petition for review to
the Judicial Conference of the United States
by

Dr. Richard Cordero

Judicial misconduct complaint about WBNY Bankruptcy **Judge** John C. **Ninfo**, II, docket no. 03-8547

Judicial misconduct complaint				**Petition for review**					
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Resubmission	Acknow-ledgment	Letter to Jud. Council	Update to Jud. Council	Denial
August 11, 03	August 27, 03	Septem. 2, 03	June 8, 04	July 8, 04	July 13, 04	July 16, 04	July 30, 04	August 27, 04	Septem. 30, 04
-	1	-	10 & 11	-	23	28	29	31	36 &37
page numbers of documents included among the exhibits									

Judicial misconduct complaint about CA2 **Chief Judge** John M. **Walker**, Jr., docket no. 04-8510

Judicial misconduct complaint				**Petition for review**				
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Acknow-ledgment	Exhibits to Jud. Council	Rejection of exhibits	Denial
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04	October 20, 04	November 10, 04
39	-	-	44 & 45	47	-	52	53	54 & 55
page numbers of documents included among the exhibits								

List of Addressees

to whom were sent
the letter and Request of January 8, 2005
and the Statement of Facts of December 18, 2004
concerning the petition for review to the Judicial Conference
held back unfiled at the Administrative Office of the U.S. Courts
by
Dr. Richard Cordero

Hon. Judge Carolyn Dineen King
Chair of the Executive Committee
of the Judicial Conference of the U.S.
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544
tel. (202) 502-2400
tel. (713)250-5750 at CA5 where Chief Judge King sits

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007
tel. (212) 857-8500

William R. Burchill, Jr.
Associate Director and General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544
tel. (202) 502-1100

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Jan 28, 05

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
THEODORE LEVIN UNITED STATES COURTHOUSE
231 WEST LAFAYETTE BLVD.
DETROIT, MICHIGAN 48226

CHAMBERS OF
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

(313) 234-5110

January 12, 2005

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

Dear Dr. Cordero:

I am in receipt of your letter and accompanying documents dated November 20, 2004. You have requested that I present to the Judicial Conference of the United States allegations of judicial misconduct that you have levied against a bankruptcy judge in the Western District of New York. My term on the Judicial Conference expired last year; therefore, I am unable to assist you in this matter.

Sincerely,

Lawrence P. Zatkoff,
United States District Judge for the Eastern District of Michigan

Dis. J. Zatkoff's letter of 1/12/5 to Dr. Cordero: no longer in Jud. Conference so can't assist with petition C:889

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

[Sample of letters sent to several officers]

February 7, 2005

William R. Burchill, Jr.
Associate Director and General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

faxed to (202)

Dear Mr. Burchill,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk in your Office, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

February 7, 2005

Hon. Chief Judge Carolyn Dineen King
Chair of the Executive Committee of the Judicial Conference
U.S. Court of Appeals for the 5th Circuit
515 Rusk Street, Room 11020
Houston, TX 77002 faxed to (713)250-5050; tel. (713)250-5750

Dear Chief Judge King,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated why a clerk to the Conference, such as Mr. Deyling as well as the General Counsel is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less the specific argument on jurisdiction that I had made in my petition. I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed by anybody else of any action taken or refused to be taken on my requests. I have reason to believe that you have not responded because you did not receive my letter accompanied by the exhibits bound with it.

Indeed, I addressed it to the Administrative Office of the U.S. Courts in Washington, as that Office told me to do because it would forward my letter to you. This morning I called the Office of the Executive Committee of the Judicial Conference, (202)502-2400, and a secretary - who would not give me her name *either* but would gladly give me the name of the office supervisor, Ms. Laura Minor- told me that my letter to you would have been forwarded to the Office of the General Counsel, William Burchill, Esq. To him I also wrote on January 8 but he has neither replied nor taken any of my calls. I questioned the reasonableness of forwarding a letter of complaint to the complained-about person. The anonymous secretary realized the

problem that such forwarding would present and when I asked her to give me your address or to let me talk to Ms. Minor, she abruptly hung up on me. (On the issues of Administrative Office personnel hiding behind anonymity and exhibiting such unprofessional telephone manners there is more in my original letter to you of January 8 and its exhibits.)

I respectfully submit that if it were established that the Office of the General Counsel did not forward to you my January 8 letter and exhibits wherein I complained about both its blocking my petition to the Judicial Conference and its personnel, it **1)** abused its power in order to act in self-interest; **2)** interfered with correspondence mailed through the USPS to a third party and its hierarchical superior at that, and **3)** deprived me of my right to petition a member and an entity of government, that is, you and the Judicial Conference. I trust that you, as a judge trained to analyze a situation from the point of view of rights and obligations, would hold such conduct to constitute a serious offense.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Therefore, I respectfully request that you:

1. determine whether the Office of the General Counsel of the Administrative Office of the U.S. Courts engaged in the above-described conduct and, if so, launch administrative disciplinary proceedings and inform me thereof;

2. retrieve from that Office my letter to you of last January 8 and the therewith bound Table of Exhibits and exhibits, and take the requested action; and

3. cause the five copies of my petition of November 18, 2004, to the Judicial Conference to be forwarded from the Office of the General Counsel to the Conference for its review.

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

United States Court of Appeals
SECOND CIRCUIT

CHAMBERS OF
RALPH K. WINTER
U.S. CIRCUIT JUDGE
U.S. COURTHOUSE
141 CHURCH STREET
NEW HAVEN, CT 06510

(203) 782-3682

February 15, 2005

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

Dear Dr. Cordero:

Thank you for your two letters, dated January 8 and February 9, 2005, regarding your November 20, 2004 request for review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit. Those orders denied review of the dismissals by the Chief Judge of the Second Circuit of two judicial conduct complaints: your August 11, 2003 complaint against United States Bankruptcy Judge John C. Ninfo, II, and your March 19, 2004 complaint against Chief Judge John W. Walker, Jr.

Please note that I am also aware of your nearly identical letters to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, to Judge Carolyn King, Chair of the Executive Committee of the Judicial Conference, and to members of the Judicial Conference. My response in this letter will eliminate any need for their further responses to your correspondence.

Your January 8th letter requested several actions, and I will address your requests in the order they appear.

First, you suggest that the December 9, 2004 letter you received from Assistant General Counsel Robert P. Deyling should be declared "devoid of any effect as ultra vires" and withdrawn. Having reviewed the material you sent me as well as the December 9th letter, I can confirm for you that Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act ("the Judicial Conference Rules").

As Mr. Deyling's letter correctly noted, the Judicial Conference does not have jurisdiction for further review of your complaint. The process for addressing complaints against judges is specified at 28 U.S.C. §§ 351 - 364. You correctly followed the statutory complaint process to its final conclusion when you obtained the orders from the Judicial Council of the Second Circuit denying your petition to review the dismissal of your complaints. A careful reading of the statute makes this very clear.

Under 28 U.S.C. § 352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed. As permitted by 28 U.S.C. § 352(c), you then petitioned to the judicial council for review of the chief judge's dismissal. The judicial council unequivocally denied your petitions. Those two denials, both taken under § 352(c), are "final and conclusive and shall not be judicially reviewable on appeal or otherwise."

The Judicial Conference review you seek is only available in certain extremely limited circumstances, and your request for review does not meet the statutory standard. Again, a careful reading of the statute leads inexorably to this conclusion, as Mr. Deyling's letter correctly explained. Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by a judicial council under § 354. A judicial council may take action under § 354 only following receipt of the report of a "special investigating committee" convened pursuant to § 353.

The chief judge did not appoint a special investigating committee under § 353 in your case. The judicial council denied your petition for review under § 352, not under § 354. Accordingly, it is clear that the only review available in your case was the review you already obtained from the Judicial Council of the Second Circuit.

This analysis, which confirms the conclusions Mr. Deyling reached in his letter to you, leads me to your second request. You ask me to forward your materials to the Judicial Conference and/or to the Committee to Review Circuit Council Conduct and Disability Orders ("the Committee"). As the Chair of the Committee, I must deny your request. Under the controlling statute, and under the Judicial Conference Rules for processing petitions for review, neither the Committee nor the Judicial Conference has jurisdiction or authority to act upon your request for review.

I also note your various references to the Judicial Conference Rules, and your arguments that the rules provide some independent basis for jurisdiction, or require the Committee or the Judicial Conference itself to take various actions with respect to your request for review. You have misinterpreted the scope and applicability of the Judicial Conference Rules. By their express terms, the rules apply to *"petitions for review submitted to the Conference under 28 U.S.C. § 357 [former 28 U.S.C. § 372(c)(10)], seeking review of circuit council actions taken under 28 U.S.C. § 354 [former 28 U.S.C. § 372(c)(6)] upon complaints of judicial conduct or disability"* (emphasis added). As I explained above, your petition seeks review of a judicial council action taken under 28 U.S.C. § 352(c). The governing statute does not provide you with any entitlement to review, by the Committee or by the Judicial Conference itself, of an action taken under § 352(c).

My answer to your first two requests implicitly addresses your remaining two requests.

Namely, you asked me to "consider and take action on the accompanying Statement of Facts and Request for an Investigation." You appear to request this action under Rule 12 of the Judicial Conference Rules. Again, I emphasize that neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review, because it is not reviewable under the statutory scheme noted above. Accordingly, I cannot take any of the actions you request. For similar reasons, I cannot report the alleged judicial misconduct to the U.S. Attorney General.

I hope that you find this letter helpful to explain why no further action will be taken on your request for review. Thank you.

Sincerely,

Ralph K. Winter
United States Circuit Judge

RKW/mrd

cc: Hon. Pasco M. Bowman II
Hon. Carolyn R. Dimmick
Hon. Barefoot Sanders
Hon. Dolores K. Sloviter
Robert P. Deyling, Assistant General Counsel

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-310-7700
600 CAMP STREET
NEW ORLEANS, LA 70130

February 18, 2005

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

Re: Petition for Review of November 20, 2004, addressed to Judicial Conference of the United States.

Letter of December 18, 2004, regarding AO response to petition for review.

Correspondence of February 7, 2005, referring to a letter of January 8, 2005.

Dear Dr. Cordero:

Chief Judge King has reviewed the above-referenced documents and has instructed us to return them to you because the Judicial Conference of the United States does not have jurisdiction to review the Second Circuit Judicial Council's denials of your petitions for review. As provided by 28 U.S.C. § 352(c), the Judicial Council's denial of a petition for review "shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise." In these circumstances, the Judicial Conference of the United States does not have jurisdiction to review the Judicial Council's actions.

We understand that your letter of January 8, 2005, referred to in the last-listed correspondence above, has been forwarded to the Chair of the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States.

Very truly yours,

CHARLES R. FULBRUGE III, Clerk

By Nancy H. Gray
Nancy H. Gray
Deputy Clerk

Enclosure

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

March 7, 2005

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

Last November 23, I timely filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review of the denials by the Judicial Council of the Second Circuit of two petitions for review under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq. These petitions and their underlying complaints contain evidence of judicial wrongdoing linked to a bankruptcy fraud scheme. Even so, they were disposed of without any investigation, contrary to the requirements of the Act; cf. §§352(a) and 354(a)(1). As such, they constitute evidence confirming the correctness of your appointment on May 25, 2004, of Justice Stephen Breyer to head a Committee to Review Circuit Council Conduct and Disability Orders, precisely because the immense majority of complaints and petitions are routinely disposed of out of hand without being investigated. So few have been allowed to move forward that in the 25-year history of the Act, the Judicial Conference has issued only 15 Memoranda and Orders!

I know that because the Administrative Office sent me copies of them. Hence, I was in a position to make a novel argument that the Judicial Conference has jurisdiction under §357(a) to review my petition since I am "A complainant or judge aggrieved by an action of the judicial council under section 354 [who] may petition the Judicial Conference for review thereof". In turn, under §354(a)(1), the judicial council can only take action "upon receipt of a report filed under section 353(a)". But no such report was ever filed because no investigation was ever conducted. Though lacking jurisdiction, the council dismissed my complaints, whereby it aggrieved me.

As a novel argument and a threshold jurisdictional one at that, it was for the Conference to pass judgment upon it. But the Conference was deprived of the right and duty to do so because a clerk at the Administrative Office, Mr. Robert Deyling, Assistant General Counsel, was bold enough to pass judgment on his own upon that argument, despite having no authority therefor, and refused to pass on my petition to the Conference, whose position he usurped in so doing.

If the appearance, not the reality, of bias or prejudice is enough under 28 U.S.C. §455 to require the recusal of a judge, as the Court reaffirmed in *Microsoft Corp. v. United States, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.)*, how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for any judge to discharge his duty to investigate complaints about it? If, as you stated[1], in the more than 200 years of our federal judiciary, only five federal judges have been convicted of offenses involving financial improprieties and perjury, then impeachment is as ineffective as the Act to discipline judges' conduct. In the absence of any control, has a judgeship become a safe haven for wrongdoing? To answer that due process determinative question, it is necessary that petitions reach the Conference, which they can only do if it interprets its jurisdiction under the Act expansively so that it can read petitions at all. Therefore, I respectfully request that you cause the Conference[2] to pass judgment on the threshold issue of jurisdiction that I am submitting hereby and already submitted in my petition.

sincerely, Dr. Richard Cordero

[1] Remarks of Chief Justice Rehnquist at the Federal Judges Association Board of Directors Meeting, May 5, 2003; at http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html.

[2] Letters sent by Dr. Cordero -but never replied to- in an effort to have Mr. Deyling's letter of December 9, 2004, declared devoid of any effect as ultra vires and withdrawn so as to have his petition unblocked and forwarded by the Administrative Office to the Conference for its review:

a) Dr. Cordero's letter of December 18, 2004, to Chief Justice Rehnquist [C:865, 871]

b) Dr. Cordero's letter of January 8, 2005, to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the U.S. Courts [C:876, 887]

c) Dr. Cordero's letter of February 7, 2005, to General Counsel Burchill stating that he has not received any response to his letter of January 8, and requesting that action be taken on that letter and its requests [C:890]

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of March 7, 2005
from Dr. Richard Cordero

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JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

ADDENDUM to the Petition's section II: The Judicial Conference Has Jurisdiction Over This Appeal Because The Complainant Was "Aggrieved" By The Judicial Council,

to **request** that the Judicial Conference consider the threshold argument for taking jurisdiction over the petition

1. On November 23, 2004, Dr. Richard Cordero timely filed a petition to the Judicial Conference (page 1, infra) for review of two denials by the Judicial Council of the Second Circuit (pgs. E-37; E-55, infra) of his petitions for review (E-23; E-47) of the dismissals (E-11; E-45) of two related judicial misconduct complaints (E-1; E39) that he had filed under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq., with the chief judge of that Circuit's Court of Appeals. As required, Dr. Cordero addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.
2. On December 9, 2004, Dr. Cordero received a letter from Assistant General Counsel Robert P. Deyling (pg. Add.-6, infra), who without even acknowledging, let alone discussing, Dr. Cordero's specific and detailed jurisdictional argument to the Judicial Conference (3§II) and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "...I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States" (Add.-7).

I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

3. Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions, which follows from 28 U.S.C. §331, 4th paragraph:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee; (emphasis added).

4. Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. However, these Rules are silent on the issue of the Conference's jurisdiction; and they certainly do not authorize any member of that Office or even of the Administrative Office of which it forms part to pass judgment on whether a petition meets any jurisdictional requirement set forth in §§351-364. What is more, those sections do not even mention the General Counsel's Office. As to the Administrative Office itself, it is only mentioned in §361, which provides for a passive role for its Director, who may receive a recommendation from a judicial council to reimburse the expenses incurred by a judge who has been the subject of a complaint. But even that recommendation can only be made at the end of it all, after "the complaint has been finally dismissed under section 354(a)(1)(B)". Nothing in those sections allows that Director, much less one of its clerks, to determine at the outset whether the

Judicial Conference will even receive and have the opportunity to read a petition for review.

5. Moreover, Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules" (emphasis added), and thus, "appropriate for present disposition" because the petition does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5)…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

6. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). A clerk has no authority to engage in a consideration of the arguments of the petitioner, much less dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own. Rather, that Office "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".
7. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but in addition either "may undertake ***any*** investigation found to be required". Moreover, Rule 12 provides that "If such investigation is undertaken by the Conference or

Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information" (emphasis added).

8. This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

9. That "argument", which may bear on jurisdiction, is a legal brief and it is for the Commit-tee to request and consider it without being preempted by a clerk's unauthorized conclusory 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

10. Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

11. Hence, Mr. Deyling, as a clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any

consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived Dr. Cordero of his legal right to have his petition processed according to the procedure set forth in the Rules. If it is true, as Mr. Deyling put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his unauthorized and presumptuous actions.

II. Relief requested

12. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

a) declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;

b) declare that, upon review of this Addendum, §§351 et seq., and the Rules, it has jurisdiction to review Dr. Cordero's petition of November 18, 2004, to the Conference;

c) review the copy of the petition included herewith (1, infra) or have its original and four copies filed with the Administrative Office on November 23, 2004, and in possession of its General Counsel, forwarded to the Conference for review;

d) grant the petition and launch an investigation of the judges and court officers complained about and expand such investigation to include similar events of misconduct by them that have taken place since the petition was filed (cf. EE-1, infra); and

e) make a report of the evidence of a bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Respectfully submitted on

March 7, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no. 04-20280

Motion
to request that Judge John C. Ninfo, II recuse himself under 28 U.S.C. §455(a) due to his lack of impartiality

---

Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

I. The standard for recusal under 28 U.S.C. § 455(a) is the appearance, not the reality, of bias and prejudice

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

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

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

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

3. Those surrounding facts and circumstances are to be assessed by "the "reasonable person" standard which [§455(a)] embraces", *Microsoft Corp.* at 1303.

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B. Judge Ninfo said in open court that he would issue Dr. Cordero's written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero's instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity 913

1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero's proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, "expressed concerns", thereby protecting the DeLanos from discovery that could show their bankruptcy fraud 916

2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in *Pfuntner v. Gordon et al.* he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered 918

C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has

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2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham! 927
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A. Judge Ninfo has given precedence to what he calls "local practice" over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero

4. On January 27, 2004, Mr. David DeLano and Mrs. Mary Ann DeLano filed for bankruptcy under Chapter 13. Mr. DeLano is far from an average debtor: Interestingly enough, he has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess

creditworthiness and remain solvent to be able to repay bank loans. Thus, he is a member of a class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition successfully for bankruptcy relief. Consequently, his petition warranted to be examined with the equivalent of strict scrutiny. But Judge Ninfo would have none of such common sense approach.

5. On the contrary, Judge Ninfo excused the Standing Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., who unlawfully prevented any examination of the DeLanos even by the only creditor, Dr. Cordero, who showed up at the meeting of creditors held on March 8, 2004. Convened under 11 U.S.C. §341, that meeting had the purpose, as provided under §343, of enabling the creditors to meet the "debtor [who] shall appear and submit to examination under oath…". What is more, FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of "any other matter relevant to the case". Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until "the final meeting of creditors".
6. It should be noted that none of the other 20 creditors of the DeLanos, all institutional, attended the meeting, of which notice is officially given by the court. This is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition. This imputed intention is reasonably supported by the fact that he distributed his unsecured credit card debt of $98,092 over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine the DeLanos.
7. Their examination was not conducted by Trustee Reiber because contrary to the Code -11 U.S.C. §341(a)- the rules –FRBkrP Rule 2003(b)(1)- and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos' debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail. Mr. Weidman alleged that there was no time for such questions and put an end to the examination despite the fact that there was more than ample time to continue it since Dr. Cordero was only at his second question! In so doing, he violated Dr. Cordero's statutory right to examine the DeLanos. Why could Att. Weidman not

risk exposing the DeLanos to have to answer under oath Dr. Cordero's question before finding out how much Dr. Cordero already knew about fraud committed by them?

8. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition.
9. For his part, Judge Ninfo started off his response in open court and for the record by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.
10. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Mr. Weidman's conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied

the law too strictly and ignored the local practice…

13. That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers engages in "local practice", which consists in the disregard of the law, the rules, and the facts and the systematic application of the law of the locals. That law is based on both personal relationships among people that work in the same small federal building and with people who appear before Judge Ninfo frequently and who must fear antagonizing him by challenging his rulings, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and the available facts . Such local practice of disregard of legality has resulted in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias in which Judge Ninfo together with others have participated to the benefit of local parties and the detriment of Dr. Cordero. (Cf. §II.C-E of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals for the Second Circuit, herein incorporated by reference.)

1. Frequency of appearance by local parties before Judge Ninfo

14. The evidence that such personal relationships has developed is indisputable. Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo; cf. Chapter 7 Trustee Kenneth Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that in the other case to which both Mr. DeLano and Dr. Cordero are parties, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230, which is of course also before Judge Ninfo, Plaintiff James Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times. Similarly, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times; he is the attorney for another party, David Palmer, the owner of Premier Van Lines, the company to which M&T Loan Officer DeLano lent money and which went bankrupt.

15. If those local parties know what is good for them, they take what they are given by Judge Ninfo and hope for something as good or better next time, which can be fifteen minutes later when they appear in their next case before him. In so doing, they make the Judge's life so much easier. A non-local party like Dr. Cordero, who comes into his court with no other relation than that to the law, the rules, and the facts, and who tries to confine the Judge's rulings to the provisions of such relation and even dare appeal from his rulings, can only upset the Judge's

relationship to the local parties and the modus operandi that they have developed. That Judge Ninfo will not tolerate.

16. Hardly did the Judge have to tolerate it, for Dr. Cordero not only was a non-local appearing merely through the written word or over the phone in only one case, that is, *Pfuntner*, but he was also a pro se litigant, as he still is in the *DeLano* case. Thus, Dr. Cordero neither stood nor stands any chance of making Judge Ninfo apply the law and the rules or respect the constraint of the facts. He was and is supposed merely to take whatever is left that the Judge throws at him. As a result of such disregard for legality and of bias, Judge Ninfo has for the last three years caused this non-local pro se party the loss of an enormous amount of effort, time, and money and inflicted upon him tremendous emotional distress. It should not continue any longer.

2. Judge Ninfo's disregard for the law, the rules, and the facts led him to make the ludicrous statement that "local practice" can be found out by making a phone call

17. The facts demonstrate Judge Ninfo's disregard for legality. In his orders in the *Pfuntner* and *DeLano* cases, whether they be written or issued from the bench , he makes no mention of, let alone discusses, the law of Congress or the procedural rules approved by it, much less any court decision, not even decisions of the Supreme Court, and that in spite of Dr. Cordero's numerous citations, after painstaking research, of both statutory and case law as well as the rules and the facts, in support of the arguments in his briefs and motions, and at hearings. Judge Ninfo's decisions have no more basis than 'because-I-say-so-and-what-I-say-goes-here'. Why should he bother with the law to provide for the impartiality required by due process when he is accustomed to receiving the whole of due respect that comes with exercising unchallenged judicial power?
18. Only a person used to making rulings with the expectation that they be accepted uncritically by those depending on his good will rather than be examined under the criteria of the law and logic could make in the presence of a stenographer who is supposed to be keeping a record of his every word Judge Ninfo's comment on March 8, 2004, that Dr. Cordero should have called to find out what the local practice for the meeting of creditors was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. In addition to being flatly contradicted by the law (para. 5, supra), that comment is ludicrous!
19. A person reflexively expecting to be challenged by the participants in truly adversary proceedings would hardly even think that a non-local who lives hundreds of miles from

Rochester can phone somebody there to find out what the "local practice" is and such somebody would have the time, selfless motivation, and capacity to explain accurately and comprehensively the details of the "local practice" and its divergencies from the law and rules of the land of Congress. How could the details of such somebody place the non-local at arms length with his local adversaries, let alone with the judges and other court officers? By contrast, the details of how to implement such comment will readily reveal how impracticable it is and how impaired by bias and prejudice the judgment of he who made it is:

a) Whom was Dr. Cordero supposed to call to obtain all the details of "local practice"? Had he called a clerk of court and asked that she tell him all there is about "local practice", would she not have jumped and said, "Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m…" "No! no! I mean "local practice", you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law." Would the baffled clerk not think that Dr. Cordero was being facetious or conspiratorial and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by "local practice"?
b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with him the winning secrets of "local practice"?
c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether "local practice" would allow him to ask more than two questions at the officially convened meeting of creditors if he was the only creditor present?
d) Should so much futile effort have justified Dr. Cordero in calling Tony Soprocal, the notorious Rochester attorney, whom the media calls "the master of local practice"? Dr. Cordero would come clean –Tony requires that from those he deals with- and admit that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten "local practice". Tony would smirk, for in his line of work a euphemism is more expressive than any long speech. "Sure! You can retain me for the unwritable dirty secrets of how things get done in our local court. You can't get more 'local' than through a chat with me…unless you also want 'practice', but that will cost them an arm and a leg…you too, but you pay me in money." "For…forgeta'bout

it, Tony," would babble a shaky Dr. Cordero, "the chat will be enough."

e) Then what? Could it be reasonable for Dr. Cordero to state at the next meeting or hearing what he expects Judge Ninfo to do because Tony said that's the way it is done in "local practice"? Will Judge Ninfo say, "Now you are talking, Dr. Cordero! If Tony told you what the "local practice" is and you relied on it, then that's the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance on the basis of my conduct as a judge."

20. What nonsense! But the description of such scenes is not meaningless at all, for it shows starkly how uneven the field is when Judge Ninfo gives precedence to whatever it is that he calls "local practice" over both the written and published laws of Congress and official notices of the court, such as the notice of the meeting of creditors (para. 6, supra). The practical consequences of such abrogation by him of the law are very serious, for in addition to frustrating Dr. Cordero's reasonable expectations that the proceedings will be held according to law, it renders for naught all his enormous effort to educate himself about the Bankruptcy Code, procedural rules, and case law as well as the time and money that he spends whenever he travels all the way to Rochester to appear in person in his court. By unfairly surprising him with his trump card of "local practice", Judge Ninfo has created an untenable situation of legal uncertainty and arbitrariness. That is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice of the law given in advance and opportunity to be heard without bias or prejudice, not tidbits about "local practice" that one must ferret out on a hit and miss basis and rely on at one's own risk.

21. That risk is all the more real and constant because Judge Ninfo's bias and prejudice lead him to break faith even with his own statement of that "local practice", whether stated orally or in a written order.

B. Judge Ninfo said in open court that he would issue Dr. Cordero's written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero's instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity

22. On July 9, 2004, Dr. Cordero submitted to Judge Ninfo a Statement analyzing the DeLanos'

bankruptcy petition and other few documents, which they belatedly produced upon request of Trustee Reiber after Dr. Cordero's repeated demands under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that the Trustee request them. The statement showed, among other things, how the DeLanos had engaged in bankruptcy fraud and how Trustee Reiber had failed to review the initial petition, to request documents for months, to subpoena documents when the DeLanos would not produce any, and how the Trustee had instead moved to dismiss the case due to the DeLanos' "unreasonable delay" in producing documents. Included in that Statement Opposing the Motion to Dismiss was Dr. Cordero's request for an order for the production of a specific list of documents.

23. At the hearing on July 19, 2004, of the Trustee's motion to dismiss, Dr. Cordero asked Judge Ninfo to grant his request for the order described in his July 9 Statement. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo decided that Dr. Cordero could do so and gave him his fax number to make it possible for him to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away.
24. Dr. Cordero reformatted into a proposed order the same text of the requested order, with the changes necessary to take into account what had occurred at the hearing, and faxed it to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was incorrect; he was then given the correct one.
25. But Judge Ninfo did not issue it. Instead, he gave precedence to the untimely objections of a local party, the DeLanos' attorney, Christopher Werner, Esq. In a letter addressed to Judge Ninfo delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." That was it. But that was enough for the Judge to take the hint. Att. Werner's letter was docketed immediately and made available through PACER. By contrast, Judge Ninfo not only failed to issue the proposed order; but he also did not even have it docketed forthwith, whereby he violated FRBkrP Rule 7005 and FRCivP Rule 5(e) and showed bias toward Att. Werner and the DeLanos.
26. In so doing, Judge Ninfo disregarded Dr. Cordero's statement in his letter accompanying the

proposed order that Att. Werner had had ten days since Dr. Cordero faxed his July 9 Statement to him to learn the breath of his requested order, yet he had failed to object to the Judge's decision at the hearing that Dr. Cordero should convert it into a proposed order and fax it to him. If, as the Attorney stated at the July 19 hearing, he has been in this business for 28 years, then he had to know his obligation to raise timely objections, particularly since:

a) Att. Werner and the Judge knew what documents had been requested, many for months since Dr. Cordero's written Objections of March 4, 2004!;
b) the Judge agreed to its production; and
c) FRCivP Rule 26(b)(1) favors broad discovery (made applicable by FRBkrP Rule 7026).

27. It was simply too late for Att. Werner to object for the first time after the hearing was over; cf. FRCivP Rule 26(a)(1)(E) last paragraph, providing for disclosure "unless the party objects during the conference"; and FRCivP Rule 46, requiring exceptions to be made "at the time the ruling or order of the court is made or sought". Att. Werner's objection was untimely and constituted an unfair surprise. Dr Cordero protested. To no avail. Judge Ninfo, showing bias once more, did not even acknowledge Dr. Cordero's objection.

28. Nor did Judge Ninfo issue the faxed proposed order as agreed at the July 19 hearing, or for that matter any production order at all. Yet, by July 21 PACER[1] already contained the minutes of that hearing, which included the statement in capital letters:

> Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

29. So Judge Ninfo made Dr. Cordero waste his time and effort once more (cf. §III of Dr. Cordero's motion of August 14, 2004, for docketing and other relief, herein incorporated by reference) in preparing and submitting a document that the Judge knew he was not going to act upon at all. Did he ask for it for leverage? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word cannot justifiably be relied on.

30. Even as late as July 26, the Judge had not caused Dr. Cordero's faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order to be docketed.

[1] PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers. Here http://www.nywb.uscourts.gov/>PACER.

31. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

07/20/2004	53	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)

When Dr. Cordero clicked on the hyperlink 53, only the letter –page 1 of 5- downloaded as an Adobe PDF (Portable Document Format), but not the order! Why?!

32. By contrast, the entry for Att. Werner's objection of July 19, 2004, to Dr. Cordero's claim as creditor of the DeLano Debtors read thus.

07/22/2004	51	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)

33. When Dr. Cordero clicked on the hyperlinks 51>2 an order proposed by Att. Werner to disallow Dr. Cordero's claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo's bias (cf. §II of Dr. Cordero's motion of August 14, 2004, for other instances of a pattern of docket manipulation).

1. **Judge Ninfo broke faith with his word that he would issue Dr. Cordero's proposed order for document production by the DeLanos just because their attorney, despite his untimeliness,** "expressed concerns"**, thereby protecting the DeLanos from discovery that could show their bankruptcy fraud**

34. As late as July 27, there had been no docketing of Dr. Cordero's letter of July 21 to Judge Ninfo protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him.

35. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004, rather than Dr. Cordero's proposed order that he had agreed to enter and the minutes of the July 19 hearing recorded its intended entry.

36. In his order, Judge Ninfo stated what it took to deny in effect Dr. Cordero's proposed order:

> WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached;

37. This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of Judge Ninfo's awareness that due to untimeliness, Att. Werner could not have raised valid objections for the first time after the hearing was over. Nevertheless, it shows how little it took for the Judge to break faith with his word given in open court: "concerns" expressed untimely by the debtors' attorney. On such "concerns", the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud, such as:
    a) the bank account and debit card statements that could show the whereabouts of the DeLanos' declared earnings of $291,470 in only the three fiscal years 2001-2003, while they declared having:
    b) only $535 in cash or in bank accounts…with Mr. DeLano's bank, M&T, which may have issued a bank officer like him with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare possessing any such M&T Bank card, not to mention 'sticking' his employer with a bankruptcy debt, as they did other credit card issuers –most likely those that Veteran Banking Industry Mr. DeLano would know have a higher threshold of loss to trigger their participation in bankruptcy proceedings- on whose 18 credit cards they owe a whopping $98,092;
    c) two cars worth together merely $6,500;
    d) equity in their home of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;
    e) household goods worth only $2,910…that's all they have accumulated throughout their work lives!, despite the fact that they have earned over a hundred times that amount in only the last three years…unbelievable! Where did the money go or is?
38. But that common sense question Judge Ninfo would not ask, much less let Dr. Cordero find the answer to, never mind that the Judge has a duty under 11 U.S.C. §1325(a)(3) to ascertain whether "the [debtor's debt repayment] plan has been proposed in good faith and not by means forbidden by law". In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

> The purpose of the examination [at the meeting of creditors] is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

39. Far from pursuing this statutory line of inquiry, Judge Ninfo entered his July 26 Order, which was an inexcusably watered down version of Dr. Cordero's proposed order that he had agreed to enter. Despite the evidence of concealment of assets by the DeLanos, the Judge failed to require them to produce bank or *debit* account statements; documents concerning their undated "loan" of $10,000 to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the mobile home admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents?
40. Consequently, Judge Ninfo's failure even to do his job under the Code, in addition to failing to keep his word, provides the foundation for the question whether he in effect denied Dr. Cordero's proposed order for document production by the DeLanos merely because of the undefined "concerns" expressed by Att. Werner or because of his own concerns and, if the latter, what are his concerns. Is the Judge protecting them because they are local parties and in general he has developed relationships with local parties that make him biased toward them, or because in particular Mr. DeLano is a 32-year veteran of the lending industry and knows too much about how abusive bankruptcies, even those to avoid repayment of loans to his bank, are handled? There is solid basis for the latter part of this question (§C, infra).

2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in *Pfuntner v. Gordon et al.* he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered

41. Still by Friday, August 6, neither Dr. Cordero's proposed order of July 19 nor his letter of July 21 had been docketed. On that day, Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
42. On Monday, August 9, Mr. Stickle informed Dr. Cordero that upon asking Judge Ninfo and his Assistant, Ms. Andrea Siderakis, he had been told that Dr. Cordero's July 21 fax never arrived.
43. That explanation for its not being docketed was definitely unacceptable: The fax went through on July 22 and a copy sent to the Judge of Dr. Cordero's telephone bill showed that he did fax

the letters and proposed order on July 20 and 22 to (585) 613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: Judge Ninfo's chambers.

44. This was by no means the first time that Judge Ninfo sprung on Dr. Cordero such a surprise: In the *Pfuntner v. Gordon et al.*, docket no. 02-2230, in which both Mr. DeLano and Dr. Cordero are parties, the Judge dismissed Dr. Cordero's claims against Chapter 7 Trustee Kenneth Gordon, a local that so very frequently appears in his court (cf. ¶14, supra). Dr. Cordero timely mailed a notice of appeal on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that Dr. Cordero's motion had been timely filed on January 29, Judge Ninfo surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! By such expedient allegation contrary to fact, Judge Ninfo denied Dr. Cordero's motion. Moreover, the Judge would not even look into how that discrepancy could have arisen between his alleged date of January 30 for the filing and Trustee Gordon's admission against legal interest that the filing occurred on January 29. Thereby the Judge insured that Dr. Cordero's appeal against his dismissal was doomed. (cf. §I.A.1. of Dr. Cordero's motion of August 8, 2003, for Judge Ninfo to recuse himself from the *Pfuntner* case, which is herein incorporated by reference).

45. The trust that a party must have in the integrity of a judge and that a judge must earn by his irreproachable conduct was thus shattered; subsequent events have only replaced it with distrust. Under these circumstances, it is not just the appearance of lack of impartiality that warrants the recusal of Judge Ninfo, but also of lack of integrity. Alas, there is even further factual basis for such assertion.

C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan

46. The DeLanos commenced this case by their bankruptcy petition of January 26, 2004. Had they wanted to object to Dr. Cordero's claim, they could and should have done so at that time. The

reasons for this are that:

a) It was they who in Schedule F therein named Dr. Cordero among their creditors;
b) Mr. DeLano knew the nature and basis of Dr. Cordero's claim against him since he was served with his complaint of November 21, 2002, in *Pfuntner v. Gordon et al.*;
c) Att. Werner signed that petition and, therefore, also knew of Dr. Cordero's claim against the DeLanos;
d) both the DeLanos and Att. Werner knew that Dr. Cordero was determined to pursue his claim as stated in his Objection of March 4, 2004, to the Confirmation of the DeLanos' Plan of Debt Repayment, so determined that he traveled all the way from New York City, and in fact was the only creditor, to attend the meeting of creditors on March 8, 2004, at which, interestingly enough, Mr. DeLano was accompanied also by his attorney in the *Pfuntner* case, Michael Beyma, Esq., of Underberg & Kessler, LLP;
e) Att. Werner objected to Dr. Cordero's status as creditor in his statement to Judge Ninfo of April 16, 2004, which Dr. Cordero refuted in his timely reply of April 25, after which Att. Werner dropped the issue and went on for months treating Dr. Cordero as a creditor; and
f) Att. Werner continued to treat Dr. Cordero as a creditor for more than two months even after he filed his proof of claim on May 15, 2004.

47. But then only after Dr. Cordero faxed to Att. Werner his Statement of July 9, 2004 –in which he opposed Trustee Reiber's motion to dismiss and presented the evidence pointing to the DeLanos' having engaged in bankruptcy fraud, particularly concealment of assets- and after the hearing on July 19, 2004, did the DeLanos and Att. Werner come up with the idea of moving to disallow Dr. Cordero's claim.

48. It should be noted that for months Dr. Cordero had repeatedly requested under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate the DeLanos and require them to produce specific types of documents. His requests were met only with Trustee Reiber's avoidance of his duty to investigate, his ineffectiveness in obtaining documents when, at Dr. Cordero's insistence, he appeared to request them, and the DeLanos' effort to produce as few documents and as late as possible. Hence, in his July 9 Statement Dr. Cordero presented Judge Ninfo for the first time with a requested order for specific documents. How the Judge dealt with that request has been described above (para. 23, supra). In addition, how he dealt in his Orders of August 30 and November 10, 2004, with the DeLanos' motion to disallow is no less

revealing of his bias and disregard for the law, the rules, and the facts.

49. To begin with, the DeLanos' motion to disallow was untimely and barred by laches, coming as it did almost two years after Mr. DeLano had known of Dr. Cordero's claim and six months after they had acknowledged in their petition his status as a creditor and during which they dealt with him as a creditor. Mr. DeLano, with his career long experience as a bank *loan* officer, had reason to expect that during that time Dr. Cordero, a non-local, non-institutional, and pro se creditor, would be worn down, for he Mr. DeLano knew that even institutional lenders simply stay away from the overwhelming majority of bankruptcies and write off what is owed them. However, Dr. Cordero not only continued pursuing his claim, but also requesting documents that could show the DeLanos' bankruptcy fraud and even pointed to the evidence of their concealment of assets. Then they came up with the subterfuge of moving to disallow Dr. Cordero's claim. And Judge Ninfo played along with them!

50. Thus, the Judge stated in his August 30 Order, without providing any reasons in accordance with law or in light of the facts, as judges are supposed to do, but in another "local practice" this-is-so-because-I-say-so fiat that:

> …the Claim Objection [the motion to disallow] was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection;

51. Through such fiat, without any citation of any authority, Judge Ninfo disregarded the Bankruptcy Code, which considers untimeliness such a grave fault that it provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. There can be no doubt that it is prejudicial to Dr. Cordero to have been treated as a creditor by the DeLanos for six months, during which he spent a lot of effort, time, and money researching and writing numerous papers, preparing for hearings, and even traveling to Rochester, only to be challenged, after he presented evidence of their bankruptcy fraud, on the threshold question whether he is a creditor at all.

52. Then Judge Ninfo severed Dr. Cordero's claim against Mr. DeLano from the *Pfuntner* case and required Dr. Cordero to take discovery of Mr. DeLano to prove his claim, the one that the DeLanos themselves had taken the initiative to acknowledge in their petition. In so doing, he severed that claim from the *Pfuntner* case to try it out of the context of all the other parties and issues in that case, to the benefit of Mr. DeLano and the detriment of Dr. Cordero. Thereby he

disregarded his own order entered at the hearing on October 16, 2003, where he suspended all proceedings in the *Pfuntner* case until Dr. Cordero had appealed his decisions all the way to the Court of Appeals for the Second Circuit, where they had been since May 2, 2003, docket no. 03-5023, and from there to the Supreme Court. (Cf. §I of Dr. Cordero's motion of September 9, 2004, in the Court of Appeals, hereby incorporated by reference.) Once more the Judge had sprung another surprise on Dr. Cordero, frustrating his reasonable expectations, and further proving that the Judge's word cannot be relied on.

53. Likewise, in asking Dr. Cordero to prove his claim, the Judge disregarded FRBkrP Rule 3001(f) and the presumption of validity that had attached thereunder since May 15, 2004, to Dr. Cordero's properly filed claim (id., §II).

54. Moreover, Judge Ninfo suspended every other aspect of the case, to the detriment of all the other creditors, and without citing any authority or giving any reason for taking a step that so unnecessarily redounds to the detriment of all the other 20 creditors, whose interest it is to have the case move along so that they can start receiving payment under the plan or see it denied and be free to collect from the DeLanos. Thereby, however, the Judge protected the DeLanos by not having to deal with the issue under 11 U.S.C. §1325(a)(3) whether "the plan has been proposed in good faith and not by means forbidden by law" (cf. ¶38, supra). Moreover, by so doing, he provided the DeLanos a subterfuge for not providing to Dr. Cordero the documents that could prove their bankruptcy fraud, so that they claimed in the Statement by Att. Werner of November 9, 2004, "All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtor's finances and have nothing to do with the matter at hand, which is Cordero's claim", targeted by the DeLanos' motion to disallow. Perfect pitcher-catcher coordination, but severely defective by its disregard of the rules (§C.2, infra).

1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity

55. To comply with the Order to prove his claim, Dr. Cordero requested the DeLanos on September 29, to produce a specific list of documents very similar to those on his proposed request of July 19, as well as other documents relating specifically to his claim against Mr. DeLano stemming from the *Pfuntner* case.

56. In his Response of October 28, 2004, by Att. Werner, Mr. DeLano declined discovery of every item requested by Dr. Cordero either as irrelevant or not in the DeLanos' possession. However, that statement is irreconcilable with the facts and the legal obligations of the DeLanos.

57. Let's begin with the pretense that the DeLanos did not have in their possessions the requested documents. At of Dr. Cordero's instigation, Trustee Reiber requested on April 20 and May 18, 2004, that the DeLanos produce documents to support their petition. Although his request was unjustifiably insufficient in its scope given the claims and statements that the DeLanos had made in their petition, the Trustee requested the statements for the last three years of each of 8 of the 18 credit cards that they had listed in Schedule F. Even so, what the DeLanos produced on June 14, 2004, was a single statement for each of those 8 cards and they were between 8 and 11 months old! That fell indisputably short of what they had been requested to produce and showed their effort to avoid producing any documents at all, so much so that the Trustee moved to dismiss their case for "unreasonable delay". Nevertheless, by producing them the DeLanos also showed that they did keep such statements for many months and presumably for all their cards, for it is implausible that they just happened to have one single statement of each of the cards that happened to be included in the request.

58. Dr. Cordero brought to Trustee Reiber's attention the gross insufficiency of what they had produced. Eventually, on July 28, 2004, the DeLanos produced some of the statements that Att. Werner had subpoenaed from issuers of those credit cards. Among them was the set produced by Discover Card for Mr. DeLano's account 6011 0020 4000 6645. It included the statements since April 16, 2001, until the one with the payment due date of May 29, 2004. All of them were addressed to him at the DeLanos' home on 1262 Shoecraft Road, Webster, NY 14580-8954. This shows that as late as May 2004, months after filing their petition, the DeLanos kept receiving monthly credit card statements. It is also all but certain that they kept receiving the monthly statements for the other credit card that they had. The evidence for this is presented here:

Table: Credit bureau reports for the DeLanos showing credit cards with activity well into 2004

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	**i: July 2004**

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
						p: January 2004
2.			D	Capital One Bank	4862 3621 5719*	**i: July 2004** **p: February 2004**
3.			D	Cbusa sears	3480 0743 0*	**i: July 2004**
4.			D	Genesee Regional Bank		**i: July 2004** **p: June 2004**
5.			D	MBNA Amer	4313 0229 9975*	i: May 2004
6.			D	Wells Fargo Financial	674-1772	**i: February 2004**
7.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	p: February 2004
8.	Experian	July 26, 04	D	Bank of America	4024 0807 6136…	b: May 2004
9.			D	Bank of Ohio	4266 86 99 5018	**p: May 2004: $197**
10			D	Bk I TX	4712 0207 0151…	**p: May 2004: $205**
11			D	Capital One Auto Finance	6206 2156 8765 2	b: June 2004
12			D	Fleet M/C	5487 8900 2018…	**p: May 2004: $172**
13			D	HSBC Bank USA	5215 3170 0105…	**p: February 04: $160**
14			D	MBGA/JC Penney	80246…	**p: *July* 2004: $57**
15			D	MBNA America Bank NA	7499 0999 89…	b: May 2004
16			D	MBNA America Bank NA	5329 0319 9996…	b: May 2004
17			D	W F Finance	1070 9031 772…	b: June 2004
18			D	First Premier Bank	4610 0780 0310…	**p: *July* 2004: $48**
19			D	Kaufmanns	R25243	b: April 2004
20			D	The Bon Ton	8601…	b: June 2004
21	Experian	July 26, 04	M	Capital One Bank	4862 3622 6671…	b: February 2004
22			M	Fleet M/C	5487 8900 2018…	**p: May 2004: $172**
23			M	MBGA/JC Penney	80246…	**p: *July* 2004: $57**
24			M	MBNA America Bank NA	4313 0229 9975…	b: May 2004
25			M	Kaufmanns	R25243	b: April 2004
26			M	The Bon Ton	8601…	b: June 2004
27	TransUnion	July 26, 04	D	Norwest Finance	1070 9031 7720 544	u: June 2004
28			D	First USA Bank.	4712 0207 0151 3292	u: April 2004
29			D	First USA Bank	4266 8699 5018 4134	u: April 2004
30			D	Summit Acceptance Corp	6206 2156 8765 2100 1	u: June 2004
31			D	Citi Cards	3480 0743 0593 0	u: July 2004

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
32			D	MBNA America	4313 0228 5801 9530	u: April 2004
33	TransUnion	July 26, 04	M	Discover Financial Svc	6011 0020 4000 6645	u: June 2004
34			M	Chase NA	4102 0082 4002 1537	u: May 2004
35			M	Citi Cards	3480 0743 0593 0	u: July 2004
36			M	JC Penney/MBGA	1069 9076 5	**p: July 2004**

59. These 36 accounts are by no means all those that the DeLanos have, just those for which those particular credit bureau reports as of July of last year provide a date under any of the categories of the last column of the table above and for which that date is in 2004. Nevertheless, they are enough to show that only an utterly biased person toward the DeLanos could even imagine that they did not receive any credit card statements so that they could no produce them to comply with the requests for those statements. They had no shortage of such requests: of April 20 and May 18 by Trustee Reiber; of August 14, September 29, and November 4 by Dr. Cordero; and the Order of July 26 of Judge Ninfo. Only a person utterly biased could disregard the fact that the DeLanos not only were billed, but also paid credit card charges as late as July 2004, the month when they requested those credit bureau reports. In fact, at the meeting of creditors held on February 1, 2005, at Trustee Reiber's office, Mr. DeLano admitted for the record that he currently uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156.
60. Likewise, only a person utterly biased toward the DeLanos could assume that they no longer have any checking or savings accounts despite their reference in Schedule B to their having them with M&T Bank, where Mr. DeLano still works. Therefore, they must have received monthly statements of those accounts, which they could also have produced.
61. Consequently, they must be presumed to have concealed those statements. But if they did not have them in their possession, that would only mean that they systematically destroyed them. In so doing, they could have followed the example of their advisor, Att. Werner. He stated for the record at their examination that he destroyed documents that the DeLanos had provided him for the preparation of the petition and that he engages in that practice routinely. That constitutes a flagrant violation of 18 U.S.C. §1519, found in Chapter 73-Obstruction of Justice and providing as follows:

> **18 U.S.C. §1519**. Whoever knowingly alters, destroys, mutilates, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of …any case filed under title 11, or in relation to or contemplation of any such… case, shall be fined under this title, imprisoned not more than 20 years, or both.

62. In the same vein, the few credit card statements that they produced, and more so the credit bureau reports, show that the DeLanos were systematically engaged in a skip and pay pattern for juggling their astonishingly high number of credit cards. This follows from the Equifax reports of July 23, 2004, which show that the DeLanos failed to make the minimum monthly payment a staggering 279 times!

63. It follows that Att. Werner's assertion in that April 16 Statement to the Court that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" was plainly untrue. If Att. Werner had conducted even a cursory inquiry, let alone a reasonable one under the suspicious circumstances of a bank loan officer that goes bankrupt owing $98,092 on unsecured credit cards, he would have readily realized that such a statement was untrue. Therefore, Att. Werner violated FRBkrP Rule 9011(b). As to the DeLanos, to the extent that they gave him that information, they intentionally misled him, the Court, and all the creditors and parties in interest.

64. Consequently, the DeLanos' **1)** scores of credit card accounts; **2)** their charging since "1990 and prior credit card purchase" (Schedule F) tens of thousands of dollars for "living expenses" (Att. Werner's written statement to the Court dated April 16, 2004) and for the two-year educational expenses of their two children at a low in-state tuition, near-home community college; **3)** their systematic failure to make even the minimum payments, **4)** their expert knowledge about the lending industry's handling of delinquencies and bankruptcies; and **5)** their concealment of account statements that they indisputably received and were legally bound to keep, show that the DeLanos made the life-style choice to live it up on credit cards without ever intending to pay their unsecured issuers while concealing the whereabouts of the $291,470 that they earned in just the 2001-03 fiscal years according to their petition and their 1040 IRS forms.

65. Consequently, only a disingenuous person could pretend that the DeLanos did not produce the requested documents because they did not have them in their possession. Moreover, only a person utterly biased toward them could disregard these facts about the conduct of the DeLanos for more than 15 years, since '1990 and prior years', and still refer to them, as Judge Ninfo did

in his August 30 Order, as "honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case". How impartial can he appear to a reasonable observer?

2. **Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!**

66. Confirming this favorable prejudgment of the DeLanos before they had ever taken the stand or even had their petition formally submitted to him by Trustee Reiber, Judge Ninfo stated in his Order of November 10, 2004, that he "in all respects denied…the Cordero Discovery Motion" of November 4, "because DeLano indicated in the Response [to Dr. Cordero's discovery request of September 29] that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding". This the Judge stated although Mr. DeLano did not provide a single document requested by Dr. Cordero! He just took Mr. DeLano's self-serving assertion at face value and purely and simply disregarded the facts and common sense.

67. Judge Ninfo made that decision by disregarding once more the rules. He did not even mention, let alone discuss, as judges do who apply the law, Dr. Cordero's argument in his November 4 motion about the broad scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), providing that "Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or **defense** of any party" (emphasis added). Based thereon, Dr. Cordero argued that he was entitled to defend against the DeLanos' untimely motion to disallow his claim, which led to Judge Ninfo's August 30 Order requiring him to take discovery from Mr. DeLano. His defense is dependent precisely on taking discovery that will allow him to establish, among other things, that the DeLanos' motion is a desperate attempt in contravention of FRBkrP 9011(b) to eliminate him from their case because he is the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of documents that can show whether they submitted their petition in bad faith in violation of 11 U.S.C. §1325(a)(3) and are engaged in bankruptcy fraud, particularly concealment of assets.

68. Had Judge Ninfo had any regard for the rules, he would not have uncritically sustained Att.

Werner's wholesale denial in his October 28 Response to Dr. Cordero's discovery request on the pretense that "all of such demands are not relevant to the claim of Richard Cordero against the Debtors." Instead, he would have complied, as judges respectful of the legality do, with FRCivP Rule 26(b)(1), which provides that:

> …Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

69. Moreover, had Judge Ninfo not been so blind by his bias, he would have put two and two together to conclude that the DeLanos' avoidance for months of their duty to comply under 11 U.S.C. §521(3) and (4) with Trustee Reiber's document production requests to the point that the Trustee moved to dismiss for "unreasonable delay" constituted reasonable evidence that in refusing to provide even one single document requested by Dr. Cordero Mr. DeLano was engaging in the same conduct aimed at the same objective, namely, concealing documents to prevent the discovery of his bankruptcy fraud.

70. By Judge Ninfo forcing Dr. Cordero to take discovery of Mr. DeLano to prove his claim against Mr. DeLano without requiring the latter to overcome the presumption of validity attached to a properly filed claim under FRBkrP Rule 3001(f), only to deny him every single document requested, the Judge has made sure that Dr. Cordero is deprived of the means of examining effectively Mr. DeLano at the upcoming evidentiary hearing. Judge Ninfo has set up Dr. Cordero to fail at a hearing that will be a sham!

3. Judge Ninfo has protected from Dr. Cordero's discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero's application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge's bias or because a 32-year veteran bank loan officer knows too much not to be protected

71. Mr. DeLano was the M&T Bank Officer who lent money for Mr. David Palmer to run his moving and storage company Premier Van Lines, which went bankrupt and gave rise to Pfuntner v. Gordon et al., in which both Mr. DeLano and Dr. Cordero are parties. Mr. Palmer too is a party in that case. He was supposed to store Dr. Cordero's property, but in fact abandoned it while he kept taking in his storage and insurance fees. Dr. Cordero served him with a summons and complaint, which Mr. Palmer never answered. Consequently, Dr. Cordero

served him with an application dated December 26, 2002, for default judgment for a sum certain under FRCivP Rule 55, made applicable by FRBkrP Rule 7055, and applied to Judge Ninfo for the entry of such judgment.

72. However, even after Mr. Palmer was defaulted by the Clerk of Court Paul Warren on February 4, 2003, the Judge would not enter such judgment. Instead, flatly contradicting the requirements of Rule 55, Judge Ninfo imposed on Dr. Cordero the obligation to conduct an "inquest" to establish loss or damage of his property. Dr. Cordero participated in such an "inquest" on May 19, 2003. At the hearing on May 21, it was established that there had been loss or damage of Dr. Cordero's property to the point that Judge Ninfo himself asked Dr. Cordero to resubmit his application for default judgment. Dr. Cordero did resubmit the same application on June 7. Nevertheless, at the hearing on June 25, 2003, Judge Ninfo would not enter it! He denied it by raising for the first time the pretext that Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back in December 2002 and that the Judge had had six months to examine! (Cf. §§I.B. and C. of Dr. Cordero's motion of August 8, 2003.)

73. Why would Judge Ninfo ask him to resubmit the application, make him spend his effort, time, and money to do so while getting his hopes high if the Judge was going to deny it on the basis of an element that he had known for six months? Why did Judge Ninfo feel the need to become the advocate of defaulted Mr. Palmer and keep him away from his court rather than protect Dr. Cordero, whose property Mr. Palmer had lost or damaged through negligence, recklessness, and fraud? These questions are particularly pertinent because it was Mr. Palmer who had invoked the protection of the law by applying for voluntary bankruptcy on March 5, 2001, and thereby submitted himself to the jurisdiction of Judge Ninfo, under which he still was. Why did the Judge not hold Mr. Palmer to his obligation under the law to answer a summons or let him contest for himself a default judgment, as he could do under FRCivP Rules 55(c) and 60(b)?

74. Therefore, how inconsistent for Judge Ninfo to state in his Order of August 30, 2004, that "…the Court is not aware of any evidence whatsoever, produced either in the *Premier* A[dversary]P[roceeding] or in the *DeLano* Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage…". How can the Judge cast doubt on the fact of such loss or damage since he so much acknowledged that there had been such that he asked Dr. Cordero to resubmit the application for default judgment?…only to deny it again! What this shows is that Judge Ninfo

does not know what he has done and only knows that he will do and say anything so long as it is to protect the local parties and injure Dr. Cordero. (Cf. §II of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals.)

75. This background provides the foundation for asking how much Mr. DeLano, as a party in the *Pfuntner* case and the lender to Mr. Palmer, knows that could incriminate others in bankruptcy fraud. In turn, this begs the question in how many other cases during his 32-year long career as a bank officer Mr. DeLano has been involved one way or another so that now he knows too much not to be protected. The same motives for Judge Ninfo to protect Mr. Palmer from Dr. Cordero's application for default judgment may explain why he is now protecting Mr. DeLano from Dr. Cordero's effort to obtain the documents showing his involvement in bankruptcy fraud. None of those motives, however, can legally justify Judge Ninfo's bias and prejudice against Dr. Cordero.

III. The totality of circumstances assessed by a reasonable person gives rise to the appearance of bias and prejudice on the part of Judge Ninfo that requires his recusal

76. Every assertion that Dr. Cordero has made in this motion or in his other papers referred to here has been supported either by citations and discussion of the applicable law and rules or facts established by other documents in the dockets of the cases under consideration (Table of References, infra). Moreover, in our system of justice a person can lose his property, his freedom, and even his life on the basis of circumstantial evidence. Hence, the approach taken by fair and impartial persons, whether they be judges, jurors, or observers, when examining evidence is, not to chip away at it by discarding its elements one by one out of context, but rather to take into consideration "the totality of circumstances" and analyze it from the point of view of the reasonable persons that the law requires people to be. Such persons would proceed on the sound principle that two similar events can be explained away as a coincidence, but three form a pattern.

77. In the *DeLano* case, just as in the *Pfuntner* case, Judge Ninfo, without citing a single law or rule, let alone discussing any, but rather disregarding their provisions as well as the surrounding facts and instead engaging in his very own "local practice" (§§9 et seq., supra), has made a series of decisions that so consistently benefit the local parties and injure Non-local Pro se Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias. This is the antithesis of process in accordance with law and constitutes a denial of due process (cf. §III of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals).

78. In light thereof, would it appear to a reasonable person informed of all the surrounding facts and circumstances of these cases that in the *DeLano* case generally, and at the upcoming evidentiary hearing in particular, Mr. DeLano or Dr. Cordero could say anything that would cause Judge Ninfo to reach any other but the forgone conclusion that Dr. Cordero has no claim against Mr. DeLano, that his claim should be disallowed, and that he has no standing to oppose the confirmation of the DeLanos' plan?…and good riddance! If so, the appearance of partiality has been reasonably questioned and Judge Ninfo has a statutory duty to recuse himself from the *DeLano* case. (Cf. §II of Dr. Cordero's motion of August 8, 2003.)

IV. Relief Requested

79. Therefore, Dr. Cordero respectfully requests that:

1) in the interest of justice the *DeLano* case and the *Pfuntner* case, and at any rate the former, be removed under 28 U.S.C. §1412 to another district where a court unrelated to any of the parties or Judge Ninfo can give rise to the expectation that it will afford all parties a fair and impartial process, as presumably will do the U.S. court for the Northern District of New York in Albany (cf. §III of Dr. Cordero's motion of August 8, 2003);
2) a report be made under 18 U.S.C. §3057(a) of these cases to U.S. Attorney General Alberto Gonzales for investigation into bankruptcy fraud; into concealment of assets and other bankruptcy offenses under 18 U.S.C. §152 et seq.; and of the trustees pursuant to 28 U.S.C. §526(a)(1); and that it be recommended that the investigation be conducted by neither the U.S. Attorney's Office nor the FBI Office in Rochester or Buffalo, NY, but rather by such Offices whose personnel is not related to or familiar with any party in these cases, as presumably are the Offices in Washington, D.C., and Chicago;
3) Judge Ninfo recuse himself from both cases, and at any rate from the *DeLano* case.

Dr. Richard Cordero

February 17, 2005

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

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated February 17, 2004, for Judge John C. Ninfo, II, WBNY, to recuse himself:

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TABLE OF REFERENCES

papers and documents referred to in the motion of February 17, 2005 for Judge John C. Ninfo, II, WBNY, to recuse himself from *DeLano*, 04-20280, & *Pfuntner v. Trustee Gordon et al.*, 02-2230

by

Dr. Richard Cordero

1. [*]Dr. **Cordero**'s **motion** of **August 8**, 2003, for J. **Ninfo** to transfer *Pfuntner* to the U.S. District Court in Albany, NDNY, **and recuse** himself due to bias [D:385[•]]
2. *Dr. **Cordero**'s motion of **November 3**, 2003, **in** the Court of Appeals for the Second Circuit for leave to file **updating** supplement of **evidence of bias** in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury [D:425]
3. **Notice** of Chapter 13 Bankruptcy Case, **Meeting of Creditors**, Deadlines [D:22]
4. Voluntary **Petition**, no. 04-20280, of **January 26**, 2004, under Ch. 13 of the Bankruptcy Code, with Schedules, of David **DeLano** and Mary Ann DeLano [D:27]
5. The DeLanos' Chapter 13 **Debt Repayment Plan** of January 26, 2004 [D:59]
6. Dr. **Cordero**'s **Objections** of **March 4**, 2004, to the **confirmation** of the DeLanos' Chapter 13 debt repayment **plan** [D:63]
7. **"Debtors' statement** of **April 16**, 2004, in opposition to Cordero objection [sic] to claim of exemptions", submitted and filed in Bankruptcy Court **by Att. Werner** [D:118]
8. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee **Reiber's** motion **to dismiss** the DeLano petition and containing in the relief the text of a requested order [D:193]
9. Dr. **Cordero**'s letter of **July 19**, 2004, faxed **to** Judge **Ninfo** together with his: [D:207]
    10. **Proposed order** of **July 19**, 2004, for **production of documents** by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's July 9 Statement to Judge Ninfo [D:208]
11. Att. **Werner**'s **notice** of hearing and order of **July 19**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it [D:218]
12. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, **objecting** to Dr. Cordero's proposed order for **document production** [D:211]

[*] Incorporated by reference.

[•] **D:**=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY. These items as well as the transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005, are in the PDF files in the D Add Pst folder on the accompanying CD.

13. Att. **Werner**'s letter of **July 20**, 2004, **to** Dr. **Cordero** accompanying the following document: [D:212]

    14. Dr. **Cordero**'s proposed **order** of **July 19**, 2004, for **production of documents**, bearing Att. Werner's scribbles and cross-outs [D:214]

15. Judge **Ninfo**'s **order** of **July 26**, 2004, providing for the production of only some documents but **not issuing Dr. Cordero's proposed order** because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" [D:220]

16. *Dr. **Cordero**'s **motion** of **August 14**, 2004, for docketing and issue of proposed order, removal, referral, examination, and other relief, noticed for August 23 and 25, 2004 [D:231]

17. Judge **Ninfo'**s Interlocutory **Order** of **August 30**, 2004, requiring Dr. Cordero to take **discovery** of his claim against Debtor **DeLano** arising from the *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, **case on appeal** in the Court of Appeals for the Second Circuit in *In re Premier Van et al.*, no. 03-5023 [D:272]

18. *Dr. **Cordero**'s **motion** of **September 9**, 2004, in the Court of Appeals for the Second Circuit to **quash** the order of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to **sever a claim** from the **case on appeal** in the Court of Appeals *In re Premier Van Lines* docket no. 03-5023, to try it in the bankruptcy case *In re DeLano,* docket no. 04-20280 [D:440]

19. Dr. **Cordero**'s letter of **September 29**, 2004, **to** Att. **Werner** requesting **production of documents** pursuant to Judge Ninfo's August 30 order and without prejudice to Dr. Cordero's September 9 motion to quash it in the Court of Appeals for the Second Circuit [D:287]

20. Att. **Werner's** letter of **October 28**, 2004, **to** Dr. **Cordero** accompanying Mr. DeLano's Response to **discovery** demand of Richard Cordero-Objection to Claim of Richard Cordero, where discovery of every item requested is **denied** as not relevant and the item concerning Mr. Palmer is said not to be in Mr. DeLano's possession [D:313]

21. Dr. **Cordero's motion** of **November 4**, 2004, **to enforce** Judge Ninfo's Order of August 30, 2004, by ordering Mr. DeLano to produce the requested documents and declaring that the Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos [D:317]

22. Att. **Werner's statement** of **November 9**, 2004, to Judge Ninfo on behalf of the DeLanos' "opposition to Cordero [sic] motion regarding **discovery"** and requesting that it **be denied in all respects** [D:325]

23. Judge **Ninfo's Order** of **November 10**, 2004, **denying** in all respects Dr. Cordero's November 4 motion for discovery and a §341 examination of the DeLanos and holding its hearing, noticed for November 17, to be moot [D:327]

*Incorporated by reference.

Dr. Richard Cordero

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March 24, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re petition for review by the Judicial Conference

Dear Judge Winter,

Thank you for your letter of February 15 concerning my letters of last February 7 and January 8, and my petition of November 18, 2004, to the Judicial Conference for review under the Judicial Conduct and Disability Act. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue. I requested that you cause my petition to be forwarded to the Conference for it to determine the issue of jurisdiction and eventually the petition itself.

I have prepared a reply to your letter and for the reasons stated therein, I respectfully request that you formally submit it to the other members of the Committee as well as to the Judicial Conference.

sincerely,

Dr. Richard Cordero

JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

REPLY

to the Chairman of the Committee
to Review Circuit Council Conduct and Disability Orders
on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions for review to the Judicial Conference and on the need for the Conference to decide the issue of jurisdiction

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Dr. Richard Cordero, Pro se Petitioner, affirms under penalty of perjury the following:

1. On November 18, 2004, Dr. Richard Cordero filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §351 et seq., (hereinafter the Act) of two orders of the Judicial Circuit of the Second Circuit denying his petitions for review concerning two judicial misconduct complaints dismissed by the Circuit's chief judge.
2. By letter of December 9, 2004, the Assistant General Counsel of the Administrative Office, Robert P. Deyling, Esq., (Exhibits page 15=E-15, infra) informed Dr. Cordero that "no jurisdiction lies for further review by the Judicial Conference of the United States" and failed to forward the petition to the Conference.
3. Dr. Cordero contends that Mr. Deyling and the Administrative Office only render clerical work for the Conference and have no authority either under the Act or the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (hereinafter the Conference Rules [C:862]), to pass judgment on any issue, much less on the threshold issue of jurisdiction, and thereby prevent the Conference from even receiving a petition for review, let alone determining

by itself the issue of its jurisdiction to entertain the petition.

4. Hence, on January 8 and February 7, 2005, (E-4; E-13) Dr. Cordero wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee for the Review of Circuit Council Conduct and Disability Orders (hereinafter the Committee), to request that he declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it and to have his petition forwarded to the Conference for review. Judge Winter replied by letter dated February 15, 2005 (E-1)

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I. 28 U.S.C. §331 requires that "*all* petitions for review *shall* be reviewed by that committee [to review circuit orders]", so while its chairman can cause it to review a petition, he cannot prevent it or the Judicial Conference from engaging in such review, which should be undertaken by the Conference given the far reaching impact of a decision on the scope of its jurisdiction

5. In his letter Judge Winter stated that "Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules". However, Judge Winter failed to cite any Conference Rule or provision of law that gives either Mr. Deyling or the Administrative Office authority to pass judgment on any issue, much less on the threshold issue of jurisdiction. Therefore, his conclusory statement is insufficient to dispose of Dr. Cordero's contention that neither Mr. Deyling nor the Office is authorized under the Act or the Rules to do anything other than clerical work, such as receiving a petition and distributing it to the Conference, which is the only entity that can pass judgment on whether it has jurisdiction to review a petition. "A careful reading of the statute makes this very clear."
6. Thus, Conference Rule 9 states the limited scope of clerical work that either can perform:

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

7. In turn, 28 U.S.C. §331, 4th paragraph, provides as follows:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and ***all*** petitions for review ***shall*** be reviewed by that committee. (emphasis added)

8. This provision is authority for the proposition that the Committee has the legal obligation to act and do so with respect to "all petitions for review", such as Dr. Cordero's and not just such as in the judgment of the Administrative Office or a clerk thereof can be forwarded to the Conference; and *"all"* of them "shall be reviewed by that committee". This means that not even the chairman of that Committee, in this case Judge Winter, has the legal authority to decide in lieu of the whole

Committee to deny review.

9. In this case, however, it should be the Judicial Conference itself that undertakes such review. This is so because the issue of jurisdiction goes to the essence of its power to function in the context of the Act and because the argument made in Dr. Cordero's petition in favor of its jurisdiction is novel. The basis for calling it novel is that in the 25 years since the Act was adopted in 1980, the Conference has only issued 15 orders and Dr. Cordero read all of them after managing to have the Administrative Office send them to him. None of them contains an argument for jurisdiction based on an analysis of the Act. As an issue on first impression that requires the interpretation of the inner workings of the Act's provisions, as shown below, and that will have an impact far beyond this petition by affecting the availability of review under the Act of all other complainants, the scope of the Conference's jurisdiction should be determined by the whole Conference, not the Committee.
10. It is the Conference that has the necessary power to depart, if need be, from a narrow interpretation of its jurisdiction that has rendered the Act a useless mechanism for processing judicial misconduct complaints and eliminating the underlying causes for such complaints. This has frustrated Congress' purpose in enacting it and even led Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair a committee to study its misapplication. Therefore, for the Conference to decide this petition's arguments for its jurisdiction and eventually decide the petition will be a step toward correcting the profound, long-standing problem of the Act's evisceration as well as one consistent with the action taken to that end by the Conference's president and the top officer of the Judicial Branch. Under these circumstances, the Committee should defer to the Conference and the Conference should take the opportunity to deal in depth with the Act through this petition.

II. The petition to the Judicial Conference explicitly seeks review under §357(a), which is not excluded by action allegedly taken under §352(c) by the Council, although it never even pretended to have acted thereunder

11. Judge Winter stated in his letter that "your petition seeks review of a judicial council action taken under 28 U.S.C. §352(c)". That statement is inaccurate both as a matter of fact and in legal terms.
12. To begin with, Dr. Cordero's petition for review to the Conference explicitly states what basis of jurisdiction it invokes. Its first substantive section after the statement of the questions presented for review is this: "II. The Judicial Conference has jurisdiction over this appeal because the

complainant was "aggrieved" by the Judicial Council". The term "aggrieved" appears in §357(a), which reads thus:

> **28 U.S.C. §357. Review of orders and actions**
>
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

13. It is on the basis of §357(a) that Dr. Cordero invoked the Conference's jurisdiction to review his petition. By its own terms, that section is broad enough to encompass his petition because he was "aggrieved" by the Council when without any investigation it denied his two petitions for review of the dismissals without any investigation either by the acting chief judge of his two complaints, thereby leaving him to continue to suffer the misconduct of the complained-about judges.
14. Moreover and as a matter of fact, the Council did not even pretend to have denied the petition under §352(c). Anybody who is familiar with the way the Council systematically discards petitions for review, knows that it only issues a form that none of its members bothers to sign and that by hand of the circuit executive states that:

> Upon consideration thereof [of the chief judge's order dismissing the complaint and the complainant's petition for review]
> ORDERED that the petition for review is DENIED for the reasons stated in the order dated [and the date of the chief judge's order].

15. That is the stated basis on which the Judicial Council of the Second Circuit denied each of Dr. Cordero's two petitions (E-17; E-18) for review of the acting chief judge's orders of dismissal of June 8 and September 24, 2004, respectively. Since the acting chief judge dismissed each of the complaints with disregard for his obligations under §§351-353 with respect to those complaints and as part of a pattern of systematic dismissal of judicial misconduct complaints (see §IV of the petition), the Council only further "aggrieved" Dr. Cordero for having lent its support to such disregard for the Act.
16. By its own words, the Council could not have taken action under §352(c). Its own *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §351 et seq.* (hereinafter JC2nd Rules [C:75]), do not even mention §352(c). Neither the members of a review panel nor those of a whole council are afforded the opportunity or have the means of expressing whether they are taking action under §352(c), or for that matter any other provision, such as §354. Their options for action are these:

JC2nd Rule 8. Review by the Judicial Council of a Chief Judge's Order

…

(b) Mail ballot. Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) ***deny*** the petition for review, or (2) ***refer*** the petition to the full membership of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.

Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council ***member voting to place the petition on the agenda*** of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.

The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be **placed on the agenda** of a council meeting upon the **votes** of at least **two members** of the council; **otherwise**, the petition for review will be **denied**. (emphasis added)

17. Panel members have nothing more to do than to put a check mark in a denial or referral box. But if any of them or any other member of the council writes anything else, it is to explain why the council as a whole should consider the petition, rather than why it should deny it. Denial comes by default, due to the failure of any other judge to second a judge's initial vote for consideration. Furthermore, even if the whole council takes a decision, it does not have to state whether it was under §352(c) or §354. As a matter of fact, it does not even have to explain its decision in a memorandum:

JC2nd Rule 8. (f) Notice of Council Decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

A. Subsection 352(c) only states the prerequisite of being "aggrieved" for petitioning a council and the effect of a council's denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council's action

18. This is what subsection §352(c) provides:

> **§352(c) Review of orders of chief judge.** –A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

19. The first sentence of this subsection shows that if a complainant can be "aggrieved" by a chief judge's final order, then he can be equally "aggrieved" when a council denies his petition expressly on the basis of that very same order. That reason for being "aggrieved" falls within the very broad scope of the term, which the Act does not limit by reference either to the order's content or circumstances of issue.

20. No analysis of that sentence or the whole subsection, let alone a gloss over it, can possibly conclude that if a council denies a petition allegedly under §352(c), then the complainant cannot legally be "aggrieved" by its denial or that he cannot be so much so as to qualify within the purview of the very same term "aggrieved" under §357(a). A basic rule of construction provides that a word in a legal instrument has the same meaning everywhere it is used with no differentiating qualifier. Both §352(c) and §357(a) use the term the same way: 'An aggrieved complainant or judge'.

21. Not only that key term links those two provisions, but also the Act's structure and workings link §352(c) to §354. Indeed, the second sentence of §352(c), by its own terms only states the **effect** of a council's denial of a petition for review. It does not state how a council can review a petition, let alone deny it. That cannot mean that §352(c) constitutes an unbounded grant of power to a council to do whatever it wants. It should be axiomatic that in a government subject to the rule of law no entity of any of its branches, such as a council is within the Judicial Branch, can act or refuse to act arbitrarily, just because it feels like it or it suits the interest of the class of persons that compose it, which in this case would be the interest of protecting complained-about peer judges and the public image of the class. Therefore, even a council constrained or permitted to take action must do so within the bounds set down by law or rule.

22. Section 354 is where the Act imposes on a council the duty and grants it the power to act. This

is expressed unequivocally by its title:

§354. Action by judicial council

23. By contrast, §352 provides for a different type of action by a different actor and at an earlier stage, so it is titled thus:

§352. Review of complaint by chief judge

24. It is not in the latter section dealing with action by a chief judge, let alone in a subsidiary sentence of a subsection therein, where the council would reasonably go to find out what it is that it can do under the Act. Legislative drafting is assumed to be carried out by as reasonable people as the reasonable man and woman who provide the standard of conduct against which the conduct of the addressees of the law is measured. Hence, it is untenable to assume that Congress was so unreasonable as to nest in a sub-sub level of a section concerned with a chief judge a grant to a council of its largest measure of power: to deny a petition for any reason and no reason without any procedural requirements.

25. Reasoning by opposite also leads to the conclusion that §352(c) is not a stand alone provision that grants a council unbounded power to act and not to act without regard for the rest of the Act: Suppose that instead of denying the petition for review of the chief judge's order, a council were to grant it. Could the mere fact that no special committee was appointed and that the council lacked the information that its report would have contained constitute the grounds for the council to claim authority to take any action whatsoever that it fancied, including any action that the complainant requested as relief in his petition? *"Of course not!",* the complained-about judge would scream and any person of sound judgment would have to agree with him. By the same token, the complainant would argue, the complained-about judge could not, just because of those circumstances, be the one to set bounds on what the council could do. Rather, a conscientious council striving to avoid even the appearance of taking arbitrary and biased action and to demonstrate its respect for the rule of law would have to look to §354 to determine what action it had the duty to take, what powers it had to discharge it, and the bounds for their exercise. It follows that even if a council took action under §352(c), it would still have to look to §354 to determine what actions it had to take to achieve the purpose of the Act and could take to remain within its bounds.

26. Section 354 opens by setting a bound thus:

§354. Action by judicial council

(a) Actions upon receipt of report.-

> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-…

27. To take action under §354(a), the council must have received a report. The Judicial Council of the Second Circuit could not have remained within that bound when it denied Dr. Cordero's petition for review because the Council could not have received a report since no special committee was ever appointed so that no committee conducted any investigation on which a report could have been submitted.
28. Just because the Council was deprived of the benefit of a special committee report it was not constrained to take action under §352(c) and deny any and all petitions. Section 354(b) empowered it to conduct its own investigation. It provides thus:

> **§354. (b) Referral to Judicial Conference.-**
>
> **(1) In general.**- In addition to the authority granted under subsection (a), the judicial council may, ***in its discretion***, refer any complaint under section 351, together with the record of ***any*** associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States. (emphasis added)

29. This subsection endows a council with discretionary power to forward a complaint on its own to the Conference, and if "any associated proceedings" have taken place, then it must join them to the complaint upon forwarding it to the Conference. The terms "any complaint under section 351" and "any associated proceedings" are sufficiently broad to allow a council 'to conduct any investigation which it considers to be necessary', cf. §354(a)(1)(A), of any complaint regardless of how the chief judge disposed of it. This grant of power encourages referral to the Conference precisely where the chief judge has failed to undertake proceedings that he should have associated to his handling of the complaint, such as 'conducting a limited inquiry' under §352(a) or 'appointing a special committee' under §353.
30. Both the chief judge and the council failed to investigate although they should have done so on the strength of the evidence of judicial misconduct presented in the complaint and of the injury that the misconduct caused to Dr. Cordero in particular and to the administration of justice by the courts for the public benefit in general. Their failure to investigate constituted abuse of discretion. Worse still, their failure was part of their systematic dismissal of complaints and denials of petitions. It constituted dereliction of duty, the intentional disregard of their duty to eliminate judicial misconduct "prejudicial to the effective and expeditious administration of the business of the

courts" (§351(a)), so as to achieve the purpose of the Act. On both counts the chief judge and the council "aggrieved" Dr. Cordero and afforded him the basis for petitioning the Conference.

B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is "aggrieved"

31. A chief judge cannot insulate himself from review by the Judicial Conference by the simple maneuver of not appointing a special committee to investigate whether a judge's conduct has been "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)). To do so would only allow the business of the courts to continue being administered ineffectively and sluggishly, thereby defeating the Act's purpose, which is not to protect the chief from embarrassment, but rather to eliminate such prejudice. Hence, such non-appointment is a particularly perverse maneuver because it covers for the chief judge's interest in not having instances of bad administration exposed during his term in office and associated with him.
32. In the same vein, a council, precisely when it is least informed because it lacks the report of a §353 special committee's investigation, cannot spare itself any investigation under §354(b) of the complaint and, by merely pretending to have denied under §352(c) a petition for review of a chief judge's uninformed and likely self-serving order, insulate itself from review by the Judicial Conference. Such expediency only compounds the prejudice to the Act's purpose and aggravates the deleterious effect of the perverse maneuver on the courts' business.
33. If the chief judge looks after himself, and the council of his peers looks only at his order, and the Conference never even sees a petition, who ever reviews the causes for complaint in the business of the courts? No wonder the Conference has issued only 15 orders in the 25 years since the Act was passed in 1980. Such a self-defeating construction of the Act cannot be the way Congress intended the Act to be read. This is particularly so when there is an alternative and reasonable construction of the second sentence of §352(c): A judicial council's denial of a petition is final unless the complainant or the judge is "aggrieved" under the terms of §357(a) and §354, such as by their failure to investigate a complaint, but if so, an appeal lies only in the Judicial Conference, not in an appeal to the courts.

III. Although both the chief judge and the Council are required by the Act to handle complaints "expeditiously" and "promptly", they failed so to handle the complaints of Dr. Cordero, whereby they also "aggrieved" him and provided further basis for his petition to the Conference

34. Judge Winter also wrote that "Under 28 U.S.C. §352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed." This statement is contrary to the facts.

35. Dr. Cordero's complaint against Bankruptcy Judge John C. Ninfo, II, WBNY, dkt. no. 03-8547, was filed on August 11, and reformatted and resubmitted on August 27, 2003. It was dismissed only on June 8, 2004. Under what conceivable notion of "expeditious" is action taken 10 months later "expeditious"!? Ten months despite the evidence that neither Chief Judge John M. Walker, Jr., nor Acting Chief Judge Dennis Jacobs used the time to "conduct a limited inquiry", as required under §352(a), and the fact that neither appointed a special committee. Ten months without taking action while a pro se and non-local litigant was being abused by a biased judge! Ten months even though on February 2, 2004, Dr. Cordero wrote to the Chief Judge to expressly bring to his attention the requirement that the Act laid upon him to handle a judicial misconduct complaint "promptly" and "expeditiously".

36. Ten months despite the fact that on March 19, 2004, Dr. Cordero filed a complaint against the Chief Judge himself precisely for his failure to act "promptly" and "expeditiously", whereby he was unlawfully and insensitively tolerating further injury to Dr. Cordero at the hands of one of his peers, Judge Ninfo. For its part, that complaint, dkt. no. 04-8510, was not dismissed until September 24, 2004, that is, more than half a year later again without even a limited inquiry or the appointment of a special committee. What is more, it was dismissed on the allegation that it had become moot by the dismissal of the earlier complaint. So why did Acting Chief Judge Jacobs fail to state so "promptly" and "expeditiously" since he was the one who dismissed the earlier complaint rather than inconsiderately make Dr. Cordero wait for months in vain during which he could have engaged the petition process?

37. Consequently, when the Judicial Council of the Second Circuit failed to exercise its discretionary power under §354(b)(1) to conduct the investigation that Chief Judge Walker and Acting Chief Judge Jacobs should have undertaken and that could have allowed them to corroborate Dr. Cordero's contention of judicial misconduct and take corrective action, the Council disregarded the purpose of the Act and its duty thereunder to attain it. By so doing, the

Council left undisturbed the complained-about Judge Ninfo and other court officers who have engaged in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the benefit of the local parties and to the detriment of Dr. Cordero, the only non-local and pro se party, as to constitute a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. Through such disregard for legality and bias Judge Ninfo has caused Dr. Cordero since 2002 an enormous waste of effort, time, and money and inflicted upon him tremendous aggravation. By their inaction, the Chief Judge, the Acting Chief Judge, and the Council have condoned Judge Ninfo's misconduct and thus encouraged him to further engage in it, which he has done since Dr. Cordero filed his complaint in 2003, and as recently as March 1, 2005 (E-19). Through dereliction of their duty under the Act, Chief Judge Walker, Acting Chief Judge Jacobs, and the Council of the Second Circuit have insensitively and wrongfully failed to protect a complaint. What is more, they have condoned the denial by Judge Ninfo and thereby engaged themselves in the denial to Dr. Cordero of due process of law under the Constitution. By so doing, they have "aggrieved" Dr. Cordero. As an "aggrieved" complainant under §357(a), Dr. Cordero now has the right to have his petition reviewed by the Judicial Conference.

IV. The request for a report under18 U.S.C. 3057(a) to the U.S. Attorney General for an investigation into bankruptcy fraud called on the judges to abide by their obligation thereunder and is totally independent from any issue of jurisdiction of the Conference or the Committee under the Act

38. Judge Winter also stated that he "cannot report the alleged judicial misconduct to the U.S. Attorney General [because] neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review".

39. To make that request, Dr. Cordero explicitly invoked 18 U.S.C. 3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…(emphasis added)

40. By its own terms, this provision has absolutely nothing to do with the Conference or the

Committee, much less with whether either has jurisdiction under the Act to review a petition. It has to do only with whether a person is a "judge, receiver, or trustee" and has, not even evidence or certainty, but rather just "any reasonable grounds for believing" that any provision of Title 18, Chapter 9 on bankruptcy, has been violated, such as that at §152(6) prohibiting the 'offer or receipt of a benefit for acting or forbearing to act in a bankruptcy case' or at §152 (8) prohibiting 'the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor'. If so, he "***shall*** report to the appropriate United States attorney". This is not an option; it is an obligation to act. That is what the law imposes on such a judge.

41. Hence, when judges shirk that obligation by mixing it with something totally extraneous to it, what confidence do they instill in the public that they in fact abide by their oath of office at 28 U.S.C. §453 to "administer justice without respect to persons", that is, even if for the sake of the integrity of judicial process, the law must be applied to investigate one of their peers? Do judges apply the law because a moral duty compels them to abide by their professional obligation to do so or do they apply it only when it suits them and their peers because, after all, who is there to complain successfully against them? These are legitimate questions justified by the facts, the same that caused Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair the committee to study the misapplication of the Act.

V. Relief requested

42. Therefore, Dr. Cordero respectfully requests:
    a) that Judge Winter reconsider the position that he expressed in his February 15 letter and in light of the statutory requirement of 28 U.S.C. §331, 4th paragraph, that "***all*** petitions for review ***shall*** be reviewed by that committee", not just its chairman, submit to the Committee this statement together with Dr. Cordero's letters of February 7 and January 8, and his petition for review of November 18, 2004, to the Judicial Conference;
    b) that Judge Winter cause the Committee to submit to the Judicial Conference Dr. Cordero's petition and arguments for the Conferences' jurisdiction;
    c) that the Conference decide that issue of jurisdiction and, if it decides to exercise it, that it determine the petition itself;
    d) that the judges in the Committee and the Conference, individually and collectively, make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial

misconduct and bankruptcy fraud scheme described in Dr. Cordero's petition, subsequent writings, and their exhibits, and request that the ensuing investigation be conducted by U.S. attorneys and FBI agents that are neither acquainted nor friends with any of the court and bankruptcy officers that may be investigated and that to that end neither the DoJ or FBI offices in Rochester or Buffalo, NY, be involved.

Respectfully submitted on

March 25, 2005

Dr. Richard Cordero

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TABLE OF EXHIBITS

in support of the reply of March 25, 2005
to the Chairman of the Committee
for the Review of Circuit Council Conduct and Disability Orders

by
Dr. Richard Cordero

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2. Dr. **Cordero**'s letter of **January 8**, 2005, and supporting files sent to the Hon. Ralph K. **Winter**, Jr., Circuit Judge at the Court of Appeals for the Second Circuit and **Chair** of the **Committee to Review** Circuit Council Conduct and Disability Orders; to request that he withdraw or cause the Judicial Conference to **withdraw** Mr. **Deyling's letter** of December 9, 2004, as ultra vires, and **forward** Dr. Cordero's **petition** of November 18, 2004, **to** the **Judicial Conference** for review ..... 4 [C:877]

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JUDGE NINFO'S BIAS AND DISREGARD FOR LEGALITY CAN BE HEARD FROM HIS OWN MOUTH

through the transcript of the evidentiary hearing
of the DeLanos' motion to disallow Dr. Cordero's claim
held on March 1, 2005,
and can be read about in a caveat on ascertaining its authenticity
that illustrates the Judge's tolerance of wrongdoing[1]

by

Dr. Richard Cordero

1. The transcript in question concerns an evidentiary hearing that Judge John C. Ninfo, II, WBNY, ordered in connection with the DeLano Debtors' motion to disallow Dr. Richard Cordero's claim against Mr. David DeLano, which claim the latter and his wife, Ms. Mary Ann DeLano, had taken the initiative to include in their bankruptcy petition of January 26, 2004. The hearing took place on March 1, 2005, and was recorded by Reporter Mary Dianetti. She also recorded the very first hearing before Judge Ninfo in which Dr. Cordero participated. What happened with the transcript of that earlier hearing illustrates the kind of bias and disregard for the law, the rules, and the facts that occur when Judge Ninfo is in the background. Knowing it will help to understand the circumstances surrounding the above statement by Ms. Dianetti and the need to ascertain the authenticity of the transcript of the recent hearing so that through it the peers of Judge Ninfo can witness the blatant bias and disregard for legality that he engages in when he is very much in the foreground.

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[1] See the transcript of the hearing in a PDF file in the accompanying D Add Pst Transcript folder.

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A. Court Reporter Dianetti participated in the manipulation of a transcript of a hearing before Judge Ninfo, which she failed to deliver to Dr. Cordero in more than two and a half months after he requested it

2. On December 18, 2002, the hearing was held of motion of Chapter 7 Trustee Kenneth Gordon to dismiss Dr. Cordero's cross-claims in Pfuntner v. Gordon et al., docket no. 02-2230, WBNY. Dr. Cordero appeared by telephone. Judge Ninfo dismissed his cross-claims for negligence, recklessness, and defamation in the context of the Trustee's liquidation of Premier Van Lines, a moving and storage company. The Judge did so despite the legitimate issues of material fact that Dr. Cordero had raised and although the Trustee had provided no disclosure and there had been no discovery under FRCivP Rule 26. At the end of the hearing, Dr. Cordero stated that he would appeal.

3. After Judge Ninfo's order of December 30, 2002, was sent from Rochester and arrived in New York City, where Dr. Cordero lives, he called Reporter Dianetti on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Yet, weeks went by without hearing from her. Dr. Cordero had to call her on several occasions to ask why he had not received it. She screened part of another message that he was leaving on her answering machine and finally picked up the phone on Monday 10, 2003. She said that the

transcript would be ready in two days.

4. As attested to by her certificate, Ms. Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after she was first requested it, whereby she violated FRBkrP Rule 8007(a). Moreover, in violation of 28 U.S.C. §753(b), Ms. Dianetti did not deliver the transcript directly to Dr. Cordero. Much worse yet, although the date on Ms. Dianetti's certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for rehearing for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26, in violation of FRBkrP Rule 8007(b). Interestingly enough, after Dr. Cordero made a statement at the March 26 hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. This reasonably suggests that the transcript was unlawfully withheld from Dr. Cordero until it could be found out what he would say at the hearing.
5. The transcript turned out to consist, not of 27 pages, but only of 15 pages of transcription! Were pages left out containing what was said between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after Judge Ninfo cut him off at the December 18 hearing? That would constitute an ex parte communication between them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP Rule 9003.
6. Interestingly enough, when Ms. Dianetti finally picked up the phone on March 10, she said to Dr. Cordero 'you want it [the transcript] from the moment you came in on the phone', that is, speakerphone. This implies that something had been said before or after Dr. Cordero was on the phone and that she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said 'Good morning, Dr. Cordero.' He said no, that he wanted everything from the moment the Judge had said 'Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He

asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

7. Was Reporter Dianetti told to leave exchanges between Judge Ninfo and Trustee Gordon while Dr. Cordero could not hear them and, if so, who told her so and why? Was the mailing of the transcript to Dr. Cordero delayed so that it could first be vetted for compliance with those instructions? Have transcripts in other cases been manipulated to alter their contents or delay or even prevent their transmission either to the clerk or the party who ordered it? Was a benefit offered or received to participate in such manipulation? None of these and many other questions have been answered through any investigation. Yet, they arouse suspicion that transcripts may not be reliable. This experience prompted Dr. Cordero to ask certain questions of Reporter Dianetti at the recent hearing.

B. Reporter Dianetti suffered a most strange attack of confusion and nervousness when at the end of the hearing on March 1, 2005, Dr. Cordero asked for a count of stenographic packs and folds

8. When the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim against Mr. DeLano began at 1:31 p.m. on March 1, 2005, Dr. Cordero asked Reporter Dianetti whether there was any marker for the point where she was beginning to record. She said that she was beginning a new pack, that is, a pack of folds of stenographic tape.
9. After the hearing ended at 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Larraine Parkhurst was still by her side. He asked the Reporter how many packs she had used. That question spun Ms. Dianetti into an astonishing state of confusion and nervousness, all the more astonishing since she was still gathering the materials that she had just finished using to record the single hearing that afternoon.
10. First she said that there were two, but then she said that there was also a third pack that she had made by taping two sections together. Dr. Cordero asked her that she count the folds in each pack. She said that the estimate of pages was difficult to make because it could be three or four…He told her that he was not asking for an estimate of pages but for a simple count of folds in each pack. That only heightened her nervousness. She said that she needed a pencil. He asked what for. She said to count them. He asked what a pencil had to do with counting folds. She said she needed the head, that is, the head of the pencil, the eraser at the head, then she dropped that and began to show him the numbers on the back of the folds to try to determine

the range, but that only made her confusion more pronounced and she said that it depended where she had began in pack the pack fold 1 to this is 159 then she no it is begun she began on fold it is 3 to 159 said that she rather it is 6 in one to 158 and a half she jumped to pack three that she had not marked pack 3 said came back to the issue of the estimate the pages of estimating the how many pages per fold she protested that nobody ever had asked her to do so why you are asking me to do counting what for you don't trust you think that when the pages come more pages but last time there were the number of the pages what she would send and the cost what had happened before that she had asked another person because she had not understood some words and it doesn't pay to be honest and this counting the pack is that it depende…'Ms. Dianetti, please, I just want to know the number of the packs and folds used today.'

11. Dr. Cordero noticed the date on two packs that she had said belonged among those used for that hearing. He asked Court Attendant Parkhurst to look at them, she did, and he pointed out that they had been dated 2/1/05! Ms. Dianetti protested and asked Dr. Cordero whether he never made mistakes. Then she wrote on them the correct date of March 1.
12. Ms. Dianetti's state of confusion was such that Dr. Cordero asked Ms. Parkhurst whether she would count the folds. She agreed to do so but Ms. Dianetti protested because it was not fair to keep Ms. Parkhurst in the courtroom that she had to go to the house to stay here when she should be so late that it was…'Ms. Parkhurst, asked Dr. Cordero, do you mind staying here a while longer to count the folds? If we do not know exactly how many packs and folds were used, all that was said today and all the effort in preparing and attending this hearing will have been in vain'. Ms. Parkhurst said that she did not mind and with Dr. Cordero at her side, she counted aloud the folds of the three packs and made a note for herself of what she had counted. Then he asked Ms. Dianetti to copy the numbers on his notepad so that she could sign it. She protested but went ahead and did it…'and this pack too I used today'. Unbelievable! There was a fourth pack! It had been right there on her table all along. Dr. Cordero asked Ms. Parkhurst to count its folds, she did, and then added her count to her list; Reporter Dianetti also added it to the list that she was making for Dr. Cordero.
13. Dr. Cordero asked Attendant Parkhurst to sign as witness the list that Ms. Dianetti had made and signed (pg. 31, supra), but she declined to do so, showed him her list on her own notepad, and said that she had made a note of all the packs and folds and that would be enough. Dr. Cordero thanked her and Ms. Dianetti, went to his table and began to gather his book, exhibits,

and his portable computer. What could possibly have triggered such confusion in Reporter Dianetti and caused her to become so nervous?

14. Interestingly enough, the attorney for Mr. DeLano, Christopher Werner, Esq., burst half way through the hearing with a protest to Judge Ninfo because he suspected that Dr. Cordero was recording the hearing on his computer. Did they have an understanding that there would be no independent recording of the hearing, nothing other than what Ms. Dianetti would record or rather, what a vetted transcript would contain? This question finds support in the fact that at the examination of the DeLanos under 11 U.S.C. §§341 and 343 on February 1, 2005, at the office of Chapter 13 Trustee George Reiber, the latter had made an official recording on audio tapes, a reporter had also stenographically recorded the meeting, and still Dr. Cordero had made his own recording using a tape recorder. This experience in conjunction with a hearing that was not going as well for Att. Werner as he could have expected in light of Judge Ninfo's undisguised bias toward his client, Mr. DeLano, before and during the hearing, could have suggested to Att. Werner, perhaps a bit too late, that Dr. Cordero might likewise have come prepared to make his own recording of the hearing, which would frustrate any other arrangement for a different type of recording. Did it?
15. Was something going on between Court Reporter Dianetti, Att. Werner, and Judge Ninfo with regard to the transcript? Interestingly enough, as of February 28, 2005, PACER[2] showed that Att. Werner appeared as attorney in 575 cases, and in 525 the judge was Judge Ninfo. They have worked together on so many cases for so long that they have developed a special relationship. This relationship helps to understand not only why Att. Werner was so upset at the possibility that the benefit of the relationship could be diminished by Dr. Cordero making his own recording of the hearing, but also why Att. Werner took a back seat and let Judge Ninfo be so unashamedly biased as to become the advocate of Mr. DeLano while the latter was being examined by Dr. Cordero.

[2] PACER is the system for **P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords. To corroborate the PACER statistics cited here go to http://www.nywb.uscourts.gov/PACER >Query and write in the query box the name of the attorney or trustee in question.

C. Judge Ninfo manifested such undisguised bias before and during the hearing as to become the chief advocate for Mr. DeLano and counsel opposing Dr. Cordero

16. The evidentiary hearing was triggered by the untimely motion of July 19, 2004, to disallow Dr. Cordero's claim against Mr. DeLano, that is, after the DeLanos and Att. Werner had treated Dr. Cordero as a creditor for six months since the filing of the bankruptcy petition in which the DeLanos listed Dr. Cordero among their creditors. Mr. DeLano had known of that claim since Dr. Cordero served him with his third-party complaint of November 21, 2002, in the Pfuntner case. Therein the claim for compensation was predicated on the negligent and reckless way in which Mr. DeLano, as a bank loan officer of M&T Bank, had exercised the Bank's security interest in the storage boxes that Premier Van Lines, a moving and storage company, had bought with a loan. Premier was storing Dr. Cordero's property and went bankrupt too, like Mr. DeLano, a 32-year veteran of the banking and lending industry and as such an expert in managing borrowed money…and he went bankrupt? How suspicious!
17. Interestingly enough, the motion to disallow was raised on July 19, the day of the hearing of Trustee Reiber's motion to dismiss the petition due to the DeLanos' "unreasonable delay" in producing requested documents. At that hearing, Dr. Cordero presented evidence that the DeLanos had engaged in bankruptcy fraud, particularly concealment of assets.
18. The DeLanos' motion to disallow was heard on August 25. By order of August 30, 2004, Judge Ninfo required Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him and present it at an evidentiary hearing. Dr. Cordero requested documents from Mr. DeLano, who denied every single one of them. Dr. Cordero moved to compel production, but Judge Ninfo denied every single one of them too! It was a set up! The motion to disallow was a subterfuge to eliminate from the bankruptcy case Dr. Cordero, the only creditor that had presented evidence of the DeLanos' bankruptcy fraud. Even documents that Dr. Cordero requested to defend against the motion and show that it had been raised in bad faith were denied by Judge Ninfo, who simply disregarded the broad scope of discovery under FRCivP Rule 26.
19. So Dr. Cordero arrived at the evidentiary hearing on March 1, 2005, without a single additional document having been produced by Mr. DeLano. However, he had prepared a set of questions. But very soon the most extraordinary fact became apparent: Mr. DeLano did not have any idea of the nature of Dr. Cordero's claim against him, the very one that he had moved to disallow.

What is more, Att. Werner did not have any idea either! So much so that during the first recess in the hearing, he and Mr. DeLano walked out of the courtroom with the attorney for M&T Bank, Michael Beyma, Esq., and then Att. Werner and Mr. DeLano came back in and asked Court Attendant Larraine Parkhurst whether she had a copy of Dr. Cordero's complaint of November 2002 against Mr. DeLano! He was told that it had been filed with the court. Then Mr. Werner turned around and asked Dr. Cordero whether he had a copy. Dr. Cordero said that he had and Att. Werner asked him for a copy!

20. Att. Werner had come to the evidentiary hearing to have a claim disallowed of which he did not even have a copy. Not only that, but he also did not have even the pertinent parts of the complaint that Dr. Cordero had attached to the proof of his claim against Mr. DeLano, a copy of which Dr. Cordero had served on Att. Werner on May 15, 2004. As a result, Att. Werner did not have a clue either what the claim was all about. Therefore, how could he possibly have overcome the presumption of validity that under FRBkrP Rule 3001(f) attached to Dr. Cordero's claim upon its being filed on May 19, 2004? He could not. He was simply relying on his relationship with Judge Ninfo and their denial of Dr. Cordero's request for documents.
21. Dr. Cordero declined to provide Att. Werner with a copy of the complaint. Instead, he asked Att. Werner not to leave the courtroom to get a copy of it in the records office only to come back in and pretend that he and Mr. DeLano knew all along what the claim was that they were trying to disallow. Att. Werner retorted that Dr. Cordero could not tell him, who has been in this business for over 28 years, how to practice law. Thereupon Dr. Cordero asked Ms. Parkhurst and Law Clerk Megan Dorr to call in Judge Ninfo before Att. Werner and Mr. DeLano could leave the courtroom.
22. When the Judge came in and the hearing was back on the record, Dr. Cordero related the whole incident. The Judge found nothing objectionable in such irrefutable proof that Att. Werner had not had before and did no have then any idea of the nature of the claim that he had moved to disallow. Nor did he find reprehensible that during an ongoing examination, Att. Werner had attempted to take advantage of a recess to feed Mr. DeLano answers to critically important questions. On the contrary, when Dr. Cordero moved to dismiss the motion to disallow because raised in bad faith as a subterfuge to eliminate him from the case and as abuse of process, Judge Ninfo denied his motion out of hand and said that it was Dr. Cordero who was making a motion in bad faith!

23. The hearing went on. Under examination, Mr. DeLano not only admitted facts asked of him about his handling of the storage boxes containing Dr. Cordero's property, but also volunteered others. Thus, he said that:
    a) Premier Van Lines had used the Jefferson-Henrietta warehouse to store the storage boxes bought with the loan from M&T Bank and containing the stored property of its clients, such as Dr. Cordero;
    b) Mr. DeLano had seen boxes there with Dr. Cordero's name and told Dr. Cordero so;
    c) Mr. DeLano was under pressure to have the storage boxes moved out of the Jefferson-Henrietta warehouse because the latter was going to put a lien on the boxes to secure unpaid warehousing fees, an action that would have delayed the sale and diminished Mr. DeLano's net recovery from liquidating M&T Bank's security interest in the boxes;
    d) So Mr. DeLano hired an auctioneer, John Renolds, to sell the storage boxes and the auctioneer sold them in a private auction to the single warehouser that he contacted;
    e) Mr. DeLano did not check and did not know whether the auctioneer had checked the capacity of the buying warehouser, whose name he did not remember, to store property safely from damage or loss due to pests, water, humidity, extreme temperature, fire, and theft;
    f) Mr. DeLano did not notify the owners of the property in the boxes to let them know how he intended to dispose of the boxes and find out from them how they wanted their property handled, such as by having it inspected before being removed, or moving it to a place of their choice, or finding out in advance the fees and terms and conditions of the buying warehouser;
    g) After the sale, Mr. DeLano directed Dr. Cordero to the buying warehouser to deal with it about his property;
    h) Dr. Cordero contacted that buying warehouser and its owner –neither of whose names and address Dr. Cordero use at the hearing but he did use them in the complaint containing the claim against Mr. DeLano- but the owner told him that he had no boxes bearing Dr. Cordero's name and that Mr. DeLano had sent him an acknowledgment of receipt that included Dr. Cordero's name, but that he would not sign it because he did not have any boxes holding Dr. Cordero's property;
    i) Mr. DeLano admitted that he had sent the owner such acknowledgment of receipt but that

the owner had turned out to be right because the boxes with Dr. Cordero's property had not been delivered to him given that they had not been in the Jefferson-Henrietta warehouse at all and that Mr. DeLano had made another mistake when he checked the slips in the business records that Premier had in its office in the Jefferson-Henrietta warehouse before including Dr. Cordero's name in that receipt;

j) Mr. DeLano admitted that his mistakes could have caused Dr. Cordero confusion and anxiety and cost him a lot of effort, time, and money as Dr. Cordero tried to find out where his property could be, which eventually was found in part lost or damaged in yet another warehouse, namely, that of Plaintiff Pfuntner; and that it was reasonable for Dr. Cordero to claim therefor compensation from him and M&T Bank and for Mr. DeLano and the Bank to compensate Dr. Cordero to a degree.

24. Upon Mr. DeLano making that frank admission, Dr. Cordero said that the degree of compensation was what had to be determined at trial where all the parties and issues could be tried as a whole. Mr. DeLano further admitted that at trial M&T Bank would call upon him to represent it since he was the officer who had handled the defaulted loan to Premier.

D. Judge Ninfo disregarded the law and rules of Congress and abdicated his position as a neutral arbiter in order to apply the law of relationships with the local parties

25. During the examination, Judge Ninfo intervened repeatedly and consistently as the advocate of Mr. DeLano, either answering questions put to Mr. DeLano; spinning Mr. DeLano's answers away from any admission of mistakes or liability; providing explanations for Mr. DeLano to escape difficult questions leading to the admission of the reasonableness of compensation; and finding fault with Dr. Cordero's conduct at the time of the events in question or at the hearing. It is by listening to his own words conveyed in an accurate and complete transcript that the indis-putable proof of Judge Ninfo's shocking bias can be obtained. It is for that reason that it is so important that the transcript be requested from Reporter Dianetti and that it be checked against the number of packs and folds in her signed statement and that their authenticity be determined.

26. Where was Att. Werner during Judge Ninfo's advocacy of his client's interests? He was seated in his lower chair from which he would stand up at times to object to questions asked by Dr. Cordero, but not once did he object to any ruling of Judge Ninfo. What a remarkable deferential

attitude throughout an examination that lasted from 1:31 p.m. to 7:00 p.m.!

27. Failure to preserve any objection for appeal has to be suspicious in itself, unless Att. Werner knew that there would be no need for him to appeal because he could take a favorable outcome for granted. This explains why he not only did not have to read Dr. Cordero's claim before or after moving to disallow it, but why he also stated several times that he did not have to prepare himself or Mr. DeLano for the hearing. In what impartial court where the outcome of a proceeding is uncertain would a lawyer volunteer a statement that he and his client are unprepared? The fear of a malpractice suit would deter the lawyer from making such a statement. But there would be no cause for fear if the lawyer had the assurance that, however unprepared, he would deliver the desired outcome to his client thanks to having made the best preparation possible: a well developed positive relation to the judge that made both teammates. Att. Werner has had the necessary deferential attitude and opportunity to develop such relation: 525 cases before Judge Ninfo, according to PACER.
28. In return, Judge Ninfo takes care of him. Indeed, what judge who respects his office and is considerate of the effort, time, and money of others would hear with indifference and allow a lawyer to say with impunity that he came to his courtroom so awfully unprepared and brought a witness totally unprepared? By not making any comment, let alone rebuking Att. Werner for his utter unpreparedness, Judge Ninfo showed his disregard for FRBkrP Rule 1, which provides that "[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"; a statement of purpose that is repeated in FRCivP Rule 1.
29. It is no wonder that, in the assurance of his protective relationship with Judge Ninfo, Att. Werner showed up at the hearing, not only without a copy of the claim that he was trying to disallow, but also without a single law book. After all, what need would he have for such books since he did not cite any rule to support his objections at the hearing, just as he has not cited, let alone discussed, any rule or law, forget about citing a case, in any of his papers submitted to the court. In so doing, he follows the example of Judge Ninfo, who does not cite any authority -unless he cites back what Dr. Cordero after painstaking legal research has cited and discussed- but only states or adds his conclusory statements without any discussion to support what in fact are rulings and decisions by fiat, not by legal reasoning, whether it be in any of his 15 orders or 15 hearings in the Pfuntner and DeLano cases. This is not the way a judge administers justice in a court of law deserving the public's trust, but rather this is how a lord runs the private affairs of his fiefdom

in his and his loyal vassals' interest. Hence, they need not cite authorities to derive or buttress a persuasive argument since they can simply send or have received the signal of a win.

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

30. The transcript of that hearing will also show another shocking manifestation of bias that demonstrates Judge Ninfo's contempt for due process: During the examination, Dr. Cordero remained at his table. To his right were Mr. DeLano, sitting in the witness stand; Att. Werner, at his table five feet away; and Att. Beyma, the lawyer for M&T Bank, in the first bench behind the bar, some nine feet away. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look away from him and toward where the two attorneys were seated and as Dr. Cordero looked at them he caught them signaling to him with their arms!
31. Dr. Cordero protested such utterly unacceptable conduct to Judge Ninfo. He was sitting some 25 feet in front and between Att. Werner and Dr. Cordero and some 30 feet from Att. Beyma. Yet, Judge Ninfo found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything.
32. However, from the distance and higher level of his bench he had an unobstructed view of the two attorneys and Dr. Cordero, who were in his central field of vision so that it was all but impossible for him not to catch the distraction of either of them flailing his arm. Nevertheless, what he said was belied more patently by precisely what he did not say than by their relative physical positions: Not only did he not say that such conduct, intended to suborn perjury, would not be tolerated in his courtroom, but he also did not even ask either of the attorneys on any of those occasions whether they had signaled an answer to Mr. DeLano. Even if, assuming arguendo, he had not seen them signaling, he did no care to find out either. Yet, he had every reason to ask, precisely because of the same revealing nature of what neither of the attorneys said: Neither protested Dr. Cordero's accusation, which they reflexively would have done had it not been true that they had signaled to Mr. DeLano how to answer.
33. Judge Ninfo's reaction to such unlawful and unethical conduct shows that he runs a court tilted by bias that prevents progress toward a just and fair resolution of cases and controversies, swerving instead toward his own interests. He proceeds, not on the strength of the law or procedural rules, which he does not cite or discuss, but rather by the power of relationships

developed with local parties. The opportunity to develop those relationships is ample. Thus, while Att. Werner has appeared before Judge Ninfo in 525 cases, Trustee Gordon has appeared before him in 3,382 out of 3,383 cases as of June 26, 2004; and Trustee Reiber in 3,907 out of 3,909 as of April 2, 2004, according to PACER. As to Att. Beyma, he is a partner in the same firm in which Judge Ninfo was a partner at the time of his appointment, that is, Underberg & Kessler.

34. These locals appear before him so frequently as to become dependent on his goodwill for the distribution of favorable and unfavorable decisions. What a lawyer or trustee may not get in one case, he may get 15 minutes later when he stands up again before Judge Ninfo for the next case…that is, if he has not shown disrespect by objecting to his rulings and dragging it up on appeal, for the Lord of the Fiefdom grants rewards to those vassals who show deference, but he also meets out punishment to those who challenge him and show rebelliousness. As a result, the law of relationships is the basis on which Judge Ninfo runs his court, rather than a Court of the United States ruled by the law of Congress.

35. Bias is the device for implementing that law. It motivated Judge Ninfo's protection of Trustee Gordon by disregarding Congressional law and rules in order to dismiss out of hand Dr. Cordero's cross-claims against the Trustee at the first hearing on December 18, 2002. Dr. Cordero, a non-local appearing pro se, was expected to accept the ruling and leave it at that. But he didn't. He went on appeal. *The horror of it!* Ever since Judge Ninfo has treated Dr. Cordero as an enemy, not as a litigant exercising his rights and entitled to due process.

36. Then the DeLanos filed their bankruptcy petition and Dr. Cordero presented evidence of their bankruptcy fraud. But Mr. DeLano has been a bank officer for 32 years and as a *loan* officer, he has handled defaulting borrowers, some of whom have ended filing for bankruptcy, as did the owner of Premier, Mr. David Palmer. Mr. DeLano knows too much to be left outside the castle of the Fiefdom, the courtroom where Lord Ninfo protects deserving vassals.

37. The chronicler of the Fiefdom is Court Reporter Dianetti. What will she report in her chronicle of the campaign that Lord Ninfo mounted against the Diverse Citizen of the City of New York, Dr. Cordero, at the hearing on March 1, 2005? Did she become so confused and nervous when asked for a count of the stenographic packs and folds that she had barely finished using because she felt under attack by the Enemy of the Fiefdom and torn in her loyalty to her Lord and the truth?

F. The transcript can allow the peers of Judge Ninfo to hear his bias from his own mouth, but its authenticity must first be ascertained by unrelated investigators, who should then investigate those related to him and these cases

38. There are so many interesting questions posed by circumstances in these cases that reinforce each other to impress a bias to their outcomes. They are enough to eliminate coincidences as the phenomenon that explains them away. Instead, when the totality of circumstances are assessed as a whole in terms of the law and common sense, they indicate intentional conduct supported by coordination in furtherance of a wrongful scheme. Its nature and extent can only be ascertained by an investigation.
39. The investigators must be experienced because the persons to be investigated are capable of concealing their unlawful coordination under the cover of their frequent or even daily work contacts. This also provides reasonable grounds to exclude the peers of Judge Ninfo from acting as the investigators of his conduct and that of the people around him. Hence, the investigation should be conducted by U.S. attorneys and FBI agents.
40. However, for their work to have a chance to be trustworthy rather than a whitewash, the investigators must not even know any of the persons that they may investigate. So they must not come from the DoJ or FBI offices in Rochester or Buffalo, who are housed in the same federal building as the courts. By way of example, the U.S. Attorney's Office in the six story federal building in Rochester is the next door neighbor of the U.S. Trustees Office. Of necessity, these officers see each other every day and the relationship that has developed among them is most likely to cloud their objectivity and influence their thoroughness and zeal when investigating their building acquaintances, let alone friends. In brief, they must not be subject to the law of relationships that gave rise to the wrongdoing under investigation in the first place.
41. By the same token, the first element of the investigation should be the transcript itself that Reporter Dianetti may provide. It must be checked against the original stenographic packs and folds and the statement of their count that she signed off on. Likewise, the authenticity of those claimed to be the originals must be ascertained as well as their untampered-with condition. If this preliminary work establishes that they are the basis for an accurate and complete transcript, the latter will also be the basis from which to gain a first view of Judge Ninfo acting as a biased advocate for local parties rather than an impartial arbiter.

42. If you would not treat a litigant before you, much less allow to be treated as a litigant, the way Judge Ninfo treated Dr. Cordero, then it is respectfully submitted here that you have a professional and moral duty to call for a more comprehensive and independent investigation to determine the extent to which Judge Ninfo's pattern of bias and disregard for legality is motivated by his participation in non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.

March 12, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

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Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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[Sample of the letters to the Committee members]

March 26, 2005

Hon. Pasco M. Bowman
Member of the Committee to Review
Circuit Council Conduct and Disability Orders
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
St. Louis, MO 63102

Dear Judge Bowman,

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, infra) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

By letter of December 9, 2004, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised (3§II). As part of my efforts to have the petition submitted to the Conference to let it decide the issue of its jurisdiction, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chair of the Committee to Review Circuit Council Conduct and Disability Orders (43; 51). Judge Winter answered on February 15 (25). I am submitting to you my reply (28; 29) to his letter because under 28 U.S.C. §331 the Committee as a whole must review all petitions.

For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

Dr. Richard Cordero

List of Members of the Judicial Conference Committee

to Review Circuit Council Conduct and Disability Orders
requested on March 24 and 26, 2005
to consider the arguments in favor of allowing
the petition for review to be forwarded to the Conference
for it to determine the threshold issue of its own jurisdiction
by
Dr. Richard Cordero

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review Circuit
Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007
tel. (212) 857-8500

Hon. Carolyn R. Dimmick
Member of the Committee to Review Circuit
Council Conduct and Disability Orders
U. S. District Court
for the Western District of Washington
700 Stewart Street
Seattle, WA 98101
tel. (206) 370-8400

Hon. Barefoot Sanders
Member of the Committee to Review Circuit
Council Conduct and Disability Orders
U. S. District Court, Northern District of Texas
1100 Commerce Street, Room 1504
Dallas, Texas 75242-1003
tel. (214) 753-2375; fax: (214) 753-2382

Hon. Dolores K. Sloviter
Member of the Committee to Review Circuit
Council Conduct and Disability Orders
U. S. Court of Appeals for the Third Circuit
18614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106
tel. (215) 597-1588

Hon. Pasco M. Bowman
Member of the Committee to Review Circuit
Council Conduct and Disability Orders
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
St. Louis, MO 63102
tel. (816) 512-5800

TABLE OF EXHIBITS

of the request of March 26, 2005, to the Members of the Committee to Review Circuit Council Conduct and Disability Orders that they forward the petition for review of November 18, 2004, to the Judicial Conference for it to determine the scope of its own jurisdiction

by

Dr. Richard Cordero

1. Dr. Cordero's **petition** of **November 18**, 2004, **to** the **Judicial Conference**.....1 [C:823]
2. Letter from Robert P. **Deyling**, Esq., Assistant General Counsel at the General Counsel's Office of the **Administrative Office** of the U.S. Courts, of **December 9,** 2004, stating that **no jurisdiction** lies **for** further **review by** the Judicial **Conference** of the orders of the Judicial Council .....23 [C:859]
3. Letter of **February 15**, 2001, of the Hon. Ralph K. **Winter**, Jr., Circuit Judge at the Court of Appeals for the Second Circuit and Chair of the Committee to Review Circuit Council Conduct and Disability Orders, **to** Dr. **Cordero** stating that the Judicial **Conference** does **no**t have **jurisdiction** for further review .....25 [C:893]
4. Dr. **Cordero**'s **letter** of **March 24**, 2005, **to** Judge **Winter** requesting that he formally submit to the other members of the Committee as well as to the Judicial Conference the following attachment:.....28 [C:935]
    a) Dr. **Cordero**'s **Reply** of **March 25**, 2005, **to** Judge **Winter** on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions **for** review to the Judicial Conference and on the need for the **Conference to decide** the issue of its **jurisdiction**.....29 [C:936]
5. Dr. **Cordero**'s letter of **January 8**, 2005, and supporting files sent **to** Judge **Winter** to **request** that he withdraw or cause the Judicial Conference to **withdraw** Mr. **Deyling's** December 9 **letter** as ultra vires, and **forward** Dr. Cordero's November 18 **petition to** the **Conference** for review .....43 [C:877]
6. Dr. **Cordero**'s letter of **February 7**, 2005, and supporting files sent **to** Judge **Winter,** stating that he has received **no response** to his January 8 letter and **requesting** that **action** be taken on that letter and its requests.....51 [C:890]
7. Judge **Ninfo**'s **bias** and **disregard for legality** can be heard from his own mouth through the **transcript** of the evidentiary **hearing** of the DeLano Debtors' motion to disallow Dr. Cordero's claim against Mr. DeLano held on **March 1**, 2005, and can be read about in a caveat on ascertaining its authenticity that illustrates the **Judge's tolerance of wrongdoing**.....53 [C:951]
8. **Key Documents and dates in the procedural History** of the judicial misconduct complaints filed by Dr. Richard Cordero ..... i [C:886]
9. **Table of Exhibits of the petition** for review to the Judicial Conference ..... ii [C:845]
    a) Exhibits.....E-# [page num.]

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Dr. Richard Cordero

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March 28, 2005

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Chief Justice,

As stated in my letters to you of 7 instant and November 20 and December 18, 2004, last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55)[♣] of two petitions for review (E-23; E-47) concerning two related judicial misconduct complaints (E-1; E-39), one about Bankruptcy Judge John C. Ninfo, II, WBNY, and the other about Chief Judge John M. Walker, Jr., CA2.

By letter of December 9, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (page 23, infra), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised in the petition (3§II, infra). As part of my efforts to have the petition submitted to the Conference to let it decide that issue, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders. Judge Winter answered by letter of February 15 (25) where he states that neither he nor the Conference has jurisdiction to act on my petition. I am submitting to you, as the Conference's presiding officer, my reply (28; 29) to his letter. Therein I argue, among other things, that under 28 U.S.C. §331 the Review Committee must review all petitions so that the Committee as a whole, not just he as its chairman, should consider mine; and that since the Review Committee derives its jurisdiction from that of the Conference, it should forward my petition to the latter with the request that it be the one to determine the jurisdictional issue that I raised.

I respectfully request that you have the Conference decide that issue or bring to the attention of Judge Winter and the Review Committee the need to let the Conference decide it. By so doing, the Conference would have the opportunity to consider whether too narrow an interpretation of the jurisdictional provisions of the Judicial Misconduct Act accounts for the fact that since March 2002 not a single petition has been submitted to it. Thus, the Conference has not had occasion to consider petitions and provide guidance to judicial councils and chief judges on the proper application of the Act. As a result, the Act has become as useless as the impeachment process as a mechanism for judicial control and discipline. Instead of it being interpreted to protect individuals who suffer abuse and bias through judicial misconduct (53) or the public at large who must bear the loss of access to justice and the material cost caused by judges involved in wrongdoing (E-83; E-109), the Act has been interpreted as a means for judges to take care of their own and protect their class image. Has the Conference not been aware of this disregard for the Act's purpose for the past 25 years during which it issued only 15 misconduct orders?

Sincerely, Dr. Richard Cordero

[♣] These Exhibits were submitted to you and the Conference together with a copy of the petition last November 26. The Exhibits are not reproduced below, but reference to their page numbers is made hereinafter using the format (E-#).

OFFICE OF THE CLERK

MARCIA M. WALDRON
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

TELEPHONE
215-597-2995

April 26, 2005

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

Re: March 15, 2005 Letter and Attachment

Dear Dr. Cordero:

The enclosed submission to a judge of this Court has been referred to this office for response. Any submissions to the Judicial Conference of the United States, or a committee thereof, must be made to the appropriate individual in the Administrative Office of the U.S. Courts.

The judges of this Court will not consider, or take any action in regard to, materials addressed to Judicial Conference materials sent to them directly. No purpose is served by sending papers directly to the judges of this Court.

Very truly yours,

Marcia M. Waldron, Clerk

By:
/s/ Bradford A. Baldus
Bradford A. Baldus
Senior Legal Advisor to the Clerk

Enclosure

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2005

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2004*	212	0	4	9	57	9	8	16	30	1	13	30	8	25	2	0
Complaints Filed	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0
Complaint Type																
Written by Complainant	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	177	1	18	1	7	4	28	10	7	6	2	80	7	6	0	0
District	456	0	21	15	23	41	32	52	51	11	22	102	27	59	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	4	0	5	1	2	3	1	2	9	2	2	0	0
Magistrate Judges	135	0	1	4	6	8	9	35	5	2	13	27	7	18	0	0
Nature of Allegations**																
Mental Disability	22	0	1	2	3	2	2	3	0	0	0	6	0	1	2	0
Physical Disability	9	0	0	2	0	0	0	0	0	0	0	4	0	2	1	0
Demeanor	20	0	0	3	0	2	0	2	0	1	2	8	1	1	0	0
Abuse of Judicial Power	206	1	7	13	3	5	26	6	3	4	28	57	0	52	1	0
Prejudice/Bias	275	1	12	19	43	21	9	16	40	5	15	57	15	20	2	0
Conflict of Interest	49	0	2	5	5	11	2	1	3	1	2	13	3	1	0	0
Bribery/Corruption	51	0	0	3	2	1	2	2	1	0	4	32	0	4	0	0
Undue Decisional Delay	65	0	0	6	8	8	2	9	2	0	4	14	7	5	0	0
Incompetence/Neglect	52	0	2	4	4	3	2	3	0	1	8	22	1	1	1	0
Other	260	0	2	1	80	40	11	80	0	7	1	19	18	0	1	0
Complaints Concluded	667	1	22	23	91	47	48	90	47	16	45	120	33	81	3	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	21	0	1	0	5	0	1	0	2	0	3	5	3	1	0	0
Directly Related to Decision or Procedural Ruling	319	1	8	8	46	18	20	30	12	6	29	57	16	65	3	0
Frivolous	41	0	1	3	1	0	4	6	3	8	5	10	0	0	0	0

Table S-22. (September 30, 2005—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	5	0	0	0	0	1	0	1	0	0	0	2	0	1	0	0
Action No Longer Necessary Because of Intervening Events	8	0	1	0	0	1	1	0	0	0	1	0	0	4	0	0
Complaint Withdrawn	6	0	0	0	2	0	0	2	0	0	0	2	0	0	0	0
Subtotal	400	1	11	11	54	20	26	39	17	14	38	76	19	71	3	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Complaints Pending on September 30, 2005	187	0	15	5	2	20	3	25	38	0	6	32	11	29	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2004

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2003*	249	0	2	19	34	3	10	19	22	1	29	38	11	61	0	0
Complaints Filed	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0
Complaint Type																
Written by Complainant	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	240	6	20	16	4	6	23	16	24	8	14	84	13	6	0	0
District	539	0	39	21	15	22	52	51	69	27	55	128	23	37	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	28	0	0	8	1	2	1	2	4	1	0	6	2	1	0	0
Magistrate Judges	149	0	1	5	3	10	18	26	7	3	25	26	11	14	0	0
Nature of Allegations**																
Mental Disability	34	0	0	4	3	5	4	4	2	0	1	10	0	1	0	0
Physical Disability	6	0	0	0	2	1	0	0	0	0	0	3	0	0	0	0
Demeanor	34	0	1	1	6	0	4	3	0	1	7	9	1	1	0	0
Abuse of Judicial Power	251	1	3	11	6	0	42	2	4	2	71	59	22	28	0	0
Prejudice/Bias	334	2	19	27	35	14	22	35	42	7	38	52	20	21	0	0
Conflict of Interest	67	0	5	8	4	6	3	3	2	0	5	22	7	2	0	0
Bribery/Corruption	93	0	0	9	5	10	5	3	1	0	25	33	0	2	0	0
Undue Decisional Delay	70	0	2	7	5	7	4	10	2	5	8	13	4	3	0	0
Incompetence/Neglect	106	0	0	9	3	8	2	3	0	0	18	16	0	47	0	0
Other	224	0	1	1	33	30	10	89	3	24	0	24	9	0	0	0
Complaints Concluded	784	2	28	40	51	34	73	99	56	35	94	135	42	95	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	6	0	5	0	4	1	5	0	0	2	0	0
Directly Related to Decision or Procedural Ruling	295	2	9	7	18	13	31	38	16	21	37	65	8	30	0	0
Frivolous	112	0	8	4	3	0	1	11	3	5	18	5	4	50	0	0

Table S-22. (September 30, 2004—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	0	1	0	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	9	0	0	0	0	0	0	2	0	0	2	0	0	5	0	0
Complaint Withdrawn	3	0	0	0	1	0	0	0	0	0	0	1	1	0	0	0
Subtotal	449	2	21	11	29	13	37	51	23	27	63	72	13	87	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Complaints Pending on September 30, 2004	177	0	5	9	6	9	0	15	38	0	12	49	10	24	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2003

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2002*	141	0	3	4	29	6	3	7	22	4	15	16	6	20	5	1
Complaints Filed	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
Complaint Type																
Written by Complainant	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	204	6	4	19	8	4	16	27	15	2	26	43	12	22	0	0
District	719	0	14	24	49	28	54	54	53	34	157	156	39	57	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Bankruptcy Judges	38	0	0	2	1	3	1	2	5	2	1	16	3	2	0	0
Magistrate Judges	257	0	0	5	11	6	21	24	21	3	91	40	7	28	0	0
Nature of Allegations**																
Mental Disability	26	0	0	1	6	4	5	1	0	1	2	5	0	1	0	0
Physical Disability	7	0	0	0	1	0	0	2	0	0	2	1	0	1	0	0
Demeanor	21	0	0	1	4	3	1	4	0	1	1	3	1	1	1	0
Abuse of Judicial Power	239	1	0	7	20	3	29	22	2	6	30	59	14	45	0	1
Prejudice/Bias	263	2	12	9	20	14	21	26	29	11	36	37	14	29	2	1
Conflict of Interest	33	0	0	1	3	5	3	2	2	1	2	7	3	4	0	0
Bribery/Corruption	87	0	0	1	4	6	10	6	15	0	20	22	0	3	0	0
Undue Decisional Delay	81	0	0	3	9	6	6	4	3	5	25	16	2	1	0	1
Incompetence/Neglect	47	0	0	3	3	2	8	2	3	0	15	6	1	4	0	0
Other	131	0	0	0	4	37	4	45	0	9	2	13	14	0	3	0
Complaints Concluded	682	2	12	18	42	40	69	94	53	31	87	117	42	69	4	2
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	39	0	1	0	1	0	3	0	17	2	9	6	0	0	0	0
Directly Related to Decision or Procedural Ruling	230	2	3	2	14	13	30	24	10	15	15	46	9	46	1	0
Frivolous	77	0	0	0	7	1	3	6	0	7	25	21	1	6	0	0

Table S-22. (September 30, 2003—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	8	0	0	1	0	0	0	1	0	0	5	1	0	0	0	0
Complaint Withdrawn	8	0	0	0	0	0	1	0	0	0	4	2	0	1	0	0
Subtotal	365	2	4	3	22	15	37	31	27	24	59	77	10	53	1	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dismissed the Complaint	316	0	8	15	20	25	32	63	26	7	28	40	32	16	3	1
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0														
Subtotal	317	0	8	15	20	25	32	63	26	7	28	40	32	16	3	2
Complaints Pending on September 30, 2003	294	0	2	22	56	7	1	20	42	1	25	45	11	61	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c) During the 12-Month Period Ending September 30, 2002

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2001*	262	0	17	15	60	3	5	19	44	5	17	36	6	31	3	1
Complaints Filed	657	0	20	14	62	51	59	81	77	28	54	105	47	54	5	0
Complaint Type																
Written by Complainant	656	0	20	13	62	51	59	81	77	28	54	105	47	54	5	0
On Order of Chief Judge	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	353	0	47	6	10	4	17	26	52	11	52	114	11	3	0	0
District	548	0	13	20	41	35	68	32	72	29	43	127	36	32	0	0
National Courts	5	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0
Bankruptcy Judges	57	0	1	1	1	6	4	2	2	0	3	27	2	8	0	0
Magistrate Judges	152	0	1	2	10	6	8	21	11	2	21	48	11	11	0	0
Nature of Allegations**																
Mental Disability	33	0	0	0	4	1	3	2	6	1	3	11	2	0	0	0
Physical Disability	6	0	0	0	0	1	2	0	0	0	0	3	0	0	0	0
Demeanor	17	0	0	1	3	0	3	0	0	0	0	7	0	3	0	0
Abuse of Judicial Power	327	0	1	7	57	6	29	49	14	13	19	71	17	41	3	0
Prejudice/Bias	314	0	34	16	40	13	20	35	51	11	20	36	19	16	3	0
Conflict of Interest	46	0	1	0	18	9	2	3	2	0	4	3	1	3	0	0
Bribery/Corruption	63	0	0	0	15	0	4	6	8	0	5	20	1	4	0	0
Undue Decisional Delay	75	0	1	0	15	3	3	5	3	7	10	15	7	6	0	0
Incompetence/Neglect	45	0	0	2	2	1	7	1	9	0	6	16	1	0	0	0
Other	129	0	4	2	0	46	3	16	8	2	4	32	9	3	0	0
Complaints Concluded	780	0	35	25	93	48	61	98	98	30	57	124	47	61	3	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity with Statute	27	0	1	0	1	0	3	1	7	0	1	9	1	3	0	0
Directly Related to Decision or Procedural Ruling	249	0	6	5	23	17	24	36	31	14	11	36	22	22	2	0
Frivolous	110	0	9	2	9	2	13	7	5	7	10	36	7	3	0	0

Table S-22. (September 30, 2002—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	1	0	0	0	0	1	0	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	6	0	0	0	2	0	1	0	0	1	0	0	0	2	0	0
Complaint Withdrawn	8	0	0	2	2	1	0	0	1	0	0	1	0	0	1	0
Subtotal	403	0	16	10	37	20	41	44	45	22	23	82	30	30	3	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	375	0	19	15	56	28	20	54	51	8	34	42	17	31	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	377	0	19	15	56	28	20	54	53	8	34	42	17	31	0	0
Complaints Pending on September 30, 2002	139	0	2	4	29	6	3	2	23	3	14	17	6	24	5	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c) During the 12-Month Period Ending September 30, 2001

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2001*	150	0	4	9	33	5	3	9	23	1	6	32	4	18	3	0
Complaints Filed	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
Complaint Type																
Written by Complainant	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
On Order of Chief Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	273	0	15	16	31	13	25	23	12	16	33	53	16	20	0	0
District	563	0	16	26	52	23	45	50	86	37	69	104	25	30	0	0
National Court	3	0	0	0	0	0	0	0	0	0	0	0	1	0	1	1
Bankruptcy Judges	34	0	0	2	2	6	2	2	1	3	0	12	2	2	0	0
Magistrate Judges	143	0	3	1	17	8	12	25	17	3	10	20	9	18	0	0
Nature of Allegations**																
Mental Disability	29	0	0	0	5	4	1	3	3	1	2	5	0	5	0	0
Physical Disability	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Demeanor	31	0	0	1	14	2	1	0	1	4	2	5	0	1	0	0
Abuse of Judicial Power	200	0	3	3	28	3	35	28	1	13	21	33	15	16	1	0
Prejudice/Bias	266	0	18	11	24	9	17	31	36	13	11	43	14	38	1	0
Conflict of Interest	38	0	0	0	10	4	3	8	1	1	0	5	4	2	0	0
Bribery/Corruption	61	0	0	0	2	5	4	6	1	1	1	33	3	5	0	0
Undue Decisional Delay	60	0	0	0	6	6	3	11	2	6	4	15	0	7	0	0
Incompetence/Neglect	50	0	0	2	5	8	3	3	7	0	1	20	0	1	0	0
Other	186	0	8	1	0	50	4	47	16	3	8	32	7	10	0	0
Complaints Concluded	668	0	18	16	75	53	61	108	68	39	41	100	30	58	1	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	13	0	1	0	4	0	0	0	1	2	1	4	0	0	0	0
Directly Related to Decision or Procedural Ruling	235	0	2	3	17	26	25	42	20	14	18	27	14	27	0	0
Frivolous	103	0	0	2	13	0	6	13	14	12	7	31	2	3	0	0

Table S-22. (September 30, 2001—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	4	0	0	0	0	1	0	0	0	1	1	0	1	0	0	0
Action No Longer Necessary Because of Intervening Events	5	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0
Complaint Withdrawn	3	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0
Subtotal	363	0	3	6	34	28	31	55	35	29	28	62	17	35	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	303	0	15	10	40	25	30	53	33	10	13	38	12	23	1	0
Withdrawn	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	305	0	15	10	41	25	30	53	33	10	13	38	13	23	1	0
Complaints Pending on September 30, 2001	248	0	17	15	60	2	5	1	52	5	17	34	6	30	3	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the 12-Month Period Ending September 30, 2000

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1999*	181	0	1	5	65	19	2	18	15	0	7	27	11	11	0	0
Complaints Filed	696	2	18	21	59	53	61	113	56	44	51	111	32	73	2	0
Complaint Type																
Written by Complainant	695	2	18	21	59	53	61	113	56	44	51	111	31	73	2	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Officials Complained About**																
Judges																
Circuit	191	4	4	4	9	10	14	23	4	11	45	35	15	13	0	0
District	522	0	17	20	41	36	62	60	50	29	52	92	26	37	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	26	0	0	1	2	6	1	2	2	2	2	5	2	1	0	0
Magistrate Judges	135	0	0	3	7	2	10	28	13	6	6	32	6	22	0	0
Nature of Allegations**																
Mental Disability	26	0	0	0	2	6	6	5	0	1	3	2	0	1	0	0
Physical Disability	12	0	0	1	1	3	4	0	0	0	0	3	0	0	0	0
Demeanor	13	0	0	0	3	2	0	0	0	0	1	6	0	1	0	0
Abuse of Judicial Power	272	0	0	10	29	25	29	43	9	23	20	38	16	30	0	0
Prejudice/Bias	257	1	13	8	28	17	15	24	28	13	17	39	25	29	0	0
Conflict of Interest	48	1	0	0	11	9	1	5	1	0	3	8	1	8	0	0
Bribery/Corruption	83	0	0	2	21	12	8	4	0	2	6	22	2	4	0	0
Undue Decisional Delay	75	0	2	1	11	6	6	7	5	3	3	16	4	11	0	0
Incompetence/Neglect	61	0	0	0	1	7	8	3	1	3	5	31	0	2	0	0
Other	188	0	7	1	5	66	0	50	4	7	13	20	9	6	0	0
Complaints Concluded	715	2	15	17	80	67	60	123	48	44	51	104	39	65	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	0	0	2	0	0	4	0	9	1	0	12	1	0	0	0
Directly Related to Decision or Procedural Ruling	264	2	4	3	29	31	26	23	21	11	23	38	15	38	0	0
Frivolous	50	0	4	1	0	0	2	8	2	12	8	9	2	2	0	0

Table S-22. (September 30, 2000—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	6	0	0	1	0	0	0	3	0	0	0	0	2	0	0	0
Action No Longer Necessary Because of Intervening Events	7	0	0	0	1	0	1	2	0	0	0	1	0	2	0	0
Complaint Withdrawn	3	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0
Subtotal	359	2	8	8	30	31	34	37	32	24	31	60	20	42	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	354	0	7	9	50	36	26	86	16	20	20	42	19	23	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	356	0	7	9	50	36	26	86	16	20	20	44	19	23	0	0
Complaints Pending on September 30, 2000	162	0	4	9	44	5	3	8	23	0	7	34	4	19	2	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-23.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the 12-Month Period Ending September 30, 1999

Summary of Activity	Total	Circuits													National Courts	
		Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1998*	228	0	3	1	23	48	0	3	28	0	19	75	3	25	0	0
Complaints Filed	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
Complaint Type																
Written by Complaint	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	174	4	16	0	23	3	7	31	16	7	25	31	11	0	0	0
District	598	0	48	17	63	24	55	98	58	27	24	99	47	38	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	30	0	0	1	2	2	0	3	2	1	2	16	0	1	0	0
Magistrate Judges	229	0	1	4	11	5	6	64	14	4	10	69	30	11	0	0
Nature of Allegations**																
Mental Disability	69	0	0	0	26	4	3	11	3	0	2	5	0	15	0	0
Physical Disability	6	0	0	0	2	0	0	0	1	1	0	2	0	0	0	0
Demeanor	34	0	0	0	2	1	4	0	5	3	1	14	1	3	0	0
Abuse of Judicial Power	254	0	1	2	7	45	17	4	9	10	16	91	27	25	0	0
Prejudice/Bias	360	2	15	8	34	20	16	28	41	15	23	85	32	41	0	0
Conflict of Interest	29	0	0	0	5	1	6	4	0	0	2	6	2	3	0	0
Bribery/Corruption	104	0	0	4	10	26	4	4	3	1	2	44	0	6	0	0
Undue Decisional Delay	80	0	5	0	0	6	6	2	5	2	2	30	18	4	0	0
Incompetence/Neglect	108	1	0	0	3	5	3	0	6	0	2	71	2	15	0	0
Other	288	0	2	0	3	62	0	143	25	7	4	26	8	8	0	0
Complaints Concluded	826	2	18	12	57	63	53	184	82	31	45	163	50	66	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	0	0	6	0	8	1	4	4	0	0	0	0
Directly Related to Decision or Procedural Ruling	300	2	0	5	19	12	21	31	24	14	11	84	28	49	0	0
Frivolous	66	0	5	2	19	0	6	6	1	3	3	16	4	1	0	0

Table S-23. (September 30, 1999—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	10	0	0	0	3	0	0	0	1	0	0	3	2	1	0	0
Complainant Withdrawn	2	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0
Subtotal	406	2	9	7	41	12	34	37	34	19	18	107	35	51	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	416	0	9	5	16	51	19	147	46	12	27	54	15	15	0	0
Withdrawn	4	0	0	0	0	0	0	0	2	0	0	2	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	420	0	9	5	16	51	19	147	48	12	27	56	15	15	0	0
Complaints Pending on September 30, 1999	183	0	1	6	65	19	2	15	18	0	10	27	11	9	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-24.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the Twelve-Month Period Ended September 30, 1998

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1997*	214	0	6	3	10	31	0	6	18	4	18	82	1	35	0	0
Complaints Filed	1,051	1	27	10	73	120	73	46	86	37	78	265	37	197	1	0
Complaint Type																
Written by Complainant	1,049	1	27	10	73	120	73	46	86	36	78	264	37	197	1	0
On Order of Chief Judges	2	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0
Officials Complained About**																
Judges																
Circuit	443	1	16	2	14	22	23	13	8	17	134	20	11	162	0	0
District	758	0	47	9	56	83	50	27	82	26	83	250	29	16	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Bankruptcy Judges	28	0	2	0	1	2	5	1	3	2	3	6	1	2	0	0
Magistrate Judges	215	0	3	2	8	13	15	12	16	5	7	110	8	16	0	0
Nature of Allegations**																
Mental Disability	92	0	0	3	9	4	7	2	18	0	36	13	0	0	0	0
Physical Disability	7	0	0	2	1	2	0	0	1	0	0	0	0	1	0	0
Demeanor	19	0	0	0	2	3	0	1	3	0	0	8	0	2	0	0
Abuse of Judicial Power	511	1	2	2	30	8	48	16	8	21	27	168	9	171	0	0
Prejudice/Bias	647	0	21	9	36	32	22	22	44	19	46	198	20	178	0	0
Conflict of Interest	141	0	0	1	0	7	3	3	0	0	3	117	2	5	0	0
Bribery/Corruption	166	0	0	0	0	0	3	0	0	1	2	155	2	3	0	0
Undue Decisional Delay	50	0	3	1	4	4	2	0	1	5	7	14	8	1	0	0
Incompetence/Neglect	99	0	0	0	1	4	4	0	3	1	1	81	1	3	0	0
Other	193	0	17	1	11	94	3	13	20	4	11	3	10	6	0	0
Complaints Concluded	1,002	1	33	13	56	95	73	49	70	40	78	257	35	202	0	0
Actions by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	43	0	6	0	4	2	5	0	2	3	6	5	3	7	0	0
Directly Related to Decision or Procedural Ruling	532	1	0	5	19	54	42	15	43	16	52	88	18	179	0	0
Frivolous	159	0	1	1	1	1	0	1	5	13	2	133	1	0	0	0

Table S-24. (September 30, 1998—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	2	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Complaint Withdrawn	5	0	1	0	0	0	1	0	1	1	1	0	0	0	0	0
Subtotal	742	1	8	6	24	57	48	16	51	34	62	227	22	186	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	258	0	25	7	32	38	25	32	19	6	16	29	13	16	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	260	0	25	7	32	38	25	33	19	6	16	30	13	16	0	0
Complaints Pending on September 30, 1998	263	0	0	0	27	56	0	3	34	1	18	90	3	30	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
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** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-24.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the Twelve-Month Period Ended September 30, 1997

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1996*	109	0	1	21	5	11	7	10	1	3	11	31	8	0	0	0
Complaints Filed	679	3	15	16	40	62	69	84	68	28	56	137	54	47	0	0
Complaint Type																
Written by Complaint	678	3	15	16	40	62	69	84	68	27	56	137	54	47	0	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	461	3	4	10	3	24	29	14	11	5	102	249	7	0	0	0
District	497	0	14	17	27	28	48	43	59	25	45	121	38	32	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	2	2	2	6	3	2	2	2	6	1	3	0	0
Magistrate Judges	138	0	0	1	8	7	15	27	10	0	9	24	25	12	0	0
Nature of Allegations**																
Mental Disability	11	0	0	0	1	1	2	0	2	0	3	2	0	0	0	0
Physical Disability	4	0	0	1	0	1	1	0	1	0	0	0	0	0	0	0
Demeanor	11	0	0	0	2	0	0	0	0	0	1	4	0	4	0	0
Abuse of Judicial Power	179	3	0	6	25	1	40	20	8	13	17	19	22	5	0	0
Prejudice/Bias	193	1	9	8	32	8	27	12	17	4	14	30	20	11	0	0
Conflict of Interest	12	0	0	0	0	0	2	1	2	0	3	3	0	1	0	0
Bribery/Corruption	28	0	0	1	0	2	1	0	4	2	4	13	0	1	0	0
Undue Decisional Delay	44	0	0	1	0	6	1	10	4	2	3	11	5	1	0	0
Incompetence/Neglect	30	0	0	3	4	1	0	0	5	0	0	16	1	0	0	0
Other	161	1	3	2	0	30	1	38	24	10	7	19	22	4	0	0
Complaints Concluded	482	3	9	13	33	31	69	80	49	24	41	60	53	17	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	2	4	0	3	1	4	2	1	3	6	2	0	1	0	0
Directly Related to Decision or Procedural Ruling	215	0	0	6	12	21	34	26	21	11	14	31	24	15	0	0
Frivolous	19	1	0	0	0	0	3	0	1	6	1	5	2	0	0	0

Table S-24. (Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	2	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaint Withdrawn	5	0	0	0	0	0	4	0	0	0	0	0	0	1	0	0
Subtotal	270	3	4	6	15	22	45	29	23	21	21	38	26	17	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Complaints Pending on September 30, 1997	306	0	7	24	12	42	7	14	20	7	26	108	9	30	0	0

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January 1, 2006, 12:01 a.m. E.S.T.
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2005 Year-End Report on the Federal Judiciary

I. Introduction

New Year's Day in America means football, parades, and, of course, the Year-End Report on the Federal Judiciary. I am pleased to carry on the tradition launched by Chief Justice Burger, and continued for the past 19 years by Chief Justice Rehnquist, of issuing on New Year's Day a report on the state of the federal courts. I recognize that it is a bit presumptuous for me to issue this Report at this time, barely three months after taking the oath as Chief Justice. It remains for me very much a time for listening rather than speaking. But I do not intend to start the New Year by breaking with a 30-year-old tradition, and so will highlight in this Report issues that are pressing and apparent, even after only a few months on the job.

First and foremost: the state of the federal judiciary is strong. We celebrated on September 24th the 250th anniversary of the birth of Chief Justice John Marshall. If Marshall were able to observe the work of the federal courts today, there doubtless would be much that would surprise him. But he would see in the work of the men and women who took the same judicial oath he did the same commitment to uphold the Constitution and to fulfill the Framers' vision of a judicial branch with the strength and independence "to say what the law is," without fear or favor. Marbury v. Madison (1803).

II. Violence Directed at Judges

No review of the year just passed can ignore the violent events that took place in Illinois and Georgia in February and March. The Nation was shocked by the horrific murders of a U. S. District Court judge's husband and mother by a disappointed litigant, and the terrible incident in Atlanta in which a judge, court reporter, and deputy were killed in the Fulton County courthouse. These attacks underscored the need for all branches of government, state and federal, to improve safety and security for judges and judicial employees, both within and outside courthouses. We see emerging democracies around the world struggle to establish court systems in which judges can apply the rule of law free from the threat of violence; we must take every step to ensure that our own judges, to whom so much of the world looks as models of independence, never face violent attack for carrying out their duties.

III. Appropriations and Judicial Independence

Article III of our Constitution seeks to protect judicial independence by providing that district and appellate judges serve during good behavior and receive "a Compensation, which shall not be diminished during their Continuance in Office." These provisions alone, important as they are, cannot guarantee judicial independence, and a strong and independent judiciary is not something that, once established, maintains itself. It is instead a trust that every generation is called upon to preserve, and the values it secures can be lost as readily through neglect as direct attack.

In recent years, the budget for the federal judiciary and the ever-lengthening appropriations process have taken a toll on the operations of the courts. There are two

areas of concern that have come to the fore and now warrant immediate attention and action. The first may come as a surprise to many: unlike many other elements of the federal government, the judiciary is required to pay a large and ever-increasing portion of its budget as rent to another part of the government — the General Services Administration (GSA). According to information compiled by the Administrative Office of the U. S. Courts, while the judiciary spends almost sixteen percent of its total budget on GSA rent — twenty-two percent of its "salaries and expenses" appropriations — only three percent of the Department of Justice budget goes toward GSA rent, and the Executive Branch as a whole spends less than two-tenths of one percent of its budget on GSA rent. During fiscal year 2005, the judiciary paid $926 million to GSA in rent, even though GSA's actual cost for providing space to the judiciary was $426 million. The disparity between the judiciary's rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the judiciary, is unfair. The federal judiciary cannot continue to serve as a profit center for GSA.

Escalating rents combined with across-the-board cuts imposed during fiscal years 2004 and 2005 resulted in a reduction of approximately 1,500 judicial branch employees as of mid-December when compared to October 2003. We are grateful that our fiscal year 2006 appropriation provides the judiciary with a 5.4 percent increase over fiscal year 2005. While this should allow the courts to restore some of these staffing losses, the judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission.

A more direct threat to judicial independence is the failure to raise judges' pay. If judges' salaries are too low, judges effectively serve for a term dictated by their financial

position rather than for life. Figures gathered by the Administrative Office show that judges are leaving the bench in greater numbers now than ever before. In the 1960s, only a handful of district and appellate court judges retired or resigned; since 1990, 92 judges have left the bench. Of those, 21 left before reaching retirement age. Fifty-nine of them stepped down to enter the private practice of law. In the past five years alone, 37 judges have left the federal bench — nine of them in the last year.

There will always be a substantial difference in pay between successful government and private sector lawyers. But if that difference remains too large — as it is today — the judiciary will over time cease to be made up of a diverse group of the Nation's very best lawyers. Instead, it will come to be staffed by a combination of the independently wealthy and those following a career path before becoming a judge different from the practicing bar at large. Such a development would dramatically alter the nature of the federal judiciary.

Chief Justice Rehnquist wrote often about the need to raise judicial pay — going so far as to say in his 2002 Year-End Report that he felt at risk of "beating a dead horse." Despite his entreaties, however, the situation has gotten worse, not better. According to information gathered by the Administrative Office, the real pay of federal judges has declined since 1969 by almost 24 percent, while the real pay of the average American worker during that time has increased by over 15 percent.

Three years ago, in January 2003, the National Commission on the Public Service concluded that "Congress should grant an immediate and significant increase in judicial, executive and legislative salaries" and that "[i]ts first priority in doing so should be an immediate and substantial increase in judicial salaries." Yet no effective action has been

taken to address this problem. I am not the first person to observe that the way judicial and other high-level government salaries are set — allowing the salaries to stagnate until large increases are required — simply does not work. And all those in public service whose pay scales are tied to those of higher-level officials feel the pinch of compressed salaries.

I understand that it is difficult for Congress to raise the salaries of federal judges, especially in a tight budget climate. I also understand that it is the responsibility of Congress to do difficult things when necessary to preserve our constitutional system. Our system of justice suffers as the real salary of judges continues to decline. Every time an experienced judge leaves the bench early, the judiciary suffers a real loss. Every time a judge leaves the bench for a higher paying job, the independence fostered by life tenure is weakened. Every time a potential nominee refuses to be considered, the pool of candidates from which judges are selected narrows.

If Congress gave judges a raise of 30 percent tomorrow, judges would — after adjusting for inflation — be making about what judges made in 1969. This is not fair to our Nation's federal judges and should not be allowed to continue. Unfortunately, judges do not have a natural constituency to argue on their behalf. They do not serve a particular group, and courts — by their very design — often have to render unpopular decisions. Judges must rely on the Congress and the President to increase their pay.

The federal judiciary, as one of the three coordinate branches of government, makes only modest requests of the other branches with respect to funding its vital mission of preserving the rule of law under our Constitution. Those of us in the judiciary understand the challenges our country faces and the many competing interests that must

be balanced in funding our national priorities. But the courts play an essential role in ensuring that we live in a society governed by the rule of law, including the Constitution's guarantees of individual liberty. In order to preserve the independence of our courts, we must ensure that the judiciary is provided the tools to do its job.

A New Year inevitably kindles fresh hope. In the coming year, the men and women of the federal judiciary will faithfully discharge their heavy responsibility of ensuring equal justice under law. The other two branches of government can aid us in that effort by, first, enacting a significant pay raise for federal judges, and, second, eliminating or at least sharply lowering the courthouse rent that the judiciary is required to pay GSA. These two steps — whose budgetary impact would be vanishingly small — would go a long way toward maintaining a strong and independent federal judiciary with the resources to administer justice efficiently and fairly. And that is priceless.

IV. In Memoriam

On September third, the Nation lost a distinguished and dedicated public servant, and we in the judiciary lost a good friend and colleague. William H. Rehnquist led the Third Branch of our government for almost 19 years. He will be counted by history — an avocation to which he offered four books of his own — as among the handful of great Chief Justices of the United States. For the many of us both within and outside the judiciary who were fortunate enough to know him personally, he will always be remembered as a fair, thoughtful, and decent man.

V. Conclusion

I want to thank the judges and court staff throughout the country for their continued hard work and dedication to our common calling over the past year. I extend to all my wish for a Happy New Year.

Appendix

Workload of the Courts

The Supreme Court of the United States

The total number of case filings in the Supreme Court decreased from 7,814 in the 2003 Term to 7,496 in the 2004 Term — a decrease of 4.1 percent. Filings in the Court's *in forma pauperis* docket decreased from 6,092 to 5,755 — a 5.5 percent decline. The Court's paid docket increased by 19 cases, from 1,722 to 1,741 — a 1.1 percent increase. During the 2004 Term, 87 cases were argued and 85 were disposed of in 74 signed opinions, compared to 91 cases argued and 89 disposed of in 73 signed opinions in the 2003 Term. No cases from the 2004 Term were scheduled for reargument in the 2005 Term.

The Federal Courts' Caseload

Filings in the U.S. bankruptcy courts surged to an all-time record during 2005, rising 10 percent to 1,782,643.[1] This growth stemmed from the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Appeals also reached new levels due in part to a surge in criminal appeals and prisoner

[1] Nonbusiness filings increased 10 percent, and business petitions decreased 2 percent. While chapter 7 and chapter 12 filings grew 17 percent and 53 percent, respectively, chapter 11 and chapter 13 filings dropped 36 percent and 6 percent, respectively. The reduction in chapter 11 filings represented a return to a more typical level after last year's 220 percent rise in chapter 11 petitions filed in the Southern District of New York. Bankruptcy filings have soared 60 percent over the last 10 years.

petitions.[2] In contrast, district court civil filings declined by 10 percent, primarily as a result of decreases in federal question filings and diversity of citizenship cases.[3]

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[2] Filings in the regional courts of appeals rose 9 percent to an all-time high of 68,473, marking the 10th consecutive record-breaking year and the 11th successive year of growth. This increase stemmed from upswings in criminal appeals, original proceedings, and prisoner petitions following the U.S. Supreme Court's decisions in Blakely v. Washington, 542 U.S. 296 (2004) and U.S. v. Booker, 543 U.S. 220 (2005), and from continued growth in appeals of administrative agency decisions involving the Board of Immigration Appeals (BIA). As large as the increase is, it would have been higher had not the Court of Appeals for the Fifth Circuit's operations been affected by Hurricane Katrina. That court's data include 92 appeals filings for the month of September, significantly lower than the 700 to 1,000 it reported for each month from October 2004 to August 2005. Nationwide, criminal appeals rose 28 percent to 16,060. The largest increases were in cases involving drugs (up 31 percent to 6,099), immigration (up 55 percent to 2,896), firearms and explosives (up 23 percent to 2,505), and property (up 15 percent to 1,967). Administrative agency appeals rose 12 percent to 13,713, primarily due to challenges to BIA decisions, which began rising in 2002. Appeals filings have increased 32 percent since 1996.

[3] Specifically, total federal question filings dropped 16 percent because of the substantial decline in filings (19,630 cases) in the District of South Carolina. In the previous year, an abnormally high number of cases related to personal property financial investments were filed in this district. Federal question filings related to civil rights also fell last year, declining by 10 percent. Most of these cases involved employment issues and other types of civil rights issues.

Total diversity of citizenship filings dropped 8 percent, mainly as a result of a 15 percent decrease in personal injury/product liability filings. The District of Minnesota reported a large drop in cases involving the anticholesterol drug Baycol. The Central District of California reported declines in multidistrict litigation cases involving both hormone replacement therapy medication and diet drugs. The Northern District of Ohio saw a major decrease in filings in multidistrict litigation cases which addressed claims of injuries caused by welding rods containing manganese.

Filings with the United States as plaintiff or defendant rose 8 percent. Cases with the United States as defendant climbed 9 percent, mainly as a result of a 29 percent jump in prisoner petitions. Especially significant was the 45 percent rise in motions to vacate sentence. In addition, federal *habeas corpus* prisoner petitions increased 16 percent. Increases in both motions to vacate sentence and federal *habeas corpus* prisoner petitions are, in part, related to the Booker decision. Filings related to the recovery of defaulted student loans and drug-related seizures of property increased 18 percent and 6 percent, respectively.

Over the past 10 years, civil filings have declined 6 percent, mostly as a result of decreases in prisoner petitions, civil rights employment cases, and personal injury/product liability cases.

Criminal filings dropped by a small amount,[4] as did the number of defendants in cases activated by pretrial services.[5] Persons under postconviction supervision remained stable at 112,931.[6]

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[4] Criminal case filings declined 2 percent to 69,575, and defendants in these cases declined one percent to 92,226. This drop was likely attributable in part to the effects of Hurricane Katrina. After Katrina, district courts in the Fifth and Eleventh Circuits reported fewer cases than normal. The decrease in filings in 2005 lowered the cases per authorized judgeship from 105 to 102. The median case disposition time for defendants rose from 6.2 months in 2004 to 6.8 months in 2005, as courts took longer to process post-Booker cases.

Overall drug cases declined 1 percent to 18,198; the numbers of defendants, however, rose 1 percent to 32,637. Immigration filings rose less than 1 percent, but, nonetheless, stood at record high levels of 17,134 cases and 18,322 defendants. Prosecution of sex offenses rose 9 percent to 1,779 cases, primarily due to an increase in filings of sexually explicit material cases. The criminal filing category with the largest numeric increase was non-marijuana drug filings, as cases went up 5 percent to 13,102 and defendants climbed 6 percent to 25,121. Firearms and explosives cases declined 4 percent to 9,207 cases. This year's decrease was the first since 1996, a period during which criminal case filings grew 45 percent.

[5] The number of defendants in pretrial services system cases opened in 2005, including pretrial diversion cases, fell less than 1 percent to 99,365. Nevertheless, pretrial services officers prepared 1 percent more pretrial reports, and the number of defendants interviewed increased 2 percent. In conjunction with all pretrial services cases closed during the year, a total of 231,060 pretrial hearings were held, an increase of 4 percent over the total in 2004. During the past 10 years, cases activated in the pretrial services system have increased 52 percent.

[6] Persons serving terms of supervised release following their release from prison totaled 82,832 on September 30, 2005, and they constituted 73 percent of all persons under postconviction supervision. The number of individuals on parole declined 5 percent to 2,778 and made up only 2 percent of those under supervision. The number of persons on probation declined 8 percent to 26,554, due to a continuing drop in the imposition of sentences of probation by both district judges and magistrate judges. Of the 112,931 persons under postconviction supervision, 44 percent had been convicted of a drug-related offense, the same as one year ago. There are now 27 percent more persons under postconviction supervision than there were in 1996.

Judicial Facts and Figures

Judicial Facts and Figuresis a set of tablescontaining historical caseload data primarily for the fiscal years 1990, 1995 and 2000 through 2005. All tables are in PDF. This publication includes data on the U.S. Courts of Appeals, the U.S. District Courts, and the U.S. Bankruptcy Courts.

The sources for the data were the *Annual Report of the Director*, the *Judicial Business of the United States Courts*, Federal Court Management Statistics and a few unpublished statistical tables. Specific data sources are noted on each table for easy reference. Except where specifically stated, data were compiled from the published report of the fiscal year noted (i.e., 1995 data are from the 1995 *Judicial Business of the U.S. Courts*). There have been minor revisions to some numbers in subsequent publications. For example, pending data are frequently revised in the subsequent publication. In addition, when the reporting period was changed in 1992 from the twelve month period ending June 30 to September 30, a number of filing totals for the previous years were revised in the *Judicial Business of the U.S. Courts*. Several tables in this report include data that reflect the revisions.

Judicial Facts and Figures does not offer an analysis of the federal caseload changes, although significant fluctuations in the data and corresponding explanations are noted on the tables. More detailed information can be found in the *Judicial Business of the U.S. Courts* for the year(s) in which the fluctuation(s) occurred. Questions concerning this report can be referred to the Judgeship Analysis Staff at 202-502-1180.

Download all the Judicial Facts & Figures tables (pdf).
This document is designed for double-sided printing.

1.	**Total Judicial Officers**
1.1	Courts of Appeals, District Courts, Bankruptcy Courts

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2.2	Appeals Filed, Terminated, and Pending - Detail
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2.5	Type of Opinion or Order Filed in Cases Terminated on the Merits After Oral Hearing or Submission on Briefs
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5.2	Criminal Cases Filed by District (Includes Transfers)
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6.4	Civil and Criminal Trials Completed
6.5	Length of Civil and Criminal Trials Completed

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7.2	Voluntary and Involuntary Cases Filed by Chapter of the Bankruptcy Code
7.3	Business and Non-business Cases Filed by Chapter of the Bankruptcy Code

Table 1.1

Total Judicial Officers. Courts of Appeals, District Courts, Bankruptcy Courts

	Courts of Appeals			District Courts							Bankruptcy Courts		
				Article III Judges			Magistrate Judges						
							Authorized Positions						
Fiscal Year	Authorized Judgeships	Active Judges	Senior Judges w/ staff	Authorized Judgeships	Active Judges	Senior Judges w/ staff	Full-Time	Part-Time	Clerk/ Magistrate Judge	Recalled Judges	Authorized Judgeships	Active Judges	Recalled Judges
1990	168	158	63	575	541	201	329	146	8	5	291	289	13
1995	179	168	81	649	603	255	416	78	3	16	326	315	23
2000	179	156	86	655	612	274	466	60	3	23	325	307	30
2001	179	147	93	665	590	281	471	59	3	28	324	312	30
2002	179	155	92	665	637	285	486	51	3	24	324	280	31
2003	179	160	91	680	651	275	491	49	3	40	324	309	35
2004	179	166	102	679	664	291	500	45	3	32	324	313	35
2005	179	167	100	678	642	292	503	45	3	34	352	315	32
*Percent Change - 2005 over 1990													
	6.5%	5.7%	58.7%	17.9%	18.7%	45.3%	52.9%	-69.2%	-	580.0%	21.0%	9.0%	146.2%

**Percentage is not computed when the total is fewer than 10.*

Source: Text Narrative and Tables - Annual Report of the Director.

Table 2.1

U.S. Courts of Appeals (Excludes Federal Circuit). Appeals Filed, Terminated, Pending -- *Summary*

Fiscal Year	Authorized Judgeships	Filed	Terminated	Pending	Per Panel **		
					Filed	Terminated	Pending
1990*	156	40,893	38,961	32,589	786	749	627
1995	167	50,072	49,805	37,536	899	895	674
2000	167	54,697	56,512	40,410	983	1,015	726
2001	167	57,464	57,422	40,303	1,032	1,032	724
2002	167	57,555	56,586	40,965	1,034	1,017	736
2003	167	60,847	56,396	44,600	1,093	1,013	801
2004	167	62,762	56,381	51,071	1,127	1,013	917
2005	167	68,473	61,975	57,724	1,230	1,113	1,037

**Twelve month period ended June 30.*

*** Assumes every case requires a three-judge panel.*

Source: *Federal Court Management Statistics* and Statistical Table B-1

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Annual Reports
Judicial Conference
2d Cir. Judges
2d Cir. Handbook
C.A.M.P.
Court Directions
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2003 Annual Report

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Statistics

STRUCTURE OF THE FEDERAL JUDICIARY

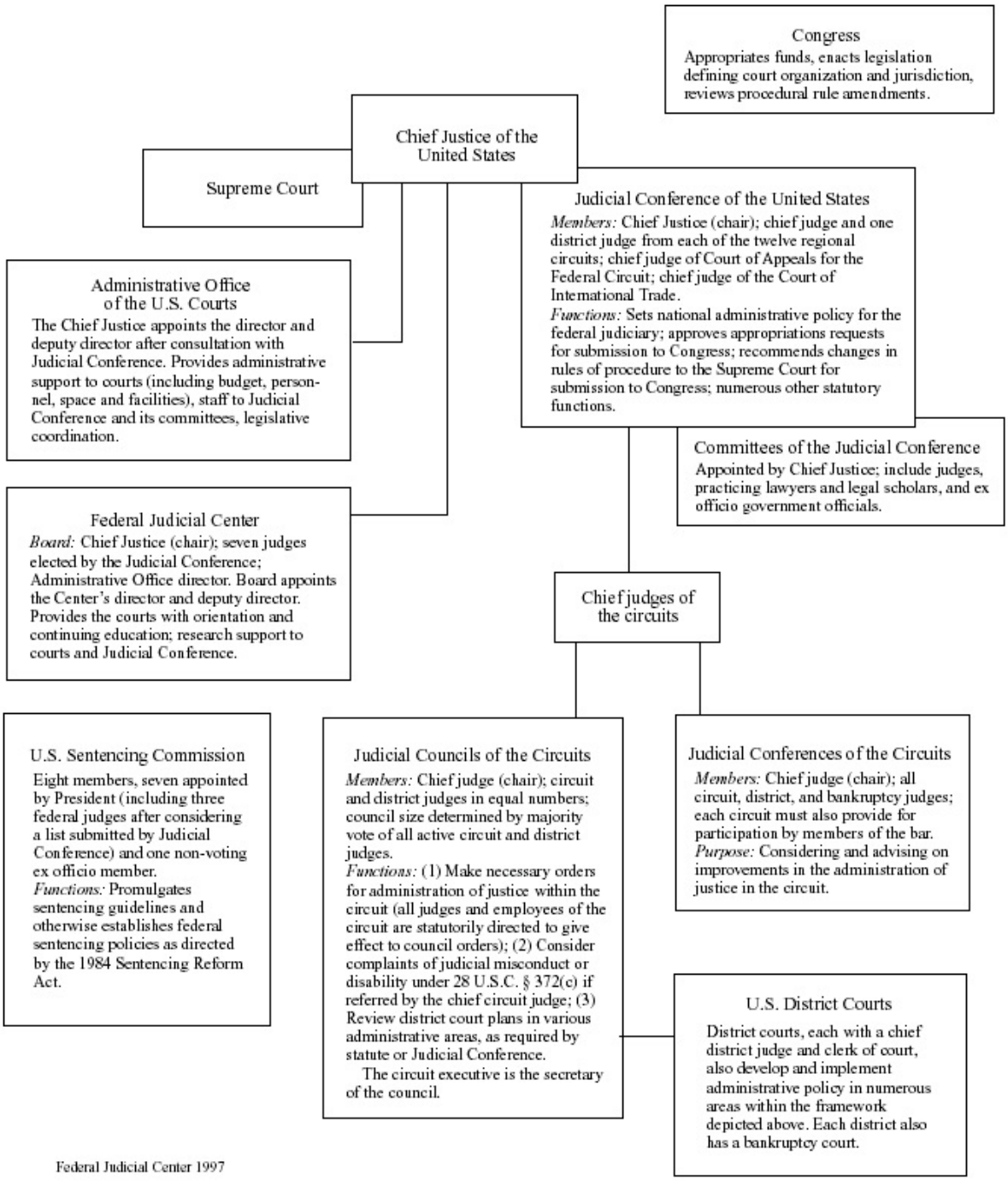
STRUCTURE OF THE FEDERAL JUDICIARY

The federal courts were established as an independent third branch of government by Article III of the Constitution, which provides for a Supreme Court ans " such inferior courts" as Congress deems necessary. Congress established federal district and circuit courts with the Judiciary Act of 1789. A major reform of the system occurred in 1891 with the Circuit Court Act, which established a permanent appellate court for each circuit. Today, the 94 federal district courts are grouped into 12 circuits, each with its own court of appeals.

The administrative head of each circuit is the chief judge of the court of appeals, who achieves this position by seniority. The judicial councils of the circuits, which include active judges of both the courts of appeals and district courts, are charged with administrative responsibility for the circuit as a whole, headed by a chief judge. The chief judge of each circuit and an elected district judge represent the circuit at the semi-annual Judicial Conference of the United States. This body, chaired by the Chief Justice of the United States, is convened for the purpose of determining policy in administrative matters. In addition, the Conference directs the housekeeping arm of the federal judiciary, the Administrative Office of the United States Courts, and advises the legislative and executive branches on matters affecting the judiciary. The Federal Judicial Center, which is governed by a national board of which the Chief Justice is chairman, is the research and training arm of the federal judiciary.

The United States Courts for the Second Circuit exercise federal jurisdiction within the states of Connecticut, New York, and Vermont. The Court of Appeals sits in New York City. The six districts (the state of New York is divided into the Eastern, Northern, Southern and Western Districts) each have a district court and a bankruptcy court, and sit in the locations shown on the map on page 5A. As of May 1, 2004, the Court of Appeals has 12 active judges in 13 judgeships, 11 senior judges (nominally retired judges, most of whom carry heavy caseloads) and one vacancy. The district courts have a total of 57 active judges, 39 senior judges, 45 magistrate judges and 28 bankruptcy judges. There are five district judgeship vacancies.

Federal Judicial Administration



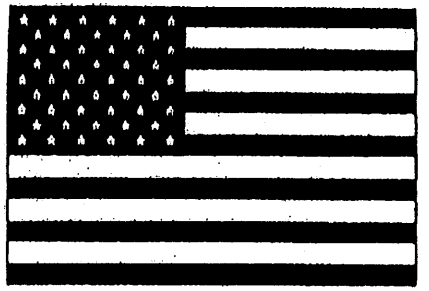
JUDICIAL BUSINESS

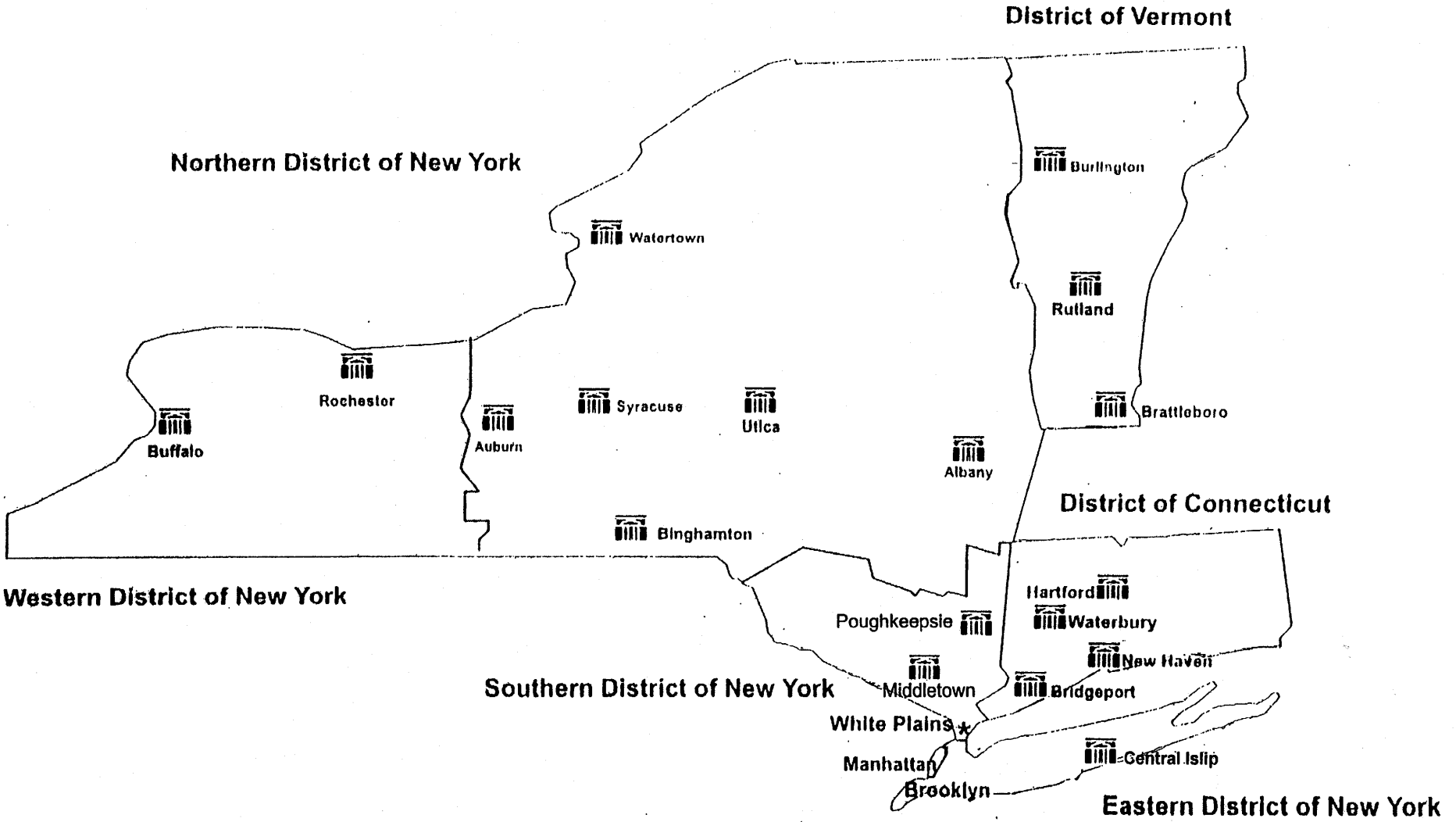
OF THE

SECOND CIRCUIT

THE SECOND JUDICIAL CIRCUIT

PLACES OF HOLDING COURT





CHIEF JUDGES'

REPORTS OF THE

SECOND CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Chief Judge John M. Walker, Jr.

On August 12, 2003, our Court suffered a grievous loss with the death of Circuit Judge Fred I. Parker of Vermont. Judge Parker or " FIP", as he was affectionately known to his circuit court colleagues, joined our Court on October 11, 1994 after serving as a United States District Judge in the District of Vermont from 1990 to 1994 and as that district' s Chief Judge from 1991 to 1994. A graduate of the University of Massachusetts and Georgetown Law School where he was Managing Editor of the Law Review, Judge Parker joined the law firm of Lyne Woodworth & Evarts in 1965 after graduation from law school. From 1966 to 1969, he was an associate in the law firm of Yardell & Page and later was a name partner in the Vermont law firm of Langrock Sperry Parker & Wool from 1972 until his 1990 appointment to the district court bench. Judge Parker served as Deputy Attorney General for Vermont from 1969 to 1972, chair of the Vermont Criminal Justice Training Council from 1973 to 1979 and as chair of the Vermont Supreme Court' s Special Committee on the Reform of the Judiciary from 1988 to 1989, among other public service endeavors. As a federal judge, from 1993 to 2003 he represented the Second Circuit on the Judicial Branch Committee of the Judicial Conference of the United States from 1993 to 2002.

Judge Parker' s sudden death was a terrible loss for our Court. A hard working and able jurist, he was a " judge' s judge," who held no personal agenda and hewed to the path of the law. His opinions were models of clear, concise and well-crafted judicial prose that did not stray from deciding the issue at hand. He delighted in his family, his adored wife and constant companion, Barbie, and his

two sons, Hawkeye and Bruce. And he loved his adopted state of Vermont and all of the outdoor activities for which that state is famous. His fifth floor chambers in the Burlington Courthouse overlooked Lake Champlain. Most of all, Fred Parker was a warm and wonderful colleague. All of us loved FIP and we will miss his dry sense of humor, his wise counsel and his strong friendship which we had hoped would be with us for many years. Our hearts and deepest sympathies remain with Barbie, Hawkeye and Bruce and his colleagues and friends in his beloved Vermont.

In 2003, with our Court's overall filings rising 31%, we were one of seven regional courts of appeals reporting increases in filings. This increase was attributable primarily to a flood of immigration appeals, the result of a concerted effort by the Department of Justice ("DOJ") to eliminate an enormous backlog of cases before the Immigration and Naturalization Service ("INS"). While the INS enforcement functions were transferred to the new Department of Homeland Security, the INS adjudicative functions remain with the DOJ. Appeals from the Bureau of Immigration Appeals ("BIA") are taken directly to the Court of Appeals.

In 2002, the Attorney General directed the BIA to clear its backlog of cases, with the result that filings of appeals of BIA decisions nationwide climbed 153 % from 2001 to 2002 and 99% from 2002 to 2003. Most of these increases were felt in the Ninth and Second Circuits with considerable impact on the Fifth and Eleventh Circuits as well. The disposition of these cases is a challenge not just for our Court, but also for the attorneys: the United States Attorney's Office for the Southern District of New York and the private immigration bar, where a small handful of attorneys represent most of the aliens in counseled appeals.

At the same time, the Court of Appeals has had to deal with a significant upward spike in habeas corpus appeals and motions for certificates of appealability from the Eastern District of New York. A backlog of approximately 500 habeas corpus petitions were assigned to one district judge for review and disposition and their appeals have stretched our resources. To handle this severe caseload increase, our Court increased the number of double panels for the 2003-2004 Term to twelve with three additional optional panels standing by if circumstances warranted. While our present information as to the number and timing of additional cases ready for calendaring is imperfect, our goal is to try to build in as much flexibility as possible to deal with this caseload challenge over the next term of our Court.

In 2002, each active judge sat for forty days which translates into about 250 appeals. In addition, our judges heard numerous motions both counseled and pro se. As in previous years, about 80% of our panels were comprised entirely of our own circuit judges and, although we continued our tradition of including visiting judges, we relied primarily on visitors from within the Circuit. Once again, enjoying a nearly full complement of judges in 2004 allowed us to schedule sittings

that maximized opportunities for our judges to work closely with one another, thereby improving collegiality and building levels of trust and respect that are at the heart of good appellate decision-making.

Last year, on August 16, 2002, Judge Pierre N. Leval took senior status. The judicial vacancy created by Judge Leval's change in status was filled on June 13, 2003 when Richard C. Wesley, an Associate Judge of the New York State Court of Appeals, was elevated to our Court. Until Judge Fred I. Parker's untimely death on August 12th, our Court briefly enjoyed a full complement of thirteen active judges with no judicial vacancies.

In 2001, our magnificent building at 40 Foley Square in Manhattan was renamed in honor of the late Associate Justice of the United States Supreme Court Thurgood Marshall. On Monday, April 14, 2003, we formally dedicated the Foley Square United States Courthouse to Justice Marshall, who was a member of our Court from 1961 to 1965. Justice Marshall's widow, Cissy, her two sons and their families joined Senators Charles Schumer and Hillary Rodham Clinton, Congressmen Jerrold Nadler, Eliot Engel and Charles Rangel, GSA Administrator Stephen Perry, Deputy Attorney General Larry Thompson, Senior Circuit Judge Ralph K. Winter (Justice Marshall's first law clerk as a circuit judge), Chief Southern District Judge Michael B. Mukasey and myself in paying tribute to the late Justice Marshall. In the Main Lobby of the now Thurgood Marshall United States Courthouse a bronze plaque is affixed to the wall which bears a likeness of the late Justice from his days on the Supreme Court. The plaque that commemorates Justice Marshall's life tells all who enter our building that this imposing courthouse is forever dedicated to an " American hero", the civil rights leader, who in addition to his distinguished judicial career as an Associate Justice of the United States Supreme Court, a United States Circuit Judge for the Second Circuit, successfully argued Brown v. Board of Education before the United States Supreme Court.

Last year, I reported that our efforts to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse ultimately proved unsuccessful. Early in 2003, GSA Administrator Perry asked the courts and the AO to work with his agency in re-examining the costs of our project in an effort to secure approval from the Office of Management and Budget (" OMB") for inclusion in GSA's FY 2005 budget. Two months after we began this review, GSA Administrator Perry, in his remarks at the April 13th dedication of our Courthouse, publicly acknowledged the pressing need to remedy the Courthouse's deteriorated infrastructure and pledged his agency's support in securing the necessary funding from Congress. Members of Congress, including Senator Clinton and Congressman Nadler, in whose district our Courthouse is located, followed suit, pledging their support for our prospectus project.

As the 2003 calendar year ends, I am pleased to report that our efforts over the past three years to secure prospectus level funding to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse through an appropriation from Congress have been successful. In February 2004, GSA's request for $16.5 million in design monies for our prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse, was included in GSA's FY 2005 budget request to Congress. Construction monies will be phased over a two-fiscal-year cycle in FY 2007 and FY 2008. In order to upgrade and replace the building's heating, air conditioning, electrical and plumbing systems, both the Court of Appeals and the Southern District have agreed to vacate the courthouse prior to the construction phase of the project and to remain out of the courthouse until completion of the project in 2010. Undertaking a project of this magnitude will require an enormous sacrifice by the judges and staff of these two courts for many years, but it is essential that we replace the aging infrastructure of the Thurgood Marshall Courthouse with new modern systems that can support court operations well into the twenty-first century.

Our success in this almost three-year endeavor was thanks to the steadfast assistance of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts (" AO") and his Assistant Director for Security and Facilities Ross Eisenman, who continued to retain the services of the Philadelphia-based architectural and engineering firm Vitetta Associates for us and who worked with us, Vitetta and GSA Region 2 throughout much of 2003 to re-examine and reduce the costs of the prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse without sacrificing the scope of the much-needed infrastructure upgrade. We also thank GSA Administrator Stephen Perry, Public Buildings Commissioner Joseph Moravec and their staffs and GSA Region 2, Senators Charles Schumer and Hillary Clinton, Congressman Nadler and the members of the Citizen's Committee to Restore the Thurgood Marshall Courthouse for their support in helping us secure the necessary monies to preserve this stately and magnificent building for generations to come.

Finally, I want to mention the strong support that we received from the late Senator Daniel Patrick Moynihan over the past several years before his untimely death n 2003. Senator Moynihan served as the Co-Chair of the Citizen's Committee to renovate the Thurgood Marshall Courthouse and played an active role in our efforts. Our project is evidence of just another way in which this great public servant will be missed by the citizens of the State of New York and the country.

In closing, I am pleased to report that the news from the Court of Appeals is good and continues to improve. Even as our Court experiences changes in personnel and workload trends, we continue our tradition of scholarship,

collegiality and respectful dissent. While our median disposition time has lengthened due to an increased caseload without an increase in judges, I fully expect that it will be reduced as we adopt more efficient practices. The important administrative issues that confront this Court and the federal judiciary as a whole remain unchanged. Judicial vacancies must be filled and increased caseloads must be dealt with. Thanks to our thirteen active and eleven senior judges, I am confident that we will carry into the future the Second Circuit' s proud traditions of craft in decision-making and expeditious docket management.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

[PHOTO UNAVAILABLE]

Chief Judge Robert N. Chatigny

JUDICIAL OFFICERS

On February 4, 2003, Alfred V. Covello took senior status after more than ten years of service as a District Judge, the last five as Chief Judge of the District Court. He was succeeded as Chief Judge by Robert N. Chatigny, the 12th person to serve the District Court in that capacity.

On June 12, 2003, President George W. Bush appointed Mark R. Kravitz to the seat vacated by Judge Covello. Judge Kravitz was sworn-in by Chief Justice William H. Rehnquist on August 18, 2003, thus becoming the 34th District Judge in the history of the Court. A formal investiture ceremony for Judge Kravitz was conducted at the New Haven Courthouse on November 10, 2003.

With the appointment of Judge Kravitz, the District Court returned to a full complement of eight active District Judges. The Court continued to benefit enormously from the work of its Senior District Judges, Ellen Bree Burns, Warren W. Eginton, Peter C. Dorsey, Alan H. Nevas, and Alfred V. Covello. Senior District Judge Gerard L. Goettel of the Southern District of New York, sitting by designation, also continued to provide exemplary service to the Court.

On February 28, 2003, Albert S. Dabrowski was appointed to succeed Alan H. W. Shiff as Chief Judge of the Bankruptcy Court, effective March 1, 2003.

Thomas P. Smith was appointed to a fourth term as a Magistrate Judge on September 26, 2003. His new eight-year term began November 1st.

The District Judges voted to seek the reappointment of Magistrate Judge William I. Garfinkel, whose first term expires November 22, 2004.

CASE STATISTICS

In 2003, the District Court opened 2,304 civil cases and disposed of 2,024 civil cases. At year-end, 3,159 civil cases were pending.

The Court opened 288 criminal cases involving a total of 368 defendants and disposed of 317 cases involving a total of 511 defendants. At the end of the year, 368 defendants had charges pending.

ATTORNEY DISCIPLINE

The Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

CLERK' S OFFICE AWARDS CEREMONY

The annual awards ceremony honoring members of the Clerk' s Office was held in the Bridgeport Courthouse on April 11, 2003. Fidelis Basile, Alyssa Esposito and Kenneth Ghilardi received 10-year service pins; Maria Carpenter received a 15-year service pin; Victoria C. Minor received a 20-year service pin; Patricia Corbett received a 25-year service pin; and Sharon Collins received a 30-year service pin. Government Service Awards were given to Shirlee Ann Brown, who received a 10-year certificate, and Judi D' Auria, who received a 25-year certificate. Special Act Awards went to Cassandra Warren and Cheryl Conte for conducting food and toy drives for the benefit of local charities. Stephen Bates received the Rookie of the Year Award. Betsy Lopez received the Distinguished Service Award.

TRAINING

During 2003, the Court' s internal training programs focused on implementing the new Case Management/Electronic Case Files system.

In addition, the Clerk' s Office began offering CM/ECF training to members of the Bar and their staffs. Lawyers attending the training class received

CLE credit. An on-line tutorial for CM/ECF also was made available to the public through the Court's website.

At the Clerk's Office annual retreat, a program dealing with attitudes at work and interaction with co-workers was presented by the Clerk of the Middle District of Florida, Sheryl Loesch.

Federal Judicial Center programs on effective writing were presented to members of the Clerk's Office by Hillary Gaylin, Deputy Clerk, Eastern District of Virginia.

AUTOMATION

During 2003, plans were finalized for installing digital evidence presentation systems at each seat of court. The work is expected to be completed in 2004.

CONSTRUCTION PROJECTS

Construction of the new grand jury room in the Bridgeport Courthouse was completed in April 2003.

During 2003, two new construction projects were designated by the District Court as priority projects for funding. The first involves construction of a new courtroom on the third floor of the New Haven Courthouse. The second involves redesigning the witness box and expanding the jury box in Courtroom 2 of the New Haven Courthouse. The Space and Facilities Committee for the Second Circuit approved these designations and provided funds for the first project. Funds for the second project were allocated by the District Court, with the approval of the Second Circuit Committee. Both projects are scheduled to be done by the General Services Administration in 2004.

The Court provided GSA with design requirements for a new jury assembly room on the second floor of the Hartford Courthouse. Because the affected space previously belonged to the U.S. Marshal's Service, GSA is funding the project in its entirety.

LONG-RANGE SPACE PLAN

During the week of March 24, 2003, Elizabeth McGrath, Chief, Long-Range Space Planning, AOUSC, Scott Teman, Assistant Circuit Executive, and representatives from Fentress Associates, met with Chief Judge Chatigny, the Court Unit Executives, the Public Defender, the U. S. Attorney, the U. S.

Marshal, and representatives from GSA to update the Long Range Space Plan originally prepared in 1994. As a result of the meetings and subsequent comments, the Court received a final draft of a Long-Range Plan in December 2003. The draft makes it clear that the Court faces, and must soon confront, worsening space shortages, significant security risks, and other issues that may require building one or more new courthouses.

UNITED STATES PROBATION OFFICE
DISTRICT OF CONNECTICUT
2nd Circuit Annual Report
Fiscal Year 2003

NOTABLE EVENTS IN FISCAL YEAR 2003

Fiscal Year 2003 was a very busy year with several important events. First and foremost was the budget crisis. Receiving the budget so late in the year impacted all of us, delaying purchases, reducing services and forcing us to make tough choices in hiring. The District of Connecticut completed the Long-Range Space Planning process. This took place in March of 2003. In April 2003, the Probation Office went through a District Review, by the Probation and Pretrial Services Office. This process involved months of preparation and more than a week of review. We feel that the review was a positive experience and a worthwhile endeavor. Fiscal Year 2003 was a contract year for us for aftercare services. We also had to contract for electronic monitoring services as the national contract failed to meet our needs. Also, for the first time, we leased GSA fleet cars. The purpose of this was to reduce travel costs. We will evaluate this program in 2004 to determine if leased cars are a cost saving measure. We implemented PACTS ECM in 2003. This program was an eight-month process, with a live date of June 2003. And finally, utilizing some of the recommendations from the review, we fine-tuned several of our manuals, the most important one being the Internal Controls Manual.

STAFFING

At the close of Fiscal Year 2003, the Probation Office staff consisted of 57 individuals filling 56.2 full-time positions. We had two pending officer appointments on September 30th. These officers came on board the first week of FY 2004, bringing our total staffing to 59. The position categories were as follows, one chief and two assistant deputies, three supervising probation officers and 31 line probation officers, 19 administrative and clerical support and three automation support. Our statistical workload justified 67.94 positions, thus indicating we were understaffed eight positions, even with the two new officers. We intended to fill all vacant positions, however, additional hiring had to be put on hold, due to budget uncertainties.

During the year, our office was critically understaffed due to unfilled positions and officers out on extended leave, for illness or maternity/family leave situations. We were able to continue functioning despite our inability to hire, through the use of temporary help in officer and support job categories.

The District of Connecticut recognizes the need for a diverse staff. The hiring practices of the Probation Office reflect our Court' s policy with the two largest minority groups, African Americans and Hispanics represented in our professional and support staff. Our officer and administrative professional staff are just about evenly divided by gender.

TRAINING

Training is a priority in the Probation Office. In FY 2003, a significant number of training hours were devoted to PACTS ECM. The total number of hours of training for PACTS ECM was approximately 700 hours. Other in-service training provided during the year included District Personnel Policies, Officer Safety, and Sentencing Guidelines. We take advantage of training offered by other agencies, especially those that cost little to nothing and do not require travel outside the District. Staff also has access to the FJTN at all three locations. They are provided a schedule and encouraged to view relevant programs of interest. Excluding training for PACTS ECM and FJTN training, probation office staff participated in 1,300 hours of training.

WORKLOAD

Pretrial: In 2003, the District of Connecticut experienced a slight increase in the workload. We activated 463 pretrial cases, down slightly from 2002. Officers attended 1,062 hearings. Thirty-seven violations were reported to the Court, with eight of them resulting on bond revocations.

In FY 2003, our detention rate began to decline, but the number of defendants on supervision increased. The changes are a reflection of a change in the focus of Government prosecutions to more white-collar crimes and fewer multi-defendant drug distribution cases. But, some credit should also be given to our Court for the attention and analysis of our role and contribution to our high detention rates. In response to our recognition of and the AO' s criticisms of our high detention rate, Chief Judge Chatigny opened dialogue between Judges and Magistrate Judges, the Probation Office, the Federal Defender and the United States Attorney. Also, a local Criminal Law Committee was formed, which also included representation from the private bar. This committee was to serve as a forum for discussion and resolution of various matters of concern, including the detention rate. Additionally, Magistrate Judges and Probation Officers responded by making a sincere effort to find appropriate alternatives to detention.

Substance abuse and mental health treatment were provided to approximately 70 defendants in 2003. The total cost of treatment for all defendants was $172,232. Approximately 95 defendants were released on home confinement during pretrial supervision. The cost for home confinement was $31,925. Approximately 25% of all pretrial services costs were covered by co-payments from defendants, private insurance or State health insurance programs. Co-payments totaled $51,475, reducing the cost to the Probation Office to $152,683. This amount was a 36% increase above 2002 costs, reflecting an increase in the use of alternatives to detention, but still a bargain considering that the cost of detention averages $68 per day or $25,000 per year, per person.

Probation: The Probation Office completed 431 presentence investigations in 2003, a 29% increase above the prior year. This increase was largely due to several high-profile, multi-defendant cases reaching final disposition after pending for several years. We do not expect that rate of increase to continue.

We supervised 880 offenders in the community, up 6% from the prior year. The vast majority of our supervision cases are on supervised release or probation. The various types of parole cases make up less than 1% of all supervision cases. Of all supervision cases, nearly 100% have one or more special conditions that include community confinement, fines or restitution, substance abuse or mental health treatment.

Expenditures for substance abuse treatment totaled $230,978, for the provision of services for approximately 140 offenders. Our actual expenditures for treatment were reduced by client and insurance co-payments, totaling $26,735, reducing the actual costs to the Government to $204,243. Mental health treatment costs totaled $57,961, providing services for approximately 40 individuals. Co-payments totaled $5,258, reducing costs to the Probation Office to $52,258.

During FY 2003, 55 post-conviction offenders were placed on home confinement. Costs for these services were $31,391. Offender co-payments collected totaled $11,822, reducing the cost to the Probation Office by one-third, to $19,570.

The total cost for all treatment and alternatives to detention was $524,488. Co-payments collected totaled $95,290, reducing our actual costs for all services to $429,199.

The Probation Office is also a key player in the collection of fines and restitution. During FY 2003, the Probation Office recorded collections of $83,635

in fines, $342,103 in restitution and $3,770 in special assessments, for a total of $429,508.

PLANNED EVENTS IN 2004

A major event for our District in 2004 is the implementation of FAS_4T. This is a huge step for us, being a manual court. We will also be implementing the new supervision monographs for probation and pretrial services.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Chief Judge Edward R. Korman

The population of the Eastern District of New York, which is one of the most populous judicial districts in the United States, increased over the last decade by 651,915, to 7.9 million. This was an increase of 8.5%. The 2000 Census indicated that much of that growth took place in the three counties of the City of New York that are part of the Eastern District of New York and in Suffolk County. A more recent update indicates that the population is likely to reach 8 million in 2004, or approximately 42 percent of the total population of the State of New York. The continued population growth, along with other factors, is responsible for the huge caseload borne by the judges of the Eastern District.

CASELOAD PROFILE

The Eastern District's judicial caseload profile remained high, but declined somewhat in 2003. Weighted filings per judgeship were 658, lower than last year's five-year high average. The Eastern District of New York remains first within the Second Circuit in weighted filings, and well above the national average of 532. Several other rankings of actions per judgeship also remain high, including total filings (553) – which is based on fifteen (15) judgeship positions when only thirteen (13) positions presently are filled; civil filings (449); pending cases (684); terminations (567) and trials completed (25). These statistics are through December 2003.

On September 30, 2003, pending total civil actions were 8, 111, down from 8,536; civil case filings were 6,742, down from 7,601; criminal case filings were 1,293, down from 1,369; and criminal defendants totaled 1,927, down from 1,969.

This high workload per judge would not have been managed without the extraordinary assistance rendered by our senior judges. Six (6) of the nineteen (19) judges in the Eastern District are senior judges. Substantial assistance was also received from visiting judges. A total of 529 trial and non-trial bench hours were logged by eight (8) visiting judges who presided over 19 trials. A significant number of settlements also resulted from their efforts.

THE DELAYS IN FILLING VACANCIES

Our ability to process our heavy caseload has been undermined significantly by the delays in filling vacancies. We have not had a full complement of judges since February 1, 2001. The vacancy created when Judge Reena Raggi was appointed to the Court of Appeals for the Second Circuit on October 14, 2002 has not been filled. A second vacancy created when Judge Sterling Johnson, Jr. took senior status on June 1, 2003, also remains unfilled. Yet, another vacancy, which went unfilled for more than two years, was created when Judge Thomas C. Platt took senior status on February 1, 2001. On September 22, 2003, Judge Sandra J. Feuerstein was appointed. Judge Feuerstein comes to the Eastern District from the Appellate Division, where she was the first woman from Nassau County to be appointed to that court. She previously served on the New York State Supreme Court in Nassau County, and as Judge of the Nassau County District Court. She was educated at the University of Vermont, at Hunter College, and she received her J.D. degree from Benjamin Cardozo School of Law of the Yeshiva University, where last year she received the Distinguished Alumnus Award.

JUDGE JACOB MISHLER

The Judges of the Eastern District lost a treasured colleague with the death of Judge Jacob Mishler on January 26, 2004. Judge Mishler was appointed by President Eisenhower on July 6, 1960. He served for more than 42 years and as Chief Judge from 1965 to 1980. Judge Mishler was one of the ablest trial judges to grace the federal bench where he served longer than any judge appointed to our Court.

The qualities that made him so special were eloquently described by Gregory Wallance, one of his former law clerks, at a Special Session of the Court that convened on the occasion of the fortieth anniversary of Judge Mishler' s appointment:

" I deeply appreciate, from personal experience as a clerk in the late 1970s, Judge Mishler' s skills in seeking objective truth, applying the law, and even down field running and punting. But what stands out for me is the extraordinary judicial humanity that he brings to the intensely human process that is the modern federal district court.

I remember the unusual human intuition that Judge Mishler brought to sentencing because, despite the Sentencing Commission' s insistence, this is the most supremely human moment in the entire legal process.

I observed deadlocked, frustrated and angry juries that he calmed, not so much with words but by communicating, through his manner, his action and sympathy for their ordeal and optimism that more effort would ultimately be productive.

I recall the status conferences that Judge Mishler enlivened with humor and a wonderful, broad smile that relaxed otherwise-uptight attorneys and allowed everyone to get on with the business at hand. And I remember how much pure, sheer fun it was to be his law clerk.

So yes, applying the law is part of what judges do. But that alone in my view does not make a great judge.

We are here today to honor a great judge because not only does he extremely ably apply the law, but because he so skillfully understands and appreciates the people he is applying it to."

HABEAS CASE PROJECT

The Eastern District had a backlog of approximately 700 pending Habeas Corpus petitions. Senior District Judge Jack B. Weinstein with his legendary generosity of spirit volunteered to accept all habeas cases reassignments, and also promised to resolve all cases so assigned before the end of the calendar year. A total of 500 Habeas Corpus cases were assigned to Judge Weinstein in May 2003, and all 500 cases were decided by December 2003. An extensive written report suggesting administrative action to avoid future backlogs in deciding Habeas Petitions also was prepared by Judge Weinstein and issued on December 11, 2003. Writs were granted in ten (10) cases and, in 68 cases, a certificate of appealability was granted by Judge Weinstein. The Board of Judges owes a debt of gratitude to our senior colleague, who continues to work as hard, if not harder, than any district judge anywhere in the United States.

THE JUDICIARY BUDGET

The Judicial Branch is experiencing a severe budget crunch. The results of this funding shortfall are being felt throughout the judicial system, most particularly in the district courts and their Clerk' s Offices. In the Eastern District of New York, the Clerk' s Office, Pretrial Services, and the Probation Service have been significantly affected by the current budget crisis. The Clerk' s Office started the fiscal year with an estimated shortfall in the personnel account well in excess of a million dollars. In July, 2003, the Clerk' s Office staff was at 162 permanent staff positions. Presently, the Clerk' s Office is down to 152 positions, and must reduce staff to 142 positions. There is a hiring freeze on all replacement staff needs, a freeze on grade increases, a freeze on even minor longevity bonuses, and five staff members have accepted buy-out retirement offers. The balance of the salary shortfall is coming out of our automation and general accounts, even after these non-personnel accounts had been reduced by approximately 32 percent, as mandated by the Judicial Conference.

The outlook for FY 2005 is not any better. Funding levels for the Clerk' s Office are projected to drop even further, and may only support a total of 132 permanent staff. The budget crunch was intensified by a decision by the AO to reset salary allotments, separate from, and even prior to, a final fiscal year budget, so there was a double salary reduction in FY 2004. Further adjustments to the so-called " work measurement formula" are projected for FY 2005, so this double reduction effect will likely be repeated. A loss of 30 staff positions, if the 132 staff level projection in FY 2005 proves accurate, will be an unprecedented 18.5 percent drop in personnel within less than two years.

BROOKLYN COURTHOUSE

The construction of a new Brooklyn courthouse began with a groundbreaking ceremony on February 7, 2000. The project is way behind schedule. A second building project, the renovation of the Brooklyn Post Office, a part of which will be occupied by the Bankruptcy Court, is also behind schedule. The Brooklyn Courthouse Project has been troubled from the very beginning by the manner in which GSA managed the budget and contracting process. GSA' s failure to recognize and act decisively in an escalating construction market resulted in a series of redesign efforts that took the project from an eighteen-story building to the fourteen-story building now under construction. The February 1998 bid on the eighteen-story building was only seven million dollars over budget. Unaware of the amount of available funds, and unwilling to negotiate the difference, GSA ignored the advice of its consultants and insisted that the size of the project be scaled down to fourteen stories at a redesign cost of 2.7 million dollars. The final bid on the fourteen-story building which GSA accepted in September 1999, was twenty-one million dollars over budget.

The fourteen-story building now under construction is capable of housing sixteen district courtrooms and chambers and eight U.S. magistrates courtrooms and chambers, barely enough for the present complement of judges and magistrates sitting in Brooklyn, and not enough to house the number of judges who are likely to be sitting there when the project is completed. Nevertheless, GSA proposed to build out only twelve district courtrooms and chambers and four courtrooms and chambers for U.S. magistrate judges. Since GSA demolished an otherwise useful office building adjoining the present courthouse, which contained four courtrooms and which would have cost tens of millions of dollars to construct, the project as contemplated by GSA would have resulted in a net increase of eight district courtrooms and four magistrates courtrooms at a cost of 208.57 million dollars.

This shortsighted plan would also have ultimately cost the taxpayers far more money in years to come when the combined facilities in the present courthouse (with ten district courtrooms) run out of space. Moreover, it would have delayed and made more expensive the long-planned renovation of the present courthouse, because it would have to have been accomplished while the building was occupied.

Our concerted efforts succeeded in reversing the proposal of GSA to construct a fourteen-story building of which a third would have been an empty shell. The Omnibus Appropriation Bill for FY 2003 appropriates the additional 39.5 million dollars needed to build out the remaining eight (8) courtrooms and chambers in the new Brooklyn Courthouse. Our efforts, which overcame the lack of support from GSA, were assisted by the Brooklyn/Queens/Staten Island delegation in the House of Representatives, especially Representative Jerrold L. Nadler, and by Senator Hillary Clinton who is a member of the Senate Public Works Committee. Nevertheless, the overall project is 28 million dollars over budget. The General Services Administration has identified sufficient funds for re-programming from other available funds. GSA will request that OMB approve the administrative transfer of these funds.

The projects, District and Bankruptcy, have yet again been delayed due to the bankruptcy of the general contractor, JA Jones Construction. The General Contractor' s surety company, Fireman' s Fund, has accepted their liability and entered into an agreement with Bovis Lend Lease to complete both projects. The new estimated completion dates (although not official) are March 2005 for the Bankruptcy Court, and October 2005 for the District Court.

GSA has spent all of the $39.5 million appropriated for our eight (8) additional courtroom and chambers just to keep the jobs going. It will be requesting an additional $74.7 million in reprogramming authority in May to complete both projects. The source of that money will be the $65 million Congress

appropriated this year for the Repair and Alteration project on the current Cadman Plaza building, and $9 million from some other undisclosed source. GSA then intends to again ask Congress for Repair and Alteration money for Cadman Plaza in the amount of $91 million in the 2006 budget. The extensive delays encountered in delivering the new Brooklyn Courthouse required a re-evaluation of the longstanding plans for the complete repair and renovation of the existing courthouse. The plan, first designed ten years ago, called for the complete vacating of the existing courthouse to enable a long overdue and needed repair. While the construction project lagged, judicial staff increased. We now will have to retain three full floors in the existing courthouse after completion and occupancy of the new courthouse. The entire Repair and Alteration project will have to be re-examined as to scope, feasibility and cost at that time.

Both projects are tens of millions of dollars over budget and four years behind schedule. Indeed, we estimate that at least $100 million of taxpayer dollars have been squandered by GSA. A number of GSA's estimated occupancy dates have come and gone. There is no reason to believe that the current projections will be met. The only positive aspect of this mess is that the current Administrator of GSA, Stephen Perry, has taken a personal role in the project and has removed responsibility for it from Region II. We are grateful to him for his efforts to complete the project.

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Detailed reports on operations throughout the Eastern District with statistical information for fiscal year 2003 (October 1, 2002 through September 30, 2003), and in some instances through December 2003 are set forth below.

THE BANKRUPTCY COURT

Bankruptcy Court case filings in Fiscal Year 2003 increased overall by 3.5 percent. Total cases filed were 25,733. Chapter 7 filings increased by 4.0 percent, to 19,856; Chapter 11 filings increased by 14.2 percent to 209; and Chapter 13 filings increased by 1.6 percent, to 5,667. In addition, 1,345 adversary proceedings were opened.

The Bankruptcy Court, effective January 1, 2003, requires all motions, pleadings, memoranda of law or other documents filed by an attorney in connection with a case, other than proofs of claim, to be electronically filed or submitted on a diskette in PDF format. Previously, from April 1, 2002 through December 31, 2002, this requirement only pertained to Chapter 11 petitions and pleadings. *Pro se* filers continue to file their petitions and pleadings using traditional methods since the Court does not permit them to file electronically.

Judge Elizabeth S. Stong was appointed to the Eastern District's Bankruptcy Court on September 2, 2003. Judge Stong replaced Judge Dorothy Eisenberg who retired on March 27, 2003. The Second Circuit immediately recalled Judge Eisenberg due to continued high case filings in the Bankruptcy Court.

The Bankruptcy Court lost a special colleague with the death of Judge Cecelia H. Goetz on January 18, 2004. Judge Goetz was an outstanding member of the Bankruptcy Court, serving first at the Brooklyn Courthouse, and later at the Long Island Courthouse from 1978 until 1993 when she retired. Judge Goetz graduated *cum laude* in 1940 from New York University Law School, where she was the first woman to serve as Editor-in-Chief of the NYU Law Review. Shortly after her graduation, she entered a career in government service, which included a post as Special Assistant to the Attorney General. After World War II, she went to Nuremberg as part of the staff of the Office of Chief Counsel for War Crimes, where she participated in the prosecution of major German industrial complexes. Before becoming a bankruptcy judge, she had been a partner in her father's firm, and had then spent years in association with several prestigious law firms in New York City, finally ending her career as a partner in Herzfeld & Rubin, P.C. At the expiration of her six-year term as a bankruptcy judge in 1978, she was reappointed in May of 1985 by then Chief Judge Jack B. Weinstein for a term of 14 years. Known for her learned opinions and as an extraordinarily capable bankruptcy judge, she was cited in many opinions by other bankruptcy judges and appellate courts throughout the nation.

THE MAGISTRATE JUDGES

Our magistrate judges were assigned the full range of civil and criminal case responsibilities authorized by 28 U.S.C. § 656. Magistrate judges were referred a total of 6,545 pending civil cases in Fiscal Year 2003 for pretrial preparation, a 4.6 percent decrease over the high level of the prior fiscal year. Criminal case assignments include detention hearings, acceptance of guilty pleas, jury selections, and pretrial hearings. Civil trials, on consent of the parties, and misdemeanor criminal trials remain a significant responsibility of the district's magistrate judges.

The Board of Judges limited the term of Chief Magistrate Judge to three years in 2000, with each future Chief Magistrate Judge to be determined by seniority. Chief Magistrate Judge Joan Azrack has served in this administrative capacity with distinction. Effective April 2004, U.S. Magistrate Judge Michael L. Orenstein will become Chief Magistrate Judge succeeding Judge Azrack.

Due to the heavy and substantial criminal and civil case workload assigned

to Eastern District magistrate judges, a survey of our magistrate judge utilization was conducted by the Administrative Office of the United States Courts, and the Judicial Conference of the United States subsequently authorized two (2) additional full-time U.S. Magistrate Judge positions for the Eastern District. The Magistrate Judge Selection Committee recommended ten final candidates to the Board of Judges, and interviews were held by the Board with the expectation that both positions will be filled by early summer, 2004. On March 17, 2004, the Board of Judges selected Kiyo Matsumoto and James Orenstein to fill the new U.S. Magistrate Judge positions at Brooklyn and Long Island, respectively.

PROBATION DEPARTMENT

The work of the Probation Department remained at essentially the same high levels as in 2002, and supervised 3,709 individuals, and conducted 3,747 investigations in Fiscal Year 2003. Separately, collateral reports (requests from other federal districts) totaled 856, a decrease of 14 percent.

Chief Probation Officer James M. Fox retired on January 2, 2004. The Board of Judges appointed Tony Garoppolo, who was Deputy Chief Probation Officer since July 2000, to succeed him. Mr. Garoppolo is an acknowledged expert on the U.S. Sentencing Guidelines, and is the author of " The Sentencing Reform Act, A Guide for Defense Counsel." The third edition was recently published by the Federal Bar Council.

PRETRIAL SERVICES

Pretrial Services conducted 2,234 bail investigations in FY 2003, a decrease of 7.8 percent over 2002. Separately, pretrial supervision cases, a significant part of the workload, totaled 899, a number not reported last year. Collateral investigations increased by 25 percent to 185 cases. There also were 49 diversion investigations, and 43 diversion supervision cases.

ADR PROGRAMS

A total of 390 civil cases, representing 5.8 percent of new civil filings, were assigned to the mandatory Arbitration program for cases valued at $150,000 or less. The Mediation program for complex civil actions had a total of 191 cases referred, representing 2.8 percent of civil filings during Fiscal Year 2003. Sixty-six (66) cases were settled through mediation.

Our ADR website (http://www.nyed.uscourts.gov/adr/) posts extensive

information on the ADR program, including the names of mediators and arbitrators listed by speciality; a schedule of pending mediations and arbitrations, by case, date and time; and information on ADR procedures; Local Rules for Arbitration and Mediation and other general ADR information. The ADR Committee, chaired by Magistrate Judge Robert M. Levy, held its third annual ADR workshop in 2003. A review of ADR procedures with the assistance of the Federal Judicial Center and private ADR experts also was conducted this year.

THE CJA PANEL

The CJA Panel Committee, chaired by Judge Frederic Block with judicial members Judge Joanna Seybert, Magistrate Judge Michael L. Orenstein and Magistrate Judge Cheryl L. Pollak, completed its annual review of the CJA Panel membership, and held the district's third annual training workshop for Panel members in November 2003.

The CJA Panel Committee also added specialized Habeas Corpus and Capital Case Panels to the available counsel resources for the Court's discretionary use in assigning counsel in these case categories.

NATURALIZATION CEREMONIES

The Eastern District of New York remained one of the busiest jurisdictions in the country for the naturalization of new citizens, despite a decline of 14.7 percent in the number of final naturalization hearings scheduled by INS, now part of the new U.S. Department of Homeland Security. The Eastern District of New York naturalized 40,245 new citizens in Fiscal Year 2003 at the Brooklyn Courthouse. The Court continues to hold four (4) naturalization hearings each week throughout the year. Only one other judicial district court, CA-Central, naturalized more citizens this fiscal year.

COURT ADMINISTRATION

The district court and Clerk's Office continued to move toward full participation in the Electronic Case Filing (ECF) system in 2003. An additional three (3) district judges were added as participating judges in electronic filing during the fiscal year. A total of thirteen (13) of the district's nineteen (19) active and senior district judges now participate fully in civil electronic case filing, and all thirteen (13) current magistrate judges participate fully. Two of the remaining six (6) district judges have had one or more large civil cases on the electronic filing

system now or in the past. The district hopes to move toward full participation in the future.

The Clerk's Office transferred all docketing from the old ICMS database to the ECF database on May 11, 2003, representing another major clerical step in the availability of e-filing for all dockets. Although criminal cases are not yet filed electronically, the Clerk's Office is electronically filing all initiating documents (indictments and informations); Judgment and Commitment Orders; and any memorandum and order of major public interest.

JURY ADMINISTRATION

The district's percent of underutilized jurors dropped slightly in 2003 to 41.7 percent. This has moved the Eastern District of New York very close to the national average for all district courts, which was 40 percent in 2003. The district's number of high profile cases and questionnaire cases for jury panels often results in higher utilization percentages. Although the Eastern District of New York has more than its share of both, juror utilization has improved this year. The Court's goal is to get below 40 percent in unused jurors, or at least equal or do better than the national average in the year ahead.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Chief Judge Frederick J. Scullin, Jr.

JUDICIAL RESOURCES

The Northern District is authorized five Article III positions. Magistrate Judge Gary L. Sharpe was elevated to a seat on the District Court Bench on January 29, 2004. Judge Sharpe filled the vacancy created by Judge Thomas J. McAvoy when he assumed senior status on September 17, 2003. Judge Sharpe joined the Northern District bench in 1997, and served as a United States Magistrate Judge up until his appointment as a United States District Court Judge. Prior to joining the bench he served as the United States Attorney for the Northern District of New York. Judge Sharpe moved his chambers from Syracuse to Albany to help the Court deal with the workload on the eastern half of the district. On February 10, 2004, Magistrate Judge George H. Lowe was sworn as our newest Magistrate Judge. Magistrate Judge Lowe filled the vacancy created by the elevation of Judge Sharpe to the District Court bench. Magistrate Judge Lowe was previously a partner in the Law Firm of Bond, Schoneck and King, LLP in Syracuse. Magistrate Judge Lowe also served as the United States Attorney in the Northern District from 1978 to 1982.

During 2003, the Court received designations for seven visiting judges to help us resolve our backlog of pending prisoner cases. Each of these seven

judges agreed to sit by designation for a period of one-year, during which time they handled motions and trials on pending prisoner civil rights cases. The seven visiting judges issued decisions in 48 dispositive motions and closed 34 prisoner cases during 2003. Our thanks go out to the Honorable Warren W. Eginton - District of Connecticut; Honorable Lyle E. Strom - District of Nebraska; Honorable G. Thomas Eisele - Eastern District of Arkansas; Honorable Joseph M. Hood - Eastern District of Kentucky; Honorable John R. Tunheim - District of Minnesota; Honorable Paul A. Magnuson - District of Minnesota, and the Honorable James K. Singleton - District of Alaska. For the upcoming year, we have already secured the services of five judges who have indicated their availability through the intercircuit assignment system to assist courts with pending motions. With these additional resources, we are hopeful that we will be able to further reduce our pending prisoner caseload.

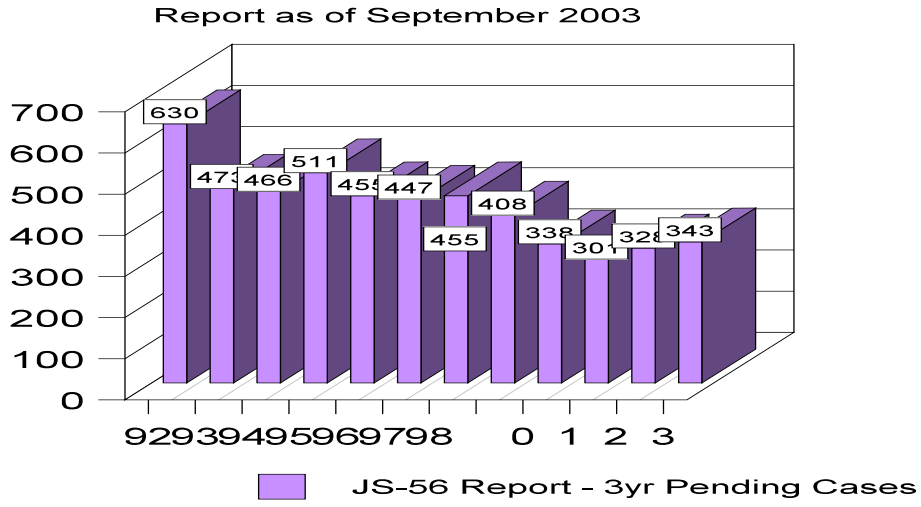
Senior Judges Howard G. Munson and Neal P. McCurn continue to take a variety of cases and provide valuable assistance to the Court. We are indebted to these judges for their many contributions over the last two and one half decades. We welcome Senior Judge Thomas J. McAvoy who will continue to take a full caseload.

STATISTICAL DATA

Our most challenging task over the last five years has been in addressing the case pending docket. New civil filings fell slightly from the previous year, filings were down by **8.6%** in statistical year 2003. The number of criminal filings rose in SY 2003 by **3%**. Some of the increased activity in our criminal filings was attributable to the increased law enforcement presence at our Northern border. The number of trials completed per judge in SY 2003 decreased slightly when compared to SY 2002, this seems to be consistent with the decrease experienced by courts on a national level.

PENDING MOTIONS AND THREE YEAR PENDING CASES

The disposition of motions is critical to the efficient operation of the Court. The Court filed **2,728** motions during statistical year 2003. During the same time period the Court disposed of **2,888** motions. As reflected in our JS-56 Report on Pending Motions and Cases Pending for Three Years or more, the district' s pending motions (*as of September 30, 2003*) increased **5.2%** over 2002, and three year pending cases increased **10%** over 2002.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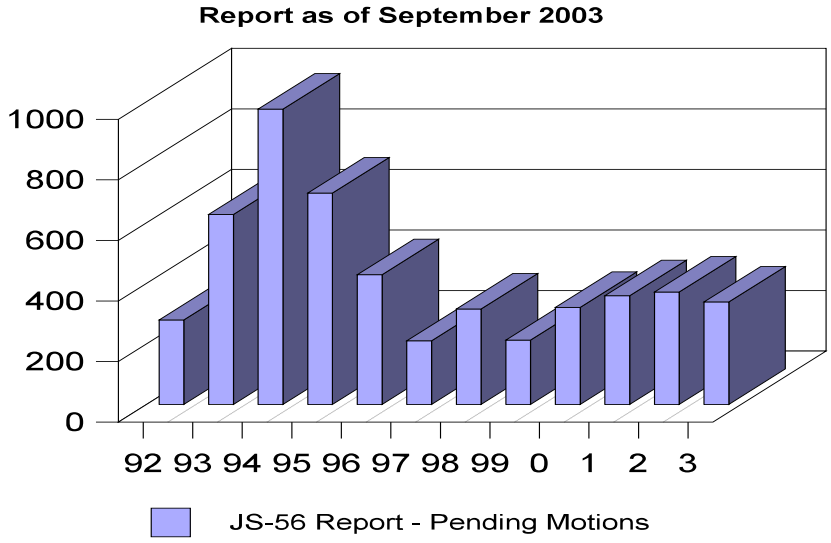
JS-56 Report - 3yr Pending Cases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JS-56 Report - Pending Motions

SPACE AND FACILITIES

Albany: A new grand jury room will be constructed in Albany. We had hoped to have this project completed in 2003, however, funding issues have delayed the project. The new projected completion date is April 2005.

Syracuse: The Judicial Conference has recommended that a new United States Courthouse be constructed in Syracuse. The current plan is for site selection and design in FY 2006, funding in FY 2008 and completed construction in FY 2010. However, this schedule will most likely be delayed due to national budget issues concerning space and facilities projects. Construction on our special proceedings courtroom was completed in March of 2003. Judge David E. Peebles moved into his new chambers and courtroom in June of 2003.

DISTRICT COURT CLERK' S OFFICE

During 2003, the District Court Clerk' s Office began the process of preparing both the bench and bar for the implementation of the new case management / electronic case filing system known as CM/ECF. During the summer months, the Clerk, Lawrence K. Baerman, and Chief Deputy Clerk John Domurad, traveled throughout the district to present information and provide demonstrations on the new system to the bar. The Court worked closely with our Federal Court Bar Association on the development of the rules and procedures for the bar to follow when filing electronic documents. In November, the Clerk' s Office began training the bar. In the course of the last few months, the Clerk' s Office has trained over 2,500 lawyers. The first full month of filing (January of 2004) resulted in over 15% of the total filings coming in over the internet. The bar and bench have found the system to be reliable, user friendly and cost effective.

Budget issues were once again a major concern for the Clerk' s Office and the Court. In the Northern District, we have lost nine staff members in less than three years due to budget cuts coupled with a decline in the number of filings. The Clerk has worked closely with the Probation Office on a project that will consolidate several of our administrative support services. Automation, human resources, personnel, budget and finance have or will be consolidated within the next year. This initiative will allow the units to continue to provide the highest possible level of service to the bench and bar while absorbing what we expect to be significant reductions in future staffing levels.

PROBATION / PRETRIAL OFFICE

The Probation Office is experiencing a slight increase in workload following two years of a downward cycle. Like other districts, budget cuts and decreasing caseloads have affected our staffing. We have lost authorized work units, and through attrition, our staffing has decreased as well. We are or will be well below our full work strength by the end of this fiscal year.

In Albany, after a long process, we are nearing the end of our renovation projects. Our first floor space is undergoing a small renovation while our third floor space is undergoing major reconstruction. Both projects should be completed during FY 04. This will satisfy the Probation Office' s space requirements as well as bringing it up to court standards.

In the area of operations, one major initiative is the investigation and monitoring of individuals involved in cybercrime offenses. In the new age of the 21st century offender, computer crimes, including frauds committed via the internet and access to websites promoting child pornography, have presented new challenges in supervision. In order to enforce Court imposed restrictions on computer use, the Probation Office has employed internet monitoring technology which allows the Probation Office to determine if offenders are accessing inappropriate Internet sites. Supervising cybercrime defendants presents the additional challenge of keeping pace with the latest trends in information technology because as the technology improves, our detection and monitoring devices will need to keep pace to adequately supervise this more technically sophisticated offenders.

ATTORNEY DISCIPLINE REPORT FOR 2003

In calendar year 2003 the Northern District had the following attorney discipline cases.

Five Attorneys were disbarred.
Five Attorneys were suspended.
A stay of suspension was issued for two attorneys.
Four Attorneys were censured.
Seven Attorneys were reinstated following suspension.

NORTHERN DISTRICT OF NEW YORK BANKRUPTCY COURT

The Bankruptcy Court for the Northern District of New York focused most of its attention on CM/ECF in 2003. The Court went live on CM/ECF on December 28, 2002 and devoted most of 2003 to putting processes and procedures in place to support CM/ECF. The training of internal and external users occurred throughout the year. Training for attorneys began in early spring and continued throughout the year in both Albany and Utica. Attorneys were provided with hands-on training by the Court's trainers and were eligible for seven hours of CLE credit. In addition, members of the Court's staff spoke at several seminars sponsored by the local bankruptcy bars. Training for standing trustees and panel trustees also occurred in 2003. At the end of 2003 only three panel trustees were not yet trained. Plans were also made to train the Assistant United States Trustees in early 2004. The conversion to CM/ECF required the Court to undertake a complete work flow analysis of the flow of paper and information in the agency. The completion of the work flow analysis required the Court to revamp and revise most of its existing case processing procedures. During the latter half of 2003, creditors were allowed to electronically file proofs of claims and transfers of claims. Some of the larger creditor filers brought on board include Beckett and Lee and Sears. Out-of-district attorneys were also allowed to file electronically upon passing the Court's on-line test. In November 2003, members of the bar received notice of the Court's intention to mandate electronic case filing on July 1, 2004. Scanners were purchased for placement at the public counters and plans are underway to allow attorneys to scan documents to the Court from the public counters.

Although most of 2003 was devoted to CM/ECF tasks, a long planned space project was finally completed. Unused chambers space was transformed into a conference room and suite of offices for the Clerk and his administrative staff.

ANNUAL REPORT OF THE NORTHERN DISTRICT OF NEW YORK ON GENDER, RACIAL AND ETHNIC FAIRNESS IN THE COURT

The Northern District of New York is committed to the fair and equitable treatment of all those that appear before the Court or are employed by the Court. The Court remains mindful of the need to protect against bias based on other grounds, such as sexual orientation, disability, national origin, religion and age.

The Court has continued the practice of providing pro se litigants with pro bono counsel to assist them at the trial stage of their cases. In addition, the Court has extensively used video conference technology to accommodate financially challenged litigants by providing them with an avenue to avoid travel costs associated with appearances before the Court.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Chief Judge Michael B. Mukasey

During the past year, three judicial vacancies were filled. Stephen C. Robinson was inducted on October 30, 2003, P. Kevin Castel was inducted on November 4, 2003 and Richard J. Holwell was inducted on November 20, 2003. One vacancy remains open. I note with extreme sadness the passing of two of our distinguished colleagues, the Honorable Allen G. Schwartz on March 22, 2003 and the Honorable Robert J. Ward on August 5, 2003. They made important contributions to the Court, and their presence will be missed. The past year also saw the retirement of the Honorable John S. Martin, Jr. who had served with distinction since his appointment in 1990. His outstanding service to the Court is to be commended.

For the period October 1, 2002 to September 30, 2003 there were 12,321 cases filed.

During the past year, the Board of Judges amended Local Civil Rule 5.2 relating to electronic service and filing of documents and approved Local Civil Rule 5.3 relating to service by overnight delivery and facsimile, and 12.1 relating to notice to *pro se* litigants opposing motions to dismiss or for judgement on the pleadings treated as motions for summary judgement. The Court' s Lawyers Advisory Committee on Local Rules also reviewed the revisions.

Also, during the past year, the Court adopted a district-wide Continuity of Operations Plan (COOP) which has been used as a model plan for other districts.

CLERK' S OFFICE

The Clerk' s Office for the Southern District of New York operates with a staff of 216 employees with offices at Foley Square and 500 Pearl Street in Manhattan and at 300 Quarropas Street in White Plains. The Clerk' s Office provides record keeping, case management, financial and other services for the District Court. The operating budget for Fiscal Year 2003 was $ 12,913,576 for personnel, automation and administrative expenses.

During calendar year 2003, the Clerk' s Office went live with the CM/ECF (Case Management/ Electronic Case Filing) program. All civil and criminal docketing events have been converted from the existing ICMS program to the new system. The Clerk' s Office has created a docket support team to plan, train and execute the CM/ECF process for Chambers staff, court employees and members of the Bar and the Public. The first wave of District Judges and all Magistrate Judges began accepting electronic filings in new cases on December 1, 2003. The remaining Judges will join the system over the course of the next year.

The financial and systems staff of the Clerk' s Office spent much of the second half of the year preparing for the implementation of FAS4T, a new automated financial system. Preparation included training, workflow process mapping and development of new security controls.

Individual departments of the Clerk' s Office report some of the following activities in the year 2003:

White Plains: The White Plains Courthouse saw signs of continued growth in 2003. One thousand one hundred and thirty four new civil cases were filed in White Plains in 2003. The Hon. Stephen C. Robinson, U.S.D.J., took the bench in White Plains in October. This returned the White Plains Court to its full complement of four District Judges and three Magistrate Judges. The Clerk' s Office staff increased by two employees to help accommodate this growth. As of December 1st, all Judges in White Plains began requiring cases to be electronically filed as part of the Court' s ECF program. After two years of preparation and training the inauguration of the ECF program is expected to streamline the docketing process by reducing paper filings.

Jury Department: The Jury Department has been working on the new Jury Management System (JMS) for over one year. The system has produced some

challenging scenarios when producing jurors to the Judges, establishing follow-up instructions for returning jurors, as well as payroll situations. During 2003, we submitted various modification requests to the software provider and to the Administrative Office of the U.S. Courts. Some of these modification requests were ground-breaking procedures for JMS and between the A.O., ACS (software company) and SDSD in San Antonio Texas, these modifications made the final product. JMS also requires us to qualify jurors on a larger scale and throughout the year we sent out close to 200,000 questionnaires for Pearl Street and White Plains. We were able to qualify over 40,000 jurors for the year 2003 alone and in light of the anticipated busy year of 2004 (including high profile cases such as Martha Stewart, Lynne Stewart and Rigas) we anticipate the abilities of this department and its staff to be tested to the fullest.

Finance: In 2003, The Finance Department issued 36,649 checks and processed 14,276 vouchers. At the intake window, 10,333 complaints were filed and 53,971 receipts were issued. For the year. the office receipted $118,527,618.39 and disbursed $111,075,895.54. The office oversaw 299 interest-bearing accounts and 766 non-interest-bearing registry accounts. At the end of the year, the balance in interest-bearing accounts was $239,897,507.25.

Personnel: During calendar year 2003, the Personnel Section processed personnel actions for the designated court staff such as appointments, separations, promotions, retirement information; disseminated benefit information and processed forms; provided Open Seasons for FEHB and TSP changes; and recruited for available positions, prepared vacancy announcements, and assisted managerial staff with interviews and testing. The need for background checks on all new employees, interns and contracted staff has become routine. A hiring freeze at the end of the year due to greatly reduced budget allowances has prevented the court from filling vacancies and has required the development of new strategies to meet operating needs in the coming year.

Training: Much of the year was dedicated primarily to coordinating training operations for the Court's conversion to CM/ECF. CM/ECF training was provided throughout the year to Clerk's Office employees, Judges, Magistrate Judges, Chambers Staff, Probation, Pretrial, Court Reporters, Press Agents, Federal Defenders and US attorneys, based on their required job performance duties. In addition, the training department continued throughout the year to provide CM/ECF training to members of the bar and their legal staff in both civil and criminal cases.

The highlight event of the year for the training department was the opening of a new state-of-the-art training room which is used to conduct training operations

for the District Court and is shared with other agencies to engage in large training events.

Audio-Visual: The Audio-Visual Department has completed installation and commenced operation of the multi-media displays in courtrooms 12D and 110. These multi-media systems allow the parties to an action to display exhibits and other case-related materials to the judge and jury in electronic form. Additionally, there are two mobile multi-media systems which can be set up in any courtroom upon request. Testing has begun on the Courtflow Audio Digital Recording System. Currently, the system is being used to record pretrial conferences. Results are very promising, and four additional systems are waiting to be installed after preliminary testing results have been fully reviewed. Anticipated installation of these additional systems is Summer of 2004.

The Audio-Visual Department helped design and plan the District Court's new training room, located at 500 Pearl Street, Room 249. The training room facilitates video-conferencing, tele-conferencing, and Smart Board annotation integrated into a video projection system. The Audio-Visual Department also designed and planned a state-of-the-art teleconferencing system in conference room 850.

The Audio-Visual Department also organized over fifty video-conferences for the Court, including three video-conferences for the Federal Bar Council's CLE programs involving sites located in Syracuse, Buffalo, White Plains, Albany and the Eastern District of New York.

Transcripts produced from audio-taped proceedings continue to grow. This year, the Department was instrumental in coordinating the production of over 1,200 transcripts. The Department now uses a digital fingerprint imaging system in the processing of new employees and student interns. This past year, the Department has processed over 500 new employees and student interns.

Records Management: During calendar year 2003, the Records Management Department handled 57,675 requests for files between the open records room and the closed records room at 500 Pearl Street and the file room at Foley Square. The office processed 1,635 opinions from the Judge and Magistrate Judges. During the year, the office generated $143,438.00 through written correspondence and printing of docket sheets from ICMS. The Records Management Department received and logged 4,775 sealed envelopes and 318 subpoenaed records in 2003.

Computer Systems: During calendar year 2003, the Court inaugurated the new CM/ECF electronic case filing system, with nearly two dozen chambers going to a "totally electronic" docket for new cases filed as of December 1st. Additional chambers are scheduled to make the transition to the new system during 2004. The Computer Systems Department purchased and deployed scanners, additional computers, and trained the Court's training staff in the use of this new equipment. The new CM/ECF system necessitated the creation of an e-mail-based document exchange system with the bar and the Clerk's Office. This was designed, assembled and deployed throughout the Court in a matter of two weeks in order to assist the staff to manage a large and rapidly growing quantity of electronic documents.

We made great strides this year with respect to the centralized, remote administration of our nearly 1,100 desktop computers. We possess the capability to deploy urgent software patches, regular updates, and certain types of new application software on an as-needed basis to all the computers under our care irrespective of whether the PCs are in the courthouse or at employees' homes. As a result of these efforts, we have been almost entirely immune from this year's spate of computer viruses, worms and Internet-borne malicious mischief.

Multi-year Disaster Recovery and Continuity of Operations initiatives continued during 2003 in which the Court purchased laptop computers, secure wireless networking hardware, and advanced encryption and VPN software, to permit judges and select Clerk's Office staff to conduct all regular business from home, if necessary, during an emergency that might otherwise shut the courthouse proper.

One unofficial test of our emergency preparedness capability was conducted during the "Great Blackout" of August, 2003. In this situation, the Court's data center at 500 Pearl Street operated in its entirety, without a moment's interruption, throughout the entire blackout by virtue of the building's own electrical generating capability. Continuous, real-time connectivity with the DCN and the Internet was demonstrated during this period. As power was restored to various residential areas, remote access to e-mail and court files was immediately successful.

All this notwithstanding, a great deal of telecommunications and other infrastructure work remains to be completed in this area during 2004 and beyond, specifically with regard to the off-site, real-time replication of the Court's electronic data, backup electrical systems at White Plains, and the integration of the new CM/ECF and FAS4T systems into our fault-tolerant operational environment.

The Computer Systems staff has continued the work begun last year with respect to wireless computer networking, encryption technologies, firewalls and geographically distributed systems. We continued to make recommendations to the Administrative Office with regard to these technologies, as well as for the elimination of "spam" from the judiciary's e-mail systems, and have communicated to them our findings with respect to fault-tolerance and disaster recovery practices.

We successfully deployed six Macintosh laptop computers and two Macintosh file servers within the Court's all-Windows infrastructure. The machines are a joy to use and they interoperate seamlessly with our extant hardware inventory, demonstrating that these are cost-effective replacements for Windows systems of all stripes.

We have also successfully introduced several Linux systems into our back office operations in anticipation of the judiciary's transition from Solaris to Linux in the next year or so.

We conducted our first live trials of the CourtFlow system, which makes audio recordings instead of typed transcriptions, of court proceedings.

We began the implementation of the new FAS4T accounting system, which is to scheduled to go live on March 1, 2004.

Magistrate Judges Unit: The Magistrate Judges Unit has seen several changes in the past Year. First, we have gone in full capacity on the Electronic Case Filing System, and second, as of the beginning of January 2004, in an effort to backup Sealed Vital Records (COOP), we began storing Seizure/Search Warrant and Pen Register ….Info on 3.5" Computer Discs. Upon completion of filling all disc space, the disc is copied onto another 3.5" disc and forwarded to the White Plains Courthouse as a back-up, in the event that the records in Manhattan become damaged or inaccessible.

Mediation Department: During 2003, the Mediation Department relocated to 40 Centre Street, Suite 205. The Mediation Department provides services for the courts in Manhattan and in White Plains. Hundreds of new and adjourned cases were scheduled for mediation sessions during the calendar year. Local Civil Rule 83.12 governs the Court' s mediation program.

Interpreters Office

SDNY Interpreter Usage: In FY 2003, interpreters of 36 languages provided foreign language interpretation during 6,152 separate proceedings, a six

percent increase in activity over last year. Of these, 4,126 were in-court events, a marked increase of 27% over last Fiscal Year. Out-of-court events (pretrial, probation, attorney-client interviews, document translations) totaled 1,930 for all languages. [Note: Interpreter usage figures are reported to the Administrative Office of the U.S. Courts for fiscal years, not calendar years.]

Spanish continues to be the most frequently requested foreign language, but in FY 2003, only 55% of the total interpreter unit caseload was for Spanish, a dramatic drop from the previous year when Spanish represented 78% of the cases covered. The next most frequently requested languages remained the same as in previous years: Russian, Arabic, Mandarin and Fuzhou. Requests for Punjabi, Pashto and Urdu increased noticeably over previous years.

Total expenditures on interpreter services, paid from a central Administrative Office account, was $542,358, only a slight increase over FY 2002, despite the increase in interpreter activity. A total of 46 criminal trials required foreign language interpretation: 33 Spanish, four Fuzhou, three Russian, two Arabic and one each in Bengali, Fulani, Hebrew, Cantonese, Urdu and Yiddish. In the aggregate, interpreters worked a total of 275 days of the year on trials.

Orientation and Recruitment

Our yearly orientation program has been suspended because the district has sufficient interpreter resources at this time, however, recruitment and coaching sessions of interpreter candidates in hard-to-find languages continue to be undertaken as needed. Interpreters in lesser-used languages require more training than interpreters for the European languages because of the differing skill levels of the available pool and the lack of traditional testing in those languages. Seven exotic language interpreters had individual orientation sessions this year.

A0 Spanish Certification Testing

In July, two staff interpreters participated as raters for the oral section of the Spanish certification examination. In the latest round of testing, five interpreters were newly certified in the New York area, but of these, most are state court employees and not generally available for the freelance pool. Available Spanish certified interpreters in our area number approximately 40.

Committees and Professional Associations

The Chief Interpreter was invited to join the Interpreter Service Model

Program for Law Enforcement Committee organized through the Summit County Sheriff's Office in Ohio. The Committee's mission is to develop interpreter protocol and routines for law enforcement settings. She is also currently serving as interim member of the Board of Directors of the National Association of Judiciary Interpreters and Translators.

Cooperation with State Courts

The Chief Interpreter presented a half-day training session for the Connecticut state court system on interpreter ethics.

Office Management

The online scheduling program designed by staff interpreter David Mintz is in its third year of usage and continues to function efficiently. All interpreter and translation usage provided to the Court and its units is recorded in a MySQL database via a web interface written in PHP.

Development of the next version of our interpreter management software is underway. This upgrade will include numerous improvements in code efficiency and maintainability as well as an expanded feature set based on user feedback.

Our office's website (http://interpreters.nysd.circ2.dcn/ and its public mirror http://sdnyinterpreters.org) underwent an extensive redesign and expansion. Nancy Festinger and David Mintz jointly created, edited, organized and published online numerous documents containing information aimed at attorneys, judges, interpreters and the general public, and made them accessible through an attractive navigational interface.

The SDNY online glossary application, designed and built by David Mintz, has been added to by staff and student interns. The glossary was ranked second in a field of over 50 in its category on Lexicool.com, an online search utility for linguists. The rating criteria were presentation and usability.

BANKRUPTCY COURT

This court experienced an overall increase in filings of 8.7%; however, adversary proceedings increased 280%. Although the Court's Chapter 11 case filings declined by 37%, this court's weighted case filings per judge are 3,112 as compared to the national median of 1,493. Therefore, the judges in this district are carrying a caseload more than twice the national median. There are more than

6,600 attorneys registered to use the Court's Electronic Case File System (ECF) and during Fiscal Year 2003, 1,300 new attorneys were added and 1,659 orders to appear *pro hac vice* were signed. The Court continues to conduct training classes for new users of the system on an average of twice a week.

FILINGS DURING FISCAL YEAR 2003

Chapter	Number of Filings	Percent Change
7	14,262	13%
11	924	(37%)
12	1	- 0 -
13	2,061	12.8%
304	50	92%
Adversary Proceedings	6,770	280.5%

During Fiscal Year 2002, there were some very noteworthy cases filed here, namely Enron Corp., Global Crossing Ltd., Adelphia Business Solutions, Ogden New York Services, Inc., and WorldCom, Inc. Numerous affiliated cases continue to be filed.

The cases designated as the case in the " mega" cases commenced during this reporting period are as follows:

Case Name	Case Number	Filed Date
Genuity Inc.	02-43558-pcb	11/27/2002
Cenargo International Plc	03-10196-rdd	01/14/2003
Regus Business Centre Corp.	03-20026-ash	01/14/2003
Magellan Health Services, Inc.	03-40515-pcb	03/11/2003
Spiegel, Inc.	03-11540-cb	03/17/2003
Aerovias Nacionales de Colombia S.A. Avianca and Avianca, Inc.	03-11678-alg	03/21/2003
Air Canada	3-11971-pcb	04/01/2003
Recoton Corporation	03-12180-alg	04/08/2003
Acterna Corporation	03-12837-brl	05/06/2003
NRG Energy, Inc.	03-13024-pcb	05/14/2003
Allegiance Telecom, Inc.	03-13057-rdd	05/14/2003
The Penn Traffic Company	03-22945-ash	05/30/2003
WestPoint Stevens Inc.	03-13532-rdd	06/01/2003
Loral Space & Communications Ltd.	03-41710-rdd	07/15/2003
Impath Inc.	03-16113-pcb	09/28/2003

The Court is continuing its efforts to provide current, correct information utilizing all means available, including the Court' s web site, printed pamphlets for *pro se* filers, using a Clerk' s Office staff member to act as a court services coordinator to assist filers unfamiliar with court operations and insuring a " help desk" line is answered by an employee during core court hours of operation.

U.S. PROBATION OFFICE

The Probation Office provides services to the Court, the community and to offenders. The office is divided into three branches: presentence investigation, supervision and administrative services. During the period ending September 30, 2003, there were 173 staff members.

Presentence Investigations: Probation officers working in the presentence investigation division completed increasing numbers of presentence investigations. FY 03 saw another substantial increase in the number of presentence reports completed. The division continues to create innovative ways of fulfilling their obligation, while maintaining their high quality of work.

Supervision: The supervision division, which provides direct supervision to offenders, has developed efficient ways of completing their responsibilities. Increased presence in the field, during non-traditional field hours continue to be emphasized. Laptop computers have been issued to individual officers in both divisions that replaced their desktops, allowing officers increased portability and flexibility. Safety measures, including mandatory defensive tactics, handgun retention, and safety scenario training have become the policy of the office.

Administrative Services: The administrative services branch includes automation, data quality analysis, personnel, records, supplies and purchasing/budget. The members of this division are dedicated to engaging in quality behind-the-scenes work that supports operations staff.

PRETRIAL SERVICES

As the component of the federal judiciary responsible for the bail investigation of defendants, the Pretrial Service Office is committed to providing verified information and assessments of the risks of non appearance and danger to the community for every defendant appearing before the Court following arrest. While working under the guidance of the Court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process and seek alternatives to detention.

The Pretrial Services Office interviewed 98% of the defendants who appeared on criminal charges during FY 2003. The workload grew from 2,199 bail interviews the previous year to 2,309 this year. Of those defendants interviewed by Pretrial Services, 95% were interviewed prior to their initial appearance in court. Our district continues to have a low detention rate, especially when compared to other large metropolitan district courts.

At the end of the Fiscal Year, September 30, 2003, there were 1,019 defendants reporting to Pretrial Services for supervision as required by their court-ordered release conditions. Ninety-six percent of those released appeared in court as required and 98.5% of defendants were not arrested during their bail period. Officers reported 249 total violations resulting in a modification of bail conditions on 46 occasions and 65 defendants were detained following bail violation hearings. The majority of these violations were technical violations for noncompliance with release conditions such as continued drug use, failure to attend a treatment program or reporting violations.

This year we placed a strong emphasis on community supervision with officers increasing home visits in addition to the defendant reporting to our office. The goal was to verify residential information, explain our role and establish collateral contacts with the defendant's family as well as continuing to identify any risks of nonappearance or danger to the community. Officers responded by completing over 2,000 home visits and 98 employment visits in FY 2003.

While numbers do not tell the whole story these are the average activities happening every day in Pretrial Services-

daily telephone contacts with defendants	= 119	daily contacts with assistant US attorney	= 14
daily office visits with defendants	= 57	daily contacts with defense attorney	= 14
daily home visits to defendants	= 10	daily law enforcement contact	= 35
daily drug tests administered	= 21	daily criminal record inquiries	= 30
daily docket searches	= 54		

Pretrial Services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be their last and so prevent the front door of the system from becoming a revolving door.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

Chief Judge William K. Sessions III

U.S. DISTRICT COURT CLERK' S OFFICE

Judicial Assistance

During calendar year 2003, both of Vermont' s district judges assisted other districts with caseload needs. In February 2003, Chief Judge William K. Sessions III, accompanied by his courtroom deputy, traveled and spent two weeks in Las Cruces, New Mexico, providing assistance with the district' s criminal caseload. In November 2003, District Judge J. Garvan Murtha sat by designation in the Eastern District of New York at Brooklyn assisting with that district' s civil caseload.

District Court Clerk' s Office

During 2003, the District Court Clerk' s Office continued to maintain its characteristically stable staffing level and the office experienced only one separation for the entire year. This vacancy was filled during early January and a replacement deputy clerk was hired for the Burlington in-take section. No other personnel changes to permanent staff occurred within the District for the remainder of the year other than the District' s part-time *pro se* law clerk position was

eliminated at the close of the calendar year. Prior to December 31, 2003, although Vermont was authorized 1.0 *pro se* law clerk positions, budget and policy considerations allowed the District to retain an additional half-time *pro se* law clerk position. Based upon the Judiciary's financial plan for FY 2003 and a change in Judicial Conference staffing policy which eliminated funding for excess *pro se* law clerk positions, the District's half-time position was eliminated effective December 31, 2003.

In anticipation of being designated as an electronic filing court, the district court's executive management team traveled to the District of Maine during May 2003 to discuss Case Management/Electronic Case Filing CM/ECF strategy. Similar to the District of Maine, Vermont's electronic filing strategy is to implement the "CM" portion of electronic filing first before moving on to full-electronic filing capability. In November 2003, Vermont was officially included as an electronic filing court in the national round-out and was listed as Implementation Wave No. 17. Vermont's target "go-live" date is tentatively set for September 2004. During December 2003, eight deputy clerks underwent CM/ECF Applications training at the San Antonio, Texas Training Center. Additional personnel will attend both Dictionary and Editor/Quality Control training during 2004.

During August 2003, the Clerk's Office converted without incident to the most current version of the Financial Accounting System For Tomorrow (**FAS_4T**), Version 3.7.3.2. The Clerk's Office continues to implement the Certifying Officer authority delegated to Court Unit Executives during the summer of 2002.

Automation and Information Technology Activities

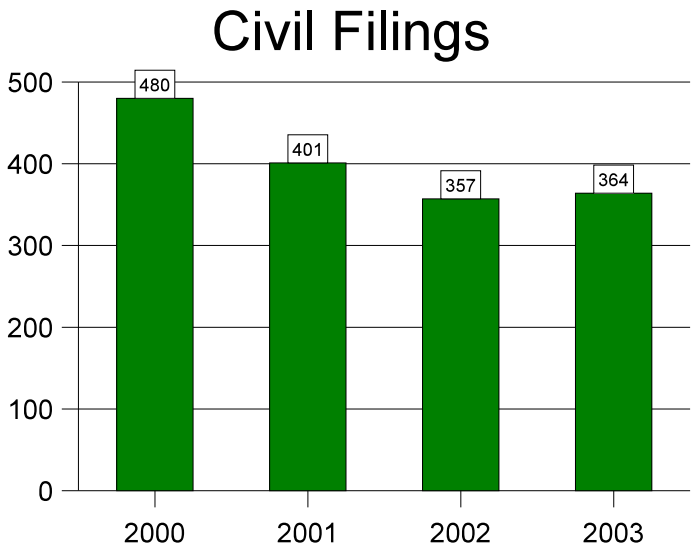
During calendar year 2003, the Clerk's Office continued to refine and expand automation and IT-related activities, with particular emphasis on enhancing the Court's external website. Jury instructions for each of the Court's duty locations have been added to the website along with instructions for using the Court's two Burlington-based evidence presentation systems. The Clerk's Office is also investigating the possibility of using the internet as a juror notification tool supplementing its toll-free phone notification system.

Two other significant accomplishments which took place during 2003 in the systems arena were the addition of a new web-based opinion review and retrieval system and the fielding of a completely new, web-based court scheduling calendar. The opinion review system makes available to the public and bar both published and non-published court opinions and also allows for electronic notification to a

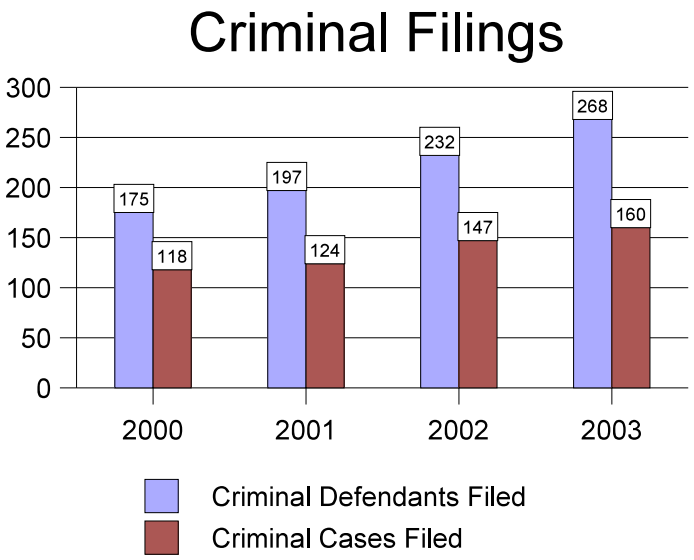
user or party when an opinion first becomes available. Enhancements made to the Court' s internal website included affording employees the ability to listen to courtroom proceedings via their desktop computer and the ability to view Federal Judicial Television Network (FJTN) programs at individual workstations. These last two enhancements were particularly well-received by Court and Clerk' s Office staff. Other applications enhancements included upgrading all user workstations with the Windows " XP" platform, upgrading all file servers with Novell Release No. 6, and as mentioned earlier, installing the latest new release for the **FAS$_4$T** financial application.

Caseload Statistics

As shown below, Vermont' s civil case filings for calendar year 2003 remained essentially constant when compared to calendar year 2002. The District experienced only a very slight increase in civil filings - seven cases - in the total number of civil cases commenced. Based upon historical data, we believe that this upward trend will continue as the District' s long-term average caseload filing on a per annum basis centers on roughly 400 civil filings per year.



Unlike its civil counterpart, however, Vermont' s criminal caseload continues to expand. Calendar year 2003 saw an increase of thirteen cases and thirty-six defendants, representing increases of sixteen and ten percent, respectively, over calendar year 2002. The increased caseload activity is attributed to a staffing increase placed in effect by the Office of the United States Attorney during late 2002 when two additional AUSA positions were filled.



Criminal Justice Act (CJA) Panel Operations

The total number of Criminal Justice Act appointments made by the District during 2003 decreased approximately five percent, from a high of 291 appointments made in 2002 to 277 appointments made for 2003. The discrepancy of having more criminal cases and defendants filed during 2003 while still experiencing a decline in the number of actual CJA Panel appointments made is attributable to the fact that the District simply had more fugitive defendant filings.

During 2002, the District applied to establish a separate, independent Office of the Public Defender within its jurisdiction as it continues to meet the qualifying criteria set forth by 28 U.S.C. § 3006A(g) - making more than 200 individual CJA appointments on a per year basis. On June 5, 2003, the Second Circuit Judicial Counsel approved Vermont's application to establish a separate office, contingent upon the Defender Services Division securing adequate funding through Congress. Vermont remains hopeful that funding will be approved during 2004 and that a separate Federal Public Defender Office will be established.

Early Neutral Evaluation (ENE) Program

The Court continues to rely upon its Early Neutral Evaluation Program to reduce the cost of litigation and its delay to the parties. Although the number of ENE sessions held during 2003 increased more than fourfold – from 17 to 74

sessions held – the rate of full case settlement remained constant at thirty-three percent. Currently, the Court's ENE Panel consists of forty-eight attorneys who are trained in various alternative dispute resolution techniques. The program will enter its tenth year of operation in 2004.

Space and Facilities

During May 2003, representatives from the Administrative Office's Space and Facilities Division assisted the District's Long-Range Space Planning Committee with updating Vermont's Long-Range Space Plan. Due to the untimely death of Circuit Judge Fred I. Parker during August 2003, the District is currently in the process of modifying its Plan to account for this unplanned event. Vermont is currently included on the national courthouse construction schedule for initial site acquisition and building design for Fiscal Year 2007.

No major court-driven tenant alteration projects took place within the District during calendar year 2003. Work on the GSA prospectus-level HVAC replacement project for the Burlington Federal Building continued ahead of schedule during the year. While the anticipated completion date is sometime during the fall of 2004, the formal contract completion date is set for March 2005. The Burlington elevator replacement project was completed during the summer of 2003. The building's existing Otis elevators installed when the building was built in 1960 were completely replaced with more modern Thyssen elevators.

Attorney Discipline

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District's proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court's federal bar during the year.

PROBATION & PRETRIAL SERVICES
District of Vermont

The Vermont Probation Office is a combined court unit fulfilling both the Probation and Pretrial Services functions, with three units providing service to the Court; Pretrial Services, Presentence Investigations and Post-Conviction Supervision. We began the fiscal year with 21.6 employees. We were authorized 22.9 units, an increase of 1.8 units from the previous year. This increase in authorized work units brought us back to where we had been in FY 2001. The increase in workload was, in part, a result of last years' significant increase in Pretrial Services' workload and an increase in Post-Conviction Supervision cases. Unfortunately the Judiciary' s budget was not finalized until early in the calendar year of 2003. Funding for new work units was provided for only one-half of the year. Consequently, we were unable to add to our staff and we finished the year with 21.6 employees.

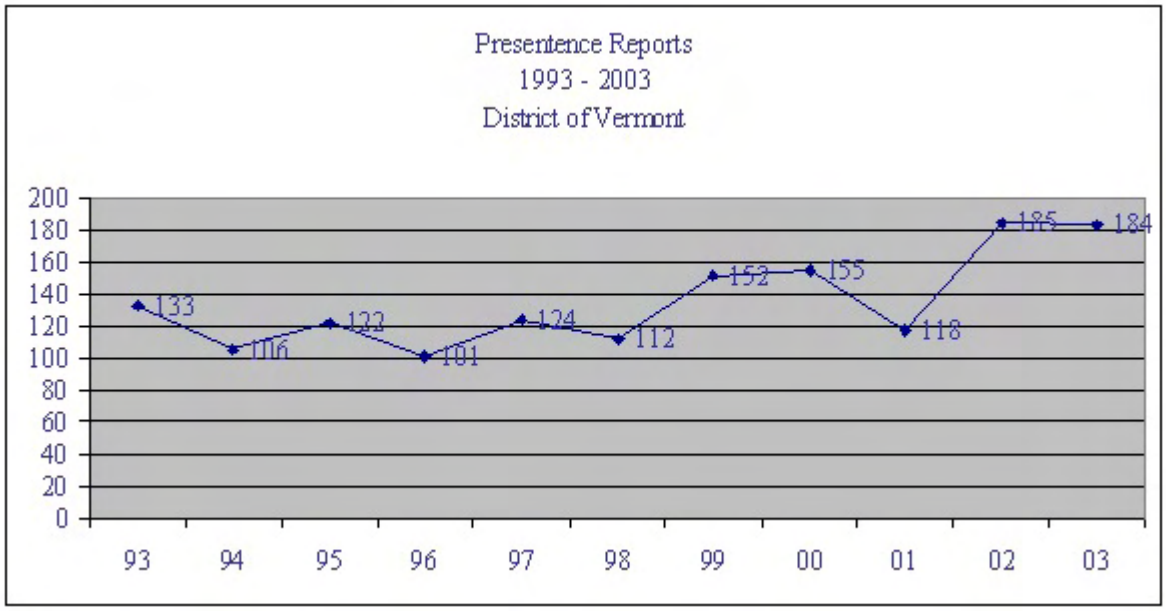
The Burlington Office includes the administrative staff, Canadian Liaison, Pretrial Services Unit, Presentence Unit and Post-Conviction Supervision Unit as well as support staff. The Burlington location also houses the drug testing laboratory. The Brattleboro, Vermont Office is staffed by two probation officers and one probation clerk. There is also an un-staffed office in Rutland, used by officers to meet with offenders and to attend Court hearings in Rutland. We have maximized the use of space in all facilities and have no room for expansion in Burlington and Brattleboro. A recent Administrative Office Long-Range Planning Report highlighted the space shortages in each of the three offices. At present, there is no room for additional staff in Burlington, Rutland or Brattleboro.

The Probation Office has a Training Committee, which includes a training coordinator and other professional, support and administrative staff. This Committee arranges and provides training to the general staff. The Probation & Pretrial Services Office also has a Tuition Assistance Program which affords training opportunities for staff on a selective individual basis from outside sources. Internal resources include a video library, packaged training programs offered by the Federal Judicial Center, local consultants and other resource materials as well as training through the FJTN. Staff participated in numerous training programs this year including New Officer Orientation, Officer Safety, Firearms, CapStun, Dealing with Mental Health Disorders, Myers Briggs, General First Aid and CPR certification.

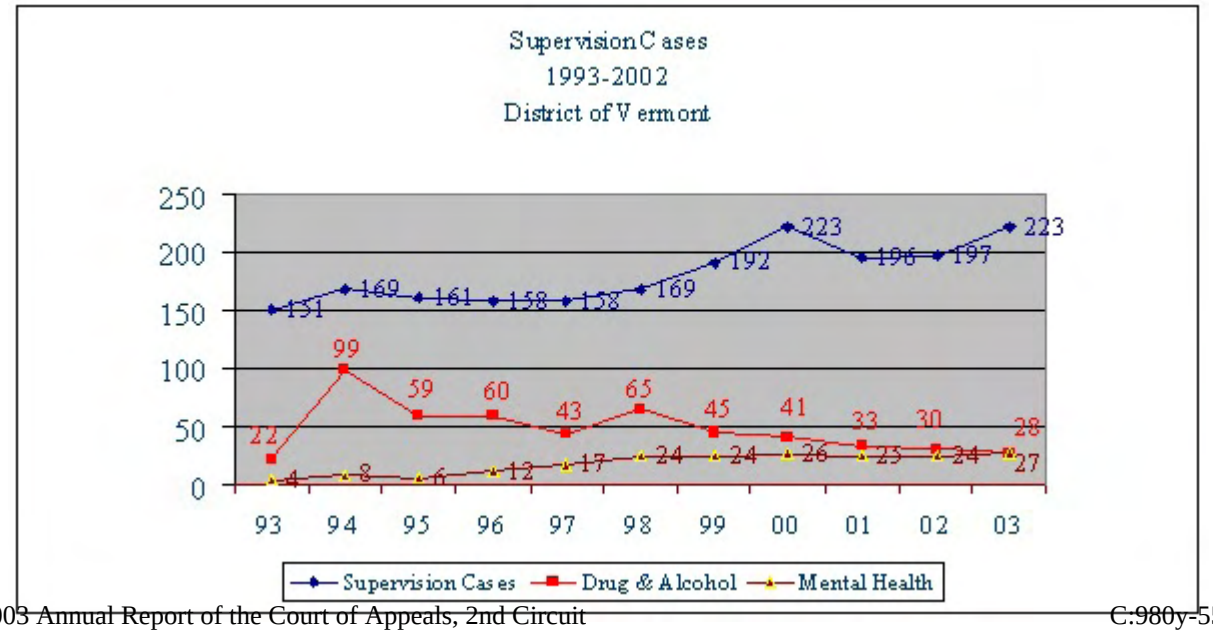
We had one officer complete the Leadership Development Program and one officer acting as a trainer for New Officer Orientation. We have continued our association with small districts from New England in a regional Critical Incident Stress Management Team. The Administrative Manager assisted the Office of

Probation & Pretrial Services with district reviews as a subject matter expert on budget and human resources. In addition, she served as a mentor in the implementation of FAS4T.

The District of Vermont's Presentence Investigation workload remained stable. After last years' record high of presentence investigation reports, we completed one less this year.



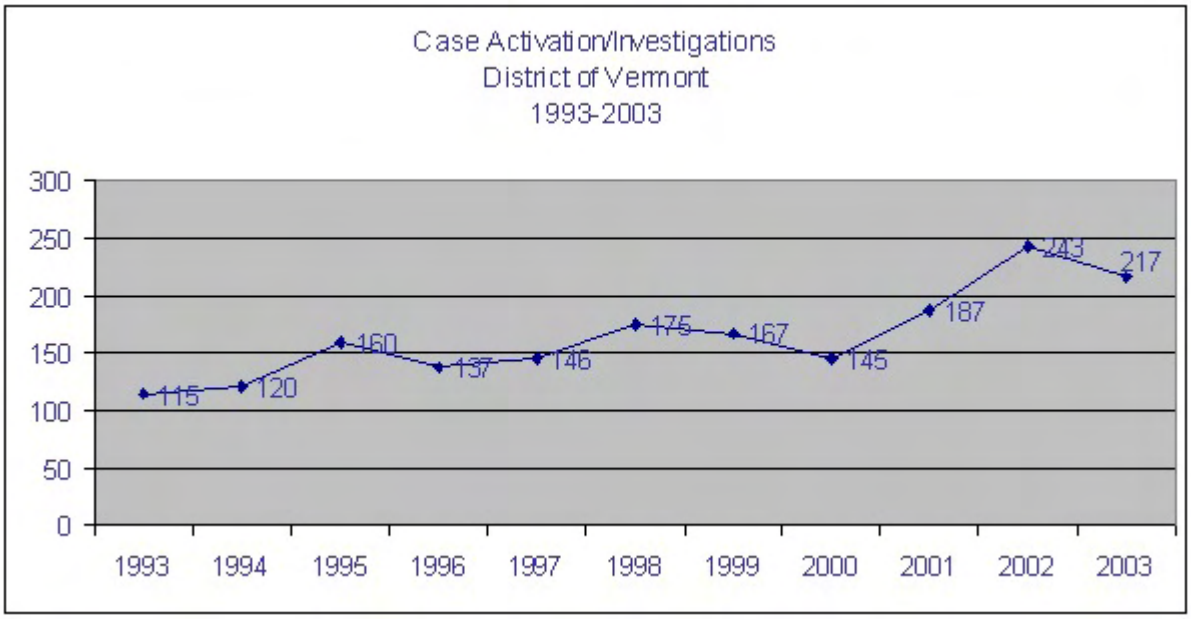
Our Post-Conviction Supervision cases increased by 13% over last year. The number of defendant's receiving drug and alcohol treatment, similar to the previous years. During the year a total of 90 offenders under post-conviction supervision received substance abuse treatment. We had a 14% increase in collateral investigations completed and a significant 39% decrease in violations.



During FY 2003, we continued to have substance abuse and mental health contracts in all fourteen counties of Vermont. The contracts are monitored by the District' s DATS officer with the assistance of one of the probation officers assigned to the pretrial services function. We had a 17% decrease in drug treatment expenditures and an 83.3% increase in mental health expenditures. We had 25.4% offender co-payments for drug treatment and 27.3% for mental health.

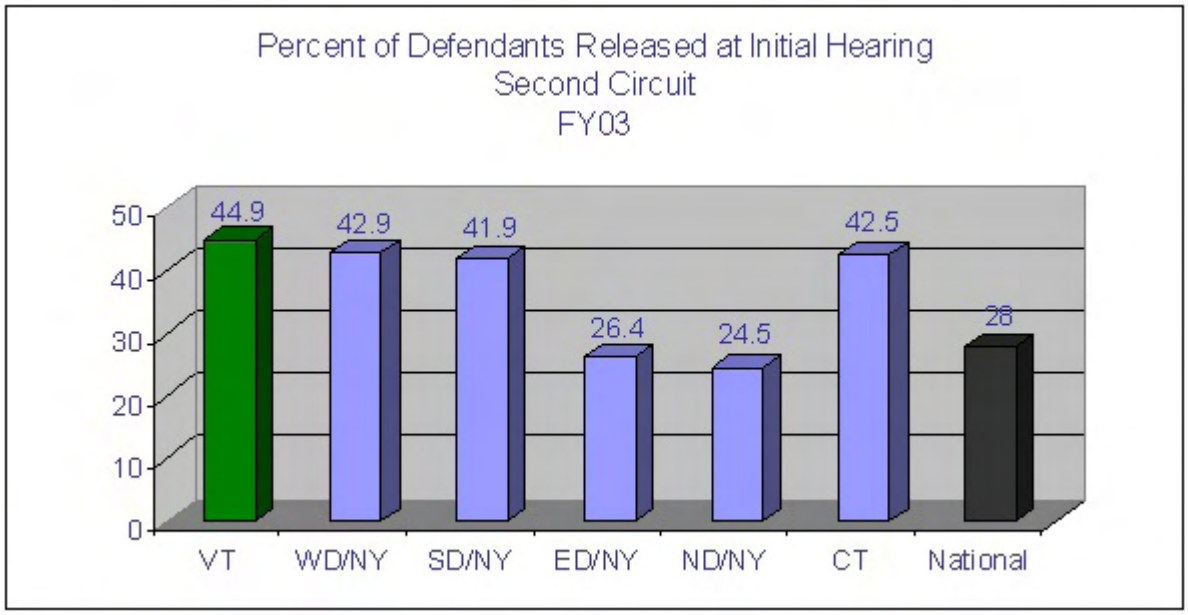
During the fiscal year, we continued to use electronic monitoring as a sanction and in lieu of halfway house placements. Sixty post-conviction offenders were under electronic monitoring services during the fiscal year and 23 offenders in Bureau of Prison custody were monitored with the electronic monitoring systems as part of their reintegration to the community because Vermont has no halfway house facilities.

During FY 2003, we experienced a 10.6% decrease in Pretrial Services cases activated, with a total of 217 cases for the year.



At the end of FY 2003, we had 94 defendants under supervision, the same number as last year. We had an 11.0% decrease in offenders released with substance abuse treatment conditions. We expended 19.5% less for drug and alcohol treatment and 70% more for mental health treatment than the previous year. We collected 13.5% of our total pretrial alternative detention funds in offender co-payments. Within the Second Circuit, Vermont had the highest release at initial

hearing, 44.9% and the lowest rate, 26.9% of defendant' s detained and never released.



The majority of offenses charged in the District of Vermont were drug related offenses, totaling 53.2%, down from 61% last year, 7.9% of offenses were fraud while 13.4% were weapon/firearm related. Our post-conviction supervision caseload results from 50.2% of drug law violators and 14.5% firearms violators.

We continue to provide liaison services between the Federal Probation System and Canadian Law Enforcement. During the fiscal year, we provided 106 investigative reports to other districts relating to Canadian offenders.

U.S. Bankruptcy Court
District of Vermont

CM/ECF

We successfully converted to CM/ECF Version 2 in early 2003. We also completed construction of an 8-station training room in Rutland and began holding monthly classes for attorneys and their staff. We had trained a total of 185 attorneys as of the end of 2003, about 34% of whom were trained on-site in attorneys' offices. Attorneys filed documents online on behalf of their clients 4,445 times in 2003, and trustees filed online 1,578 times. Together, this accounts for approximately 49% of all filings, up from 31% in 2002. Attorneys opened 966 bankruptcy cases and 14 adversary proceedings electronically, which constituted approximately 51% and 22% of those categories, respectively. This reflects a significant increase from 2002. By December 31, 2003, over 64% of all attorney transactions were being completed online.

Community Outreach

Several members of the Clerk's Office staff have formed a Community Outreach Task Force for the purpose of creating and presenting a community outreach program that is very similar to the CARE program which is being initiated throughout the circuit. The task force has been very active in several different projects, all of which focus primarily on disseminating information to *pro se* parties and educating young people about the risks associated with imprudent use of credit.

In late 2003, the task force completed a revised *pro se* packet which we have made available to persons who choose to seek bankruptcy relief without benefit of counsel, communicated the existence of this information to the Vermont agencies that provide legal services to the indigent, obtained information from these agencies about how best to coordinate the task force's efforts with the services the agencies provide, made the bar aware of this new *pro se* information packet, and posted the *pro se* packet of information on the Court's web page.

During spring 2003, the task force created and finalized a one-hour interactive educational mini-course entitled **$tart $mart.** During the summer of 2003, the task force disseminated information about this program to many colleges in Vermont, offering to give this presentation on site for no fee. On September 27, 2003, members of the task force made their initial presentation of **$tart $mart** at the College of St. Joseph (in Rutland, VT). The response from students who have

participated in the program has been very positive, and the task force is currently planning to offer this course several more times in 2004, to both college and high school students.

In a similar vein, the Court created a *pro se* litigant information sheet and instituted a procedure whereby the Clerk's Office sends out a form to both parties explaining the notice, service, filing and local rule requirements whenever one of the parties to a summary judgment motion is *pro se*.

Judge Brown implemented a Judicial Performance Appraisal system in 2003, in which attorneys are encouraged to offer candid comments to a third party (an attorney who does not practice in this court), who then passes the comments along to Judge Brown. As of December 2003, this attorney had heard from and/or contacted 15 attorneys who have practiced in this court. (This is a significant number, and an excellent level of response, since our bar is so small: about 45 attorneys filed approximately 80% of all papers filed by attorneys in 2003.) We are pleased to report that the comments were overwhelmingly positive. Certain questions were raised as to court operations, to which we responded via an article in the Vermont Bar Association journal.

Mega-Case and Jury Trial

This court received its first " mega-case" in 2003, involving over 19,000 creditors. This is an exceptionally large case for the District of Vermont, and the staff managed to process 2,720 claims without any outside assistance.

In June 2003, Judge Brown also held the first jury trial in Vermont's bankruptcy court since she took the bench. It lasted five days before the parties settled the lender liability and other claims in issue.

Also in 2003…

- Judge Brown was appointed to serve as the Second Circuit Representative to the Administrative Office' s Bankruptcy Judges' Advisory Group.
- We implemented new rules regarding privacy.
- The Court successfully converted to a new time and attendance system (ELMR).
- We, in collaboration with the U.S. District Court, constructed a courtroom and chambers space for the Bankruptcy Court in the courthouse in Burlington.

- The Clerks Office staff created and populated new databases in Lotus Notes, including:
  - a policy database containing this court's Employee Handbook;
  - a VTB Documents Library containing meeting agendas and minutes, financial procedures, the Internal Control Manual, and job descriptions for each employee; and
  - a CM/ECF Procedures database.
- The Court sponsored *Take Your Kids to Work Day* during which attorneys and staff were encouraged to bring their children to the Court to learn about what their parents do all day.
- Judge Brown traveled to Petrozovodsk, Karelia, in the former Soviet Union, for 10 days in May 2003 to speak to about 200 Karelian judges of the Arbitrage [commercial] Court about their new bankruptcy system and how it compared to the American Bankruptcy law, and participate in the Russian American Rule of Law Consortium (RAROLC) on the American adversarial system.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Chief Judge Richard J. Arcara

SUMMARY OF HIGHLIGHTS AND ACTIVITIES IN THE WESTERN DISTRICT OF NEW YORK

Statistical Year 2003 was yet another year during which case filings, both civil and criminal, increased in the Western District. The District Court, while at a full complement of district judges and magistrate judges, nevertheless struggled significantly to keep pace with the workload demands placed upon this extraordinarily busy court.

As has been the case for more than a decade, the District' s workload continues to be substantial. The District ranks second in the Circuit and 22nd nationally with regard to civil filings, and first in the Circuit and 21st nationally with regard to criminal filings. With respect to pending cases per judgeship, the District ranks first in the Circuit and 6th nationally, with 727 cases per judgeship. Overall, civil filings in the District were up 5.5% over the preceding reporting period, while criminal filings were up 13% for the same period. The total civil and criminal filings place the District 10th nationally in this category.

Despite the heavy workload, the District continues to make great strides in disposing of cases. The District ranks first in the Circuit and 10th in the nation

with regard to terminations per judgeship. This result is even better than last year when the District was 18th nationally in this category. In view of the District's increasing caseload, however, it will be difficult for the District to keep up this pace without the creation of any new judgeships.

No new judicial officer positions were created in the Western District during this reporting period. Although the Court has been working diligently towards reducing the significant caseload, more help is needed. The Judicial Conference of the United States has recognized this and has recommended, since 1992, that an additional judgeship be created for the Western District of New York. It is only recently that Congress has begun to create additional judgeships but, unfortunately, the Western District has not been included in the new authorizations. Weighted filings per judgeship, a statistical factor of great significance when justifying the need for new judgeships, places this Court second in the Circuit and 19th nationally. This district is well above the national average of 611 weighted filings per judgeship versus 523 nationally.

Plans proceed apace with two major construction projects in the District. The first project, originally designed as an annex to the Michael J. Dillon Courthouse in Buffalo, was subsequently determined to be impractical in light of the September 11th terrorist attacks and increased security regulations for new construction.

The General Services Administration, the Administrative Office of the U.S. Courts, and the District Court concluded that the project should be scrapped in favor of a separate, stand-alone Courthouse. The project's ranking in the Judiciary's five-year plan for courthouse construction projects for Fiscal Year 2003 resulted in a Congressional appropriation for site acquisition and design. These funds became available shortly after October 1, 2002. The General Services Administration is in the process of negotiating for the purchase of the parcels of land on which the new courthouse will be constructed. The site selected for the new courthouse is on Niagara Square, the main civic center of downtown Buffalo. The new building will provide courtrooms and chambers for all of the district and magistrate judges in the Buffalo Division, a new grand jury facility, work spaces for the United States Attorney's Office and the Federal Public Defender, and offices for the United States Marshals Service, the District Court Clerk and U.S. Probation and Pretrial Services. The existing federal courthouse, which is a historical building, will be preserved in the new housing plan and will become the home of the U.S. Bankruptcy Court and other federal agencies. The Dillon Courthouse will continue to provide for the government's needs well into the future.

Artist renderings of concept design of the new Buffalo Courthouse

The Rochester project possesses a lesser ranking in the Judiciary's five-year courthouse construction program. Funding for an annex to the Kenneth B. Keating Federal Building and U.S. Courthouse is not expected until Fiscal Year 2007 at the earliest. It is anticipated that the annex will house four district courtrooms and chambers plus related support office space for the Court and the U.S. Marshals Service. The annex will be connected to the existing facility by way of an atrium.

During Fiscal Year 2003, a number of judicial officers continued their service on national committees, advisory groups and organizations. U.S. Magistrate Judge Hugh B. Scott continues to serve on the District Court Advisory Council to the Administrative Office. Senior District Judge Michael A. Telesca continues his term on the Anti-Terrorist and Removal Court. U.S. Bankruptcy Judge Michael J. Kaplan continued to serve as a member of the Second Circuit's Library Committee. Bankruptcy Judge Carl L. Bucki was selected to serve as a member of the Board of Governors of the National Conference of Bankruptcy Judges. Chief Bankruptcy Judge John C. Ninfo, II was appointed to the Second Circuit Judicial Council on Bankruptcy. Chief Judge Ninfo continued to expand the Credit Abuse Resistance Education (CARE) program within the District and, as a result of a November 13, 2003 letter from Second Circuit Chief Judge John M. Walker, Jr. to Chief District Judges, the CARE program expanded throughout the Second Circuit and to some extent nationally as the result of a number of initiatives within the Federal Judiciary.

The District Court, selected as one of ten courts nationwide for early implementation of the new financial accounting system known as FAS_4T, continued

to serve as a mentor court at the request of the Administrative Office. Most notably, during this reporting period, the District Court acted as a mentor and advisor to the Southern District of New York, the Northern District of Georgia, and the Eastern District of North Carolina.

During the period October 1, 2002 through September 30, 2003, the District implemented the CM/ECF case management system as part of Wave 11, going live on the case management module on October 4, 2003. The final conversion was accomplished over the weekend of October 1, 2003 through October 3, 2003, with over a million and a half records converted without error. Over 500 attorneys have been trained on and registered for the system to date, and attorneys began e-filing on January 4, 2004.

PERSONNEL

Judicial Officers

Active District Court Judges include Richard J. Arcara (Chief Judge) and William M. Skretny in Buffalo and David G. Larimer and Charles J. Siragusa in Rochester. Senior Judges include John T. Curtin and John T. Elfvin in Buffalo and Michael A. Telesca in Rochester. Judge Telesca celebrated his 20th anniversary on the bench in May 2003. Magistrate Judges include Leslie G. Foschio, Hugh B. Scott, and H. Kenneth Schroeder, Jr. in Buffalo and Jonathan W. Feldman and Marian W. Payson in Rochester. Bankruptcy Court Judges include John C. Ninfo, II (Chief Judge) in Rochester and Michael J. Kaplan and Carl L. Bucki in Buffalo. Fiscal Year 2003 marked the tenth anniversary on the bench for Judge Bucki.

Administrative Officers

Court Unit Executives are Rodney C. Early, Clerk of Court, United States District Court, Paul Warren, Clerk of Court, United States Bankruptcy Court, and Joseph A. Giacobbe, Chief Probation and Pretrial Services Officer. The United States Marshal is Peter Lawrence. The District Court' s Chief Deputy Clerk is Jeanne M. Spampata. The Rochester Division Clerk' s Office is administered by Deputy Clerk-In-Charge, Rachel Bandych (Ms. Bandych resigned effective December 28, 2003). The Bankruptcy Court' s Chief Deputy Clerk is Michelle Pierce. The Buffalo Division of the Bankruptcy Court is administered by Deputy-In-Charge JoAnn Walker, the Rochester Division Office is administered by Deputy-In-Charge Todd Stickle. Deputy Chief Probation Officer Anthony San Giacomo oversees the operation of the Buffalo Office, while Deputy Chief

Probation Officer Thomas McGlynn supervises the Rochester Division Probation Office (Mr. McGlynn retired at the end of December, 2003.)

Magistrate Judges

All magistrate judges in the Western District of New York continue to be utilized to the fullest extent possible under existing law. Consent cases before magistrate judges are encouraged and each magistrate judge has a substantial number of consent cases pending. Virtually all discovery matters, including Rule 16 Conferences, are referred to magistrate judges. In many cases, magistrate judges also supervise much of the pre-trial criminal work, including motions. Magistrate judges are also used extensively in settlement conferences.

Because there are 14 state correctional facilities and numerous local correctional facilities in the District, the Court has a significant number of prisoner filings. The Court has successfully experimented with a system for direct assignment of prisoner petitions in habeas corpus cases to magistrate judges in equal proportion to those assigned to district judges. There is a very high rate of consents in these cases which allows for more efficient use of the magistrate judges.

Magistrate judges are an integral and indispensable part of the Court. They also participate with the district judges in all aspects of court management in the District.

STATISTICS

District Court

Civil filings for the year ending September 30, 2003 were 1,697, which is a 5.5% increase over the prior year's civil filings. Buffalo's filings were up 3% and Rochester's filings were up 9.5%. Total criminal case filings for the year ending September 30, 2003 were 439, a 13% increase over the prior year. Filings were up 2.3% in Buffalo, and 34.6% in Rochester.

The civil pending caseload is up a combined 6.4% over last year. Buffalo is up 7.9%, and Rochester is up 4.5%. Rochester's share of the pending civil caseload stands at 42%, down one percentage point from last year's share.

The criminal pending caseload is up 9.2% overall, and now stands at 570 cases.

One thousand five hundred and forty two civil cases were terminated during the period October 1, 2002 - September 30, 2003. That number is one more than was terminated during the prior twelve-month period. Buffalo closed 904 cases, while Rochester closed 638 cases.

Bankruptcy Court

Bankruptcy filings in the Western District of New York for the preceding twelve-month period increased, as has been the national trend. A total of 14,579 cases were filed during Fiscal Year 2003, which represents a district-wide increase of 12.95% from the previous twelve-month period. The percentage increase in bankruptcy filings in the District was significantly greater than the national average of 7.4%. Chapter 7 cases continue to comprise the majority of the cases in this district, representing approximately 74% of the total cases filed. A total of 527 Adversary Proceedings were filed during Fiscal Year 2003, representing a slight decrease from last year.

According to the most recent Bankruptcy Program Indicators, the Court continues to rank nationally in the median range with respect to the number of case filings, disposition time and average age of pending cases. The Court's active case management of Adversary Proceedings has resulted in it being ranked first in the Circuit with respect to the average age of pending dischargeability Adversary Proceedings and second in the Circuit for the average age of other Adversary Proceedings. The Court continued to rank highly in the Circuit in these categories despite the increased workload and the inability to fill new authorized work units.

Probation and Pretrial Services

Joseph A. Giacobbe, Chief Probation Officer, reports that during statistical year 2003, the U.S. Probation and Pretrial Services office updated its strategic plan and the staff continued their commitment towards Total Quality Service. The plan identifies major performance outcome areas involving improvement of quality and service in pretrial service reports, supervision services, presentence reports, automation services, training, diversity of the organization and management. Staff members, representing all job types, are assigned to work on goals supporting these outcome areas.

During this reporting period, a number of individuals participated in regional and national initiatives outside of the district. Two probation officers participated as trainers for the Federal Judicial Center's new officer training program. One member of the management team assisted the Office of Probation

and Pretrial Services on the Committee for the Development of the AO's updated post sentence and pretrial services supervision monographs. One of the senior probation officers was selected as the Second Circuit's representative on the U.S. Sentencing Commission's Advisory Board.

In statistical year 2003, 698 cases were activated on pretrial release, representing a bail release rate of 65.7%. The percentage of pretrial defendants who successfully completed supervision was 80%. The majority of violations while on pretrial release were technical violations as opposed to re-arrests. The total number of pretrial service defendants received for supervision during this reporting period was 365, which includes pretrial diversion defendants. Of this number, 160 defendants were referred for substance abuse testing and/or treatment. A total of 52 pretrial services defendants were referred for mental health treatment.

A total of 198 defendants were released on electronic monitoring surveillance at the pretrial services stage. Defendants paid approximately $16,000 toward co-payment orders. The successful EMS completion rate continued in the mid-80% range. Use of pretrial EMS resulted in a potential savings to the government of $1,921,177.

The presentence investigation unit completed 495 investigations. District-wide, 71% of sentenced defendants were remanded, 22% were placed on probation, 15% were ordered to pay a fine and 15% were directed to make restitution.

During the reporting period, 1,277 post-sentence offenders were under supervision. Of this number, 1,211 offenders, or 95%, completed their term of supervision successfully. A total of 160 offenders received drug treatment, while 71 offenders received mental health treatment. Two Hundred Forty offenders were placed under electronic monitoring conditions which produced a successful completion rate of 99%. Offenders paid $11,885 towards co-payment orders. The average monthly number of individuals on post-sentence electronic monitoring was 55. Had these individuals been incarcerated, the cost to the government would have been approximately $1,606,000. A total of 2,098 hours of community service were completed by 58 offenders. Restitution and fine collections totaled $1,146,255. A total of 47 individuals were processed through the probation office's employment program, resulting in 61% of the offenders either securing work, completing a training program, or becoming involved in an educational program.

AUTOMATION

District Court

During this reporting period, a significant amount of time was spent by the systems staff preparing for implementation of the new case management/electronic case filing (CM/ECF) system. New servers were successfully installed and configured for use in the CM/ECF project. The entire ICMS database was successfully migrated to the new system.

In addition to the technical work performed, the systems staff provided extensive training, both internally and externally, in support of the CM/ECF project. This included more than ten on-site training classes for members of the Bar as well as many in-house technical training seminars for court staff.

The new digital telephone system in Buffalo and Rochester continues to provide the Curt with many new opportunities. The Bankruptcy Court's Rochester Office was successfully migrated to the new telephone system during this reporting period. The process of migrating the District Court Clerk's Office and Chambers in Rochester to the new system is nearing completion. This migration to the digital telephone switch promises to save the District Court and Bankruptcy Court significant budget resources. Shortly, the remaining chambers in Buffalo will be migrated to the new digital system as well.

In an effort to obtain more competitive telephone service rates, the District Clerk's Office has provided the Probation and Pretrial Services Unit with consulting expertise to assist them in their move to a less expensive service.

The systems staff continued throughout the year to process all necessary work station and server cyclical replacements and began to truly utilize the SAN for storage of digital audio recording data.

A new FAS_4T server has been installed and the FAS_4T application migrated to it. At the conclusion of this reporting period, the systems staff was preparing to upgrade to the new version of FAS_4T, version 3.7.

On the whole, the systems staff participated greatly in the training opportunities throughout the year. Deborah Trouse completed a computer forensics class while Brian Loliger actively participated in the CM/ECF on-site training program. Systems Manager Patrick Healy continues to provide on-site training to the Bar and others with respect to the new case management/electronic case file system.

This Fiscal Year saw the completion of the infrastructure and technical installation of expanded courtroom technology in two district courtrooms, one in Rochester and one in Buffalo.

Bankruptcy Court

On June 13, 2003, the Bankruptcy Court switched its case management system from BANCAP to CM/ECF, ending the use of the case management system that the Court had used for nearly 15 years. Conversion to CM/ECF required a significant commitment of IT personnel and budget resources to adequately train, test and convert existing case records and to support the Court in using the new case management system. The IT staff converted approximately 165,000 case records from BANCAP to CM/ECF, making that case information available to internal and external users without the need to keep two case management systems operating. For the period from June 30, 2003 through January 30, 2004, attorneys " e-filed" a total of 811 cases with the Court representing 8.90% of the Court' s total case filings for that period. During that same period of time, through the use of a scanning system developed by the Court' s IT staff, the Court was able to electronically image 166,592 documents, consisting of over 659,000 pages. Consequently, the Court was able to remain timely in its docketing, while at the same time making all documents filed with the Court since June 13, 2003 available electronically through CM/ECF. The IT staff has developed a " CM/ECF off-line program" for use by judges that hold court in remote locations without high-speed internet access, enabling a judge to take a notebook or CD to that location and have available all of the documents for the matters being heard that day without the need to rely on dial-up connections. The program has been very well received by other Bankruptcy Courts around the country.

Chief Deputy Clerk Michelle Pierce, served as CM/ECF Project Manager, while performing all other duties, in an admirable fashion. The Court registered 90 attorneys as e-filers, and has trained over 130 attorneys, together with the support staff for many of those attorneys. The Court is certified by the New York State Bar as a continuing legal education provider, offering a four credit-hour course to attorneys in the Court' s training facilities.

FINANCIAL OPERATIONS

District Court

Statistics for the Financial Department show a slight increase across the board in various measures of workload. Fees forwarded to the United States Treasury, including payments to the Crime Victims Fund, totaled over $2.9 million

representing a 5% increase over the prior year, with the actual number of receipts issued (10,492) increasing by 2%. This growth appears to be the result of increased payments received from the Bureau of Prisons each month, which rose by 7%. Additionally, our registry deposits grew by 88% with $3.5 million being collateralized through the Federal Reserve.

The volume of criminal debt activity overseen by the Financial Department significantly increased this year particularly due to joint and several restitution cases. Our current caseload involves the monitoring, tracking and collections on debt totaling over $27 million for these types of cases alone which represents a 40% increase over what was ordered last year. Early in the year, our Financial Operations Supervisor initiated an inter-agency meeting with the District's U.S. Attorney's Office and the United States Probation Office to resolve outstanding issues with joint and several restitution cases. Countless hours were spent by the Financial staff identifying issues, communicating with the various agency leaders, attending a multitude of meetings, questioning and understanding the legal ramifications of various situations, and ultimately adjusting our records accordingly. This resulted in our ability to reduce the District's Deposit Fund by 23% by year end.

During the year, the Court's Financial staff processed over 6,600 payment vouchers and issued 13,078 checks. Combined Registry and Treasury disbursements totaled almost $6.4 million. These statistics remained relatively stable from last fiscal year; however, one significant change in this area of financial operations involved the implementation of Certifying Officers legislation in October, 2002. Although the Clerk of Court remains the sole disbursing officer for the Western District of New York, the Financial Department continues to print the checks for all court units within the district but is no longer required to review vouchers for the other court units. Payments are now initiated electronically upon certification by the Unit Executives and/or their designees.

The Court's Criminal Justice Act program maintained its commitment to the timely processing of CJA payment vouchers. A total of 387 vouchers were certified for payment during the year, with over $1.3 million being paid to attorneys, experts and related service providers on behalf of indigent defendants. This activity represented increases of 9% and 84% respectively primarily due to the assignment of multiple panel attorneys in two very significant cases. Numerous hours were spent reviewing, researching, and communicating with experts in the area of high profile criminal matters similar to USA vs. Goba, et al., after which the presiding Judge approved our proposed Order which included a rather significant departure from the **Guide to Judiciary Policies and Procedures.** The Administrative Office was very pleased with the Court's decision and brought it

to the attention of the Defender Services Committee which met shortly thereafter. Coincidentally, one of their primary agenda items included the management of large non-death penalty cases whereby possible guidelines were being decided upon. As a result, they commended the Hon. William M. Skretny for his efforts in this area. Furthermore, the provision of recommendations on CJA-related death penalty guidelines and a subsequent proposed Order in the matter of USA vs. Diaz, et al, were also completed.

Other accomplishments in the area of CJA, upon the Chief Judge' s direction, involved the drafting of new local policies and procedures for CJA Panel Attorneys regarding appointments, prior expenditure approvals, submissions deadlines, and other details, which are now provided at the time of assignment. New attorneys to the Panel are also provided with written material, as well as an overview of the CJA appointment system and resources. And finally, our public web page now includes various CJA documentation, voucher forms and instructions.

Early February also brought many FAS_4T related activities (Financial Accounting System for Tomorrow). Our Financial Operations Supervisor assisted the Administrative Office with training their team leads on Certifying Officer implementation simultaneously with FAS_4T, which resulted in a request by the Chief Accounting Officer for the Accounting and Financial Systems Division (AFSD) to write an article on Certifying Officer Preparations that was subsequently published in the nationwide FAS_4T flyer. Assistance was also provided in the presentation of Project Management Training to new FAS_4T implementation courts. This was followed by a member of the Financial Department mentoring the Eastern District of North Carolina as they converted their financial operations to FAS_4T. Additionally, we were asked to participate with the Administrative Office in an Operational Assessment and Audit of Texas Southern' s budget, financial, and systems operations.

And lastly, we completed the reconciliation of our district' s Deposit, Registry and Unclaimed Funds accounts with the Administrative Office' s Central Accounting System (CAS) data. This task took two months to complete resulting in our initiating appropriate corrections to errors dating back to the 1960's. This was the first step required in the preparation for Civil/Criminal Accounting Module (CCAM) which is beginning to be rolled out to the courts in Fiscal Year 2004.

Bankruptcy Court

The Bankruptcy Court and the District Court identified the need to replace outdated telephone equipment being used by both courts in the Rochester

Courthouse during Fiscal Year 2003. The Bankruptcy Court fully funded the cost of purchasing a telephone system for the courts to share, at a total cost of approximately $80,000. The cost for each court to purchase its own telephone system would have been approximately $75,000. Consequently, the Court saved approximately $65,000 by partnering to purchase a single telephone system. District Court provided technical support to the Bankruptcy Court in operating and maintaining this system, further reducing the operating cost of the new equipment. In addition, the Bankruptcy Court reprogrammed funds into the District Court budget to assist District Court in performing building improvements and upgrades.

The Bankruptcy Court's inventory control system has been made available to other courts through the Administrative Office, and the Court regularly assists other courts in addressing their inventory control issues. The Court witnessed an increase in the use of credit cards by attorneys to pay filing fees from 1.5% of all fees paid in Fiscal Year 2002 to 19% of all fees paid during Fiscal Year 2003. It is expected that attorneys' use of credit cards to pay filing fees will continue to increase as the number of cases filed by attorneys electronically through CM/ECF increases.

ATTORNEY DISCIPLINARY STATISTICS

Suspensions	0
Disbarment	0
Resignation	0

It came to the attention of the District Court that the Appellate Division, 4th Department, has failed to provide this Court with notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year's Annual Report.

JUDICIAL MISCONDUCT COMPLAINTS

None

JUDICIAL

ADMINISTRATION

IMPROVING THE WORK OF THE COURTS

Judicial Conference of the United States

The federal judiciary as a whole is governed for administrative purposes by the Judicial Conference of the United States, a national body constituted pursuant to 28 U.S.C. § 33l. Consisting of representatives of all the federal courts, the Judicial Conference roughly resembles a legislature for the judicial branch, or perhaps a board of directors.

The tabulation following indicates Second Circuit representation on the various committees of the Conference. The names of the committees provide a kind of summary of the issues dealt with by the Judicial Conference. These are highly important bodies because the full Conference meets only twice each year, primarily to act upon committee reports. Most business is transacted on the " consent calendar," adopting committee proposals. The committees are generally staffed by the Administrative Office of the United States Courts, the Washington agency responsible for judicial branch administration and support at the national level. In addition, the Federal Judicial Center conducts research for many committees.

As Chief Judge of the Second Circuit, Chief Judge John M. Walker, Jr. is the statutory Second Circuit representative on the Judicial Conference of the United States. He will continue in this role during his tenure as the Chief Judge of the Circuit. The current Second Circuit District Court representative is Chief Judge Frederick J. Scullin, Jr., of the Northern District of New York, whose term expires on September 30, 2004.

The Judicial Conference met in Washington, D.C., on March 18, and September 23, 2003. At the March 18th meeting, the Judicial Conference, at the recommendation of the Committee on Federal-State Jurisdiction, unanimously adopted a resolution expressing the Conference' s continued opposition to legislation pending in the 108th Congress that, if passed, will expand federal jurisdiction over class action litigation by permitting, through the use of minimal diversity citizenship, the initial filing in or removal to federal court of almost all such actions now brought in state court. Since 1999, the Conference has expressed its concern that such legislation would be inconsistent with principles of federalism and would add substantially to the workload of the federal courts. In the March 18th resolution, the Conference, while recognizing that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, noted that Congress, in the event it passed such legislation, should be encouraged to include sufficient limitations and

threshold requirements so that federal courts were not unduly burdened and states' jurisdiction over in-state class actions remained undisturbed. The Conference further resolved to continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that did not unduly intrude on state courts or burden federal courts.

Also at the March 14th meeting, the Committee on Judicial Resources, as part of the biennial Article III judgeship survey, recommended and the Judicial Conference agreed to transmit to Congress a request for additional Article III judgeships, including two circuit judgeships for the Second Circuit Court of Appeals, three permanent and one temporary district court judgeships for the Eastern District of New York and one temporary judgeship for the Western District of New York. On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference approved the redesignation of the part-time Southern District Magistrate Judge from Newburgh, New York to Middletown, New York. The Conference also approved the Magistrate Judges Committee's recommendation that the number, locations and arrangements of the Magistrate Judges in the Western District of New York remain unchanged in the district.

On March 27, 2003, the House of Representatives approved a floor amendment (the "Feeney Amendment") to H.R. 1104, 108th Congress, the then-pending, "Child Abduction Prevention Act," which would have, among other things, restricted district courts' authority to depart downward from the sentencing guidelines to grounds specifically identified by the United States Sentencing Commission. It also would have required, in appeals of downward departures, *de novo* review by the courts of appeals of sentencing judges' application of the guidelines to the facts. The House substituted H.R. 1104 for an earlier-passed Senate bill dealing with child pornography, an a conference was scheduled forthwith. By mail ballot concluded on April 3, 2003, the Executive Committee of the Conference, adopted the recommendations of the Committee on Criminal Law, that the Conference oppose legislation eliminating the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for departure; oppose legislation that directly amended the sentencing guidelines and suggest that Congress should instruct the Sentencing Commission to study changes to particular guidelines and to report to Congress if it determines not to make the recommended changes; oppose legislation that would alter the standard of review in 18 U.S.C. §3742(e) from "due deference" regarding a sentencing judge's applications of the guidelines to the facts of a case to a "*de novo*" standard of review; and urge Congress not to pursue legislation in this area until after the Judicial Conference, the Sentencing Commission and the Senate have had an opportunity to consider

more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system. On April 30, 2003, a somewhat narrower version of the bill subsequently passed by Congress was signed into law as the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 or " PROTECT Act" (Public Law No. 108-21). At the September 23, 2003 meeting, the Conference voted to support repeal of certain provisions of the PROTECT Act that did not relate to child kidnaping or sex abuse, including the provisions previously acted upon on behalf of the Conference by the Executive Committee as well as certain provisions of the Act on which the Conference had not previously taken positions, including, among others:

The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure; the requirement directing that the Sentencing Commission release data files containing judge-specific information to the Attorney General; the requirement directing the Department of Justice to submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees and the requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures.

Also at the September 23rd session, the Conference endorsed the recommended changes to the miscellaneous fee schedule by the Committee on Court Administration and Case Management (" CACM"), following a comprehensive review undertaken by CACM of the miscellaneous fees set by the Judicial Conference for the courts of appeals, the district courts, the United States Court of Claims, the bankruptcy courts and the Judicial Panel on Multi-District Litigation. These changes included adopting inflationary increases to most miscellaneous, increasing the fee in the courts of appeals for docketing a case on appeal or review, or docketing any other proceeding, from $100 to $250, establishing a new, optional fee to the court of appeals miscellaneous fee schedule of $200 per remote location for the use, at the request of counsel, of videoconferencing equipment in connection with an oral argument to defray the cost of transmission lines and maintaining the videoconferencing equipment used by the courts, and that the fee for filing a lift stay motion in bankruptcy courts be increased from one-half the filing fee prescribed in 28 U.S.C. §1914(a) to the full filing fee which is currently $150.

At its September 23rd meeting, the Conference approved the recommendation of the Committee on Defenders Services to create a new section

in the guidelines for the administration of the Criminal Justice Act and related statutes encouraging courts to use case budgeting techniques in complex, non-capital panel attorney representations that appear likely to become or have become extraordinary in terms of cost. These new provisions parallel those already pertaining to managing the CJA representation costs in capital cases.

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

Top row, left to right:
Circuit Judge Chester J. Straub
Chief Judge Robert N. Chatigny, District of Connecticut
Circuit Judge Guido Calabresi
Circuit Judge Dennis Jacobs
Circuit Judge Rosemary S. Pooler
Chief Judge William Sessions III, District of Vermont
Circuit Judge Robert D. Sack

Bottom row, left to right:
Chief Judge Michael B. Mukasey, Southern District of New York
Circuit Judge José A. Cabranes
Chief Circuit Judge John M. Walker, Jr.
Chief Judge Edward R. Korman, Eastern District of New York
Chief Judge Richard J. Arcara, Western District of New York

Absent:
Chief Judge Frederick J. Scullin, Jr., Northern District of New York

SECOND CIRCUIT JUDGES SERVING ON U.S. JUDICIAL CONFERENCE COMMITTEES AND SPECIAL COURTS FEBRUARY 2004

John M. Walker, Jr.	Court of Appeals	The Executive Committee
Jed S. Rakoff	S.D.N.Y.	Committee on the Administration of the Bankruptcy System
Victor Marrero	S.D.N.Y.	Committee on the Budget
Denis R. Hurley	E.D.N.Y.	Committee on Codes of Conduct
John G. Koeltl	S.D.N.Y.	Committee on Court Administration and Case Management
Norman A. Mordue	N.D.N.Y.	Committee on Criminal Law
John Gleeson	E.D.N.Y.	Committee on Defender Services
Loretta A. Preska	S.D.N.Y.	Committee on Federal-State Jurisdiction
Robert D. Sack	Court of Appeals	Committee on Financial Disclosure
Rosemary S. Pooler	Court of Appeals	Committee on Information Technology
Janet Bond Arterton	Connecticut	Committee on International Judicial Relations

Robert A. Katzmann	Court of Appeals	Committee on the Judicial Branch
William K. Sessions, III	Vermont	Committee on the Judicial Branch
Dennis Jacobs, Chair	Court of Appeals	Committee on Judicial Resources
Nina Gershon	E.D.N.Y.	Committee on the Administration of the Magistrate Judges System
J. Garvan Murtha	Vermont	Committee on Rules of Practice and Procedure
Mark R. Kravitz	Connecticut	Committee on Rules of Practice and Procedure
Laura Taylor Swain	S.D.N.Y.	Advisory Committee on Bankruptcy Rules
Shira A. Scheindlin	S.D.N.Y.	Advisory Committee on Civil Rules
David G. Trager	E.D.N.Y.	Advisory Committee on Criminal Rules
David G. Trager *Ex-Officio*	E.D.N.Y.	Advisory Committee on Evidence Rules
Barrington D. Parker, Jr.	Court of Appeals	Committee on Security and Facilities
William K. Sessions, III	Vermont	U.S. Sentencing Commission

COMMITTEES OF THE SECOND JUDICIAL CIRCUIT OF THE UNITED STATES

Jed S. Rakoff, Chair	S.D.N.Y.	Bankruptcy Committee
Rosemary S. Pooler, Chair	Court of Appeals	Information Systems and Technology Committee
José A. Cabranes, Chair	Court of Appeals	Library Committee
Barrington D. Parker, Jr., Chair	Court of Appeals	Space & Facilities Committee
Carol Amon, Chair	E.D.N.Y.	Committee on Judges' Obligation under 28 U.S.C. § 455
Robert D. Sack, Chair	Court of Appeals	History & Commemorative Events Committee
John M. Walker, Jr., Chair	Court of Appeals	Public Affairs Committee
Alfred V. Covello, Chair	District of Connecticut	Committee on Local Holding Procedure for Filing Motions
Robert N. Chatigny Chair	District of Connecticut	Connecticut Federal/State Judicial Council
William K. Sessions, III Chair	District of Vermont	Vermont Federal/State Judicial Council
George B. Daniels, Chair	S.D.N.Y.	New York Federal/State Judicial Council

JUDICIAL CONFERENCE (SECOND CIRCUIT) AND JUDICIAL COUNCIL

Circuit judicial conferences are periodic circuit-wide meetings convened pursuant to 28 U.S.C. §333. A modification to this statute, which formerly mandated an annual conference, permits the Judicial Conference to be held in alternate years. A 1996 modification of §333 makes attendance optional; formerly, active circuit and district judges were required to attend unless excused.

The 2003 Judicial Conference was a bench-bar conference. It was held on June 5th through 8th at The Sagamore on Lake George in Bolton Landing, New York. The Hon. John M. Walker, Jr., Chief Judge, presided over the conference and the Hon. Denise Cote, United States District Judge for the Southern District of New York was the Conference Chair. Prior to the judges' Executive Session on the first day of the conference, Chief Judge Walker met with the members of the Second Circuit Judicial Council. At the Executive Session, William Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, appearing for AO Director, Leonidas Ralph Mecham, reported to the judges on AO initiatives concerning the federal judiciary. The Honorable Fern Smith, the Director of the Federal Judicial Center, also spoke to the judges about various education programs available to them. Following the Executive Session, members of the Federal Judges Association met.

At the Friday dinner program, the new district, bankruptcy and magistrate judges who had taken the bench since the 2002 Judicial Conference were introduced: Circuit Judge Reena Raggi, Western District Magistrate Judge Marian W. Payson and Court of International Trade Judge Timothy Stanceau. United States District Judge Barbara S. Jones of the Southern District of New York served as Toastmaster for the evening.

Friday morning June 6th, the Conference opened with Chief Judge Walker's Report on the State of the Second Circuit. The Chief Judge's speech focused on the continuing crisis of judicial vacancies among the federal courts, including the courts of the Second Circuit; the need to address the problems of aging and overcrowded courthouses throughout the Second Circuit; the caseload increase in the Court of Appeals due to a tremendous influx of immigration appeals over the past year and national bi-partisan efforts to redress the inequities of judicial pay. Following Chief Judge Walker's Report, two plenary sessions were held. Circuit Judge Robert A. Katzmann moderated a discussion entitled, *Federalism: Where Are We Heading?*, between Professor Marci A. Hamilton of the Benjamin N. Cardozo School of Law of Yeshiva University and former Solicitor General Seth P. Waxman, now with Wilmer, Cutler & Pickering in Washington, D.C. The second Friday morning plenary session was moderated by Senior Circuit Judge Ralph K. Winter. Judge Winter led a discussion based on the criminal, civil

and administrative investigations into the activities of a fictional corporation which bore a striking resemblance to the activities of a certain well known Houston, Texas corporation. Entitled, *Enron On My Mind*, the panel included James B. Comey, United States Attorney for the Southern District of New York, Stephen Fraidin of Kirkland & Ellis, Patricia M. Hynes of Milberg Weiss Bershad Hynes & Lerach, LLP, Lawrence B. Pedowotz of Wachtell Lipton Rosen & Katz, Linda C. Thomsen, Deputy Director of the Enforcement Division of the Securities and Exchange Commission in Washington, D.C., Richard Walker, General Counsel, Corporate and Investment Bank, Deutsche Bank AG and Theodore V. Wells of Paul Weiss Rifkind Wharton & Garrison. Eighth Circuit Court of Appeals Judge and Chair of the United States Sentencing Commission Diana E. Murphy provided closing remarks on federal sentencing guidelines issues in white collar criminal cases.

The second day of the Conference opened with a report on the 2002-2003 United States Supreme Court term by Circuit Justice Ruth Bader Ginsburg. Following her report, Justice Ginsburg and her colleague, Associate Justice Stephen G. Breyer participated in a dialogue with Southern District Judge Loretta A. Preska and Eastern District Judge John Gleeson. Both Justices joined Chief Judge Walker, Second Circuit Judge Dennis Jacobs, Chair of the Second Circuit Committee on the American Inns of Court Professionalism Award and Judge Randy J. Holland, President of the American Inns of Court, in presenting the second annual Second Circuit American Inns of Court Professionalism Award to Gerald Walpin, Esq. of KMZ Rosenman. Circuit Judge Dennis Jacobs, who chaired the selection committee, introduced Mr. Walpin and explained to the audience the basis for his selection by the Committee.

After the presentation of the Second Circuit American Inns of Court Professionalism Award to Mr. Walpin, Circuit Judge José Cabranes moderated a panel discussion, *The Role of Courts in Time of War*, with Professors Ruth Wedgwood of Johns Hopkins University, William C. Banks of Syracuse University College of Law, Burt Neuborne of New York University School of Law and Scott L. Silliman of Duke Law School.

The 2003 Judicial Conference concluded with the presentation of a rock opera, *There' s Something Afoot*, written, produced and directed by Steven Edwards, Esq. of Hogan & Hartson and former President of the Federal Bar Council and starring The Federal Bar Council Players: Dennis Cariello, Jason Cooper, Carey Dunne, Jennifer Edlind, Suzanne Griffin, Carrie Kei Heim, Deirdre Kane, Fran Obeid, John Redmon, Yasuhiro Saito, Gary Sandelin, Spencer Schneider, Irene Vavulitsky, Frank Velie and Jim Zucker. After the performance

concluded, Mr. Edwards and his band of musician-attorneys provided music for dancing.

Principal items of discussion at the Judicial Council meetings during the year included judicial misconduct complaints, the states of the dockets of the courts of the Circuit, and Circuit-wide space, security and automation issues. The Council especially was concerned about the continuing difficulties being encountered in the Eastern District courthouse construction projects in Brooklyn, New York. At its June 5th meeting, the Council received a report from Eastern District Chief Judge Edward R. Korman outlining the latest problems, including the apparent lack of monies necessary to finish the project and the rumor that the general contractor, J.A. Jones, was in danger of filing for bankruptcy. The Council directed Circuit Judge Barrington D. Parker, Jr., Chair of the Second Circuit Committee on Space and Security, to contact GSA Administrator Stephen Perry regarding the Brooklyn courthouse project in an effort to resolve these and other issues.

Judge Parker along with Chief Judge Korman and Eastern District Judge Raymond Dearie held a series of meetings throughout the year with GSA Administrator Perry, GSA Commissioner of the Public Building Service Joseph Moravec and Deputy Commissioner Paul Chistolini to resolve the problems plaguing the Brooklyn courthouse project. As a result of these meetings, GSA replaced local GSA staff on the project and assigned Deputy Commissioner Chistolini to supervise the project. In November 2003, J.A. Jones, the general contractor, filed for Chapter 11 protection in the United States Bankruptcy Court for the Western District of North Carolina, forcing the surety Firemen' s Fund Insurance Corporation (" FFIC") to take over the project and bring in a new general contractor. As 2003 drew to a close, discussions between GSA and FFIC were ongoing and it appeared that Bovis Lend Lease would be the new contractor on the Brooklyn courthouse construction project. It is clear, however, that the project' s completion will be delayed until sometime in 2005.

Also, in 2003, the Office of Public Affairs continued its outreach efforts which included coordinating the expanded *Courts Visits Program* for New York City high school students in conjunction with the Federal Bar Council, the annual April *Take Our Children to Work Day* program with the New York Women' s Bar Association and its Foundation and organizing the national *Open Doors to Federal Courts* program in the Manhattan federal courts. The Public Affairs Office also oversaw student mentoring and moot court programs and provided courthouse tours for visiting foreign judges and court administrators.

PROTECTING THE QUALITY OF THE JUDICIAL PROCESS

Attorney Discipline

Attorney discipline in the Second Circuit is carried out pursuant to local rules adopted by the individual courts.

At the appellate level, the Second Circuit Committee on Admissions and Grievances was formed in January, 1978, to assist the Court of Appeals in administering Local Rule 46(f)-(h). The Committee, composed of seven attorneys, may be called upon to conduct investigations and other proceedings in disciplinary matters involving attorneys admitted to practice before the Court. Pursuant to Local Rule 46(f), in 2003, the Court took reciprocal action to enforce disciplinary orders entered in other jurisdictions against two members of the Court of Appeals' bar. The Court disbarred two attorneys.

In the District of Connecticut, Local Rule 3 provides for a grievance committee with nine members, who serve for three-year terms. Two attorneys appointed by the Court serve as counsel to the committee. In calendar year 2003, the Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

Attorney discipline in the Southern and Eastern Districts of New York is governed by a local rule common to the two districts. Effective in April, 1997, the operative provision is Local Civil Rule (1.5). Pursuant to subsection (a) of the rule, the Southern District of New York has established a committee on grievances composed of six district judges and one magistrate judge, which is chaired by Judge Jed S. Rakoff. In addition, a panel of attorneys is available to advise and assist the committee on grievances by investigating complaints and serving on hearing panels. In 2003, there were 43 disbarments, 33 suspensions, three interim suspensions, three public censures, one private reprimand and ten reinstatements in the Southern District. The Court had 18 cases pending at the end of the calendar year.

In the Eastern District of New York, 56 disciplinary orders were issued in 2003: 20 disbarments, 21 suspensions, seven resignations and eight censures. Chief Judge Edward R. Korman is responsible for oversight of attorney disciplinary matters and is assisted by a committee of three judges.

It came to the attention of the Western District of New York that the Appellate Division, 4th Department, has failed to provide this Court with

notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year' s Annual Report.

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District' s proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court' s federal bar during the year.

In the Northern District of New York, attorney disciplinary actions in calendar year 2003 were handled by Chief Judge Frederick J. Scullin, Jr. There were five disbarments, five attorney suspensions - a stay of suspension was issued for two attorneys, four censures, and seven reinstatements.

Judicial Misconduct

The Judicial Council' s Reform and Judicial Conduct and Disability Act of 1981, 28 U.S.C. §372©, creates a mechanism for addressing complaints of judicial misconduct or disability. The statute' s objective is to correct conditions that interfere with the proper administration of justice. To facilitate that end, the Act sets out procedures for reviewing allegations that a federal judge " has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts " or" is unable to discharge all the duties of office by reason of physical or mental disability."

Under the Act, the Judicial Council of the Circuit has primary responsibility for resolving complaints. The Second Circuit' s Judicial Council has adopted Rules Governing Complaints Against Judicial Officers that closely follow a national set of " illustrative" rules. The Local Rules, together with the forms to be used in filing complaints, are available from the Court of Appeals Clerk' s Office.

Complaints are filed with the Clerk of the Court of Appeals and are reviewed by the Chief Judge of the Circuit. The statute permits the Chief Judge, after a timely review, to dismiss complaints that are not covered by the statute, such as " frivolous" complaints and those " directly related" to the merits of a decision or ruling. The Circuit Executive' s Office conducts initial staff review on behalf of the Chief Judge.

Complainants may petition for review of the Chief Judge' s dismissal orders. Petitions for review are considered by a four-member panel of the Judicial Council. The full membership of the Council will consider a petition for review upon the vote of any member of the review panel.

If a complaint is certified by the Chief Judge for investigation, it is sent to a statutory Committee on Judicial Conduct. After the Committee reports, the Judicial Council conducts any additional investigation it considers necessary and then may take appropriate action. Options available to the Council include dismissing the complaint, certifying the judge' s disability, asking the judge to retire, temporarily suspending new case assignments, and public or private censure or reprimand. 28 U.S.C. §372(c)(6)(B) &©. The Judicial Council may also refer the entire matter to the Judicial Conference of the United States.

During 2003, 63 judicial misconduct complaints were filed in the Second Circuit.

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UNITED STATES COURTS

SECOND CIRCUIT REPORT

2004

John M. Walker, Jr.
Chief Judge

Karen Greve Milton
Circuit Executive

The Annual Report will open in 1 seconds.

UNITED STATES COURTS
SECOND CIRCUIT REPORT
2004

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Statistics - Adobe Acrobat Reader Required

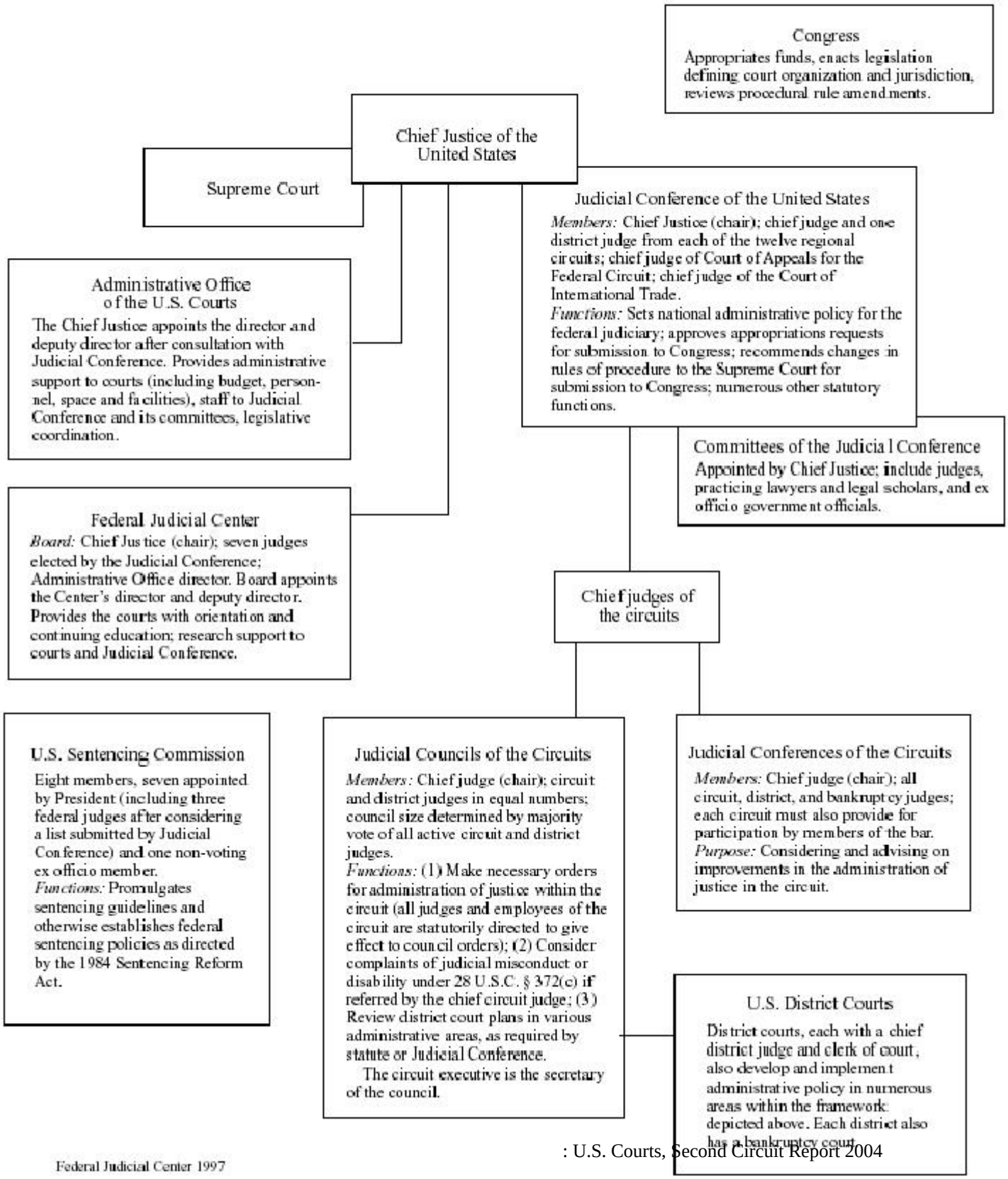
STRUCTURE OF THE FEDERAL JUDICIARY

The federal courts were established as an independent third branch of government by Article III of the Constitution, which provides for a Supreme Court ans "such inferior courts" as Congress deems necessary. Congress established federal district and circuit courts with the Judiciary Act of 1789. A major reform of the system occurred in 1891 with the Circuit Court Act, which established a permanent appellate court for each circuit. Today, the 94 federal district courts are grouped into 12 circuits, each with its own court of appeals.

The administrative head of each circuit is the chief judge of the court of appeals, who achieves this position by seniority. The judicial councils of the circuits, which include active judges of both the courts of appeals and district courts, are charged with administrative responsibility for the circuit as a whole, headed by a chief judge. The chief judge of each circuit and an elected district judge represent the circuit at the semi-annual Judicial Conference of the United States. This body, chaired by the Chief Justice of the United States, is convened for the purpose of determining policy in administrative matters. In addition, the Conference directs the housekeeping arm of the federal judiciary, the Administrative Office of the United States Courts, and advises the legislative and executive branches on matters affecting the judiciary. The Federal Judicial Center, which is governed by a national board of which the Chief Justice is chairman, is the research and training arm of the federal judiciary.

The United States Courts for the Second Circuit exercise federal jurisdiction within the states of Connecticut, New York, and Vermont. The Court of Appeals sits in New York City. The six districts (the state of New York is divided into the Eastern, Northern, Southern and Western Districts) each have a district court and a bankruptcy court, and sit in the locations shown on the map on page 5A. As of May 1, 2005, the Court of Appeals has 13 active judges in 13 judgeships, 10 senior judges (nominally retired judges, most of whom carry heavy caseloads). The district courts have a total of 59 active judges, 41 senior judges, 47 magistrate judges and 27 bankruptcy judges. There were three district judgeship vacancies.

Federal Judicial Administration



Federal Judicial Center 1997

: U.S. Courts, Second Circuit Report 2004

JUDICIAL BUSINESS OF THE SECOND CIRCUIT

THE SECOND JUDICIAL CIRCUIT
PLACES OF HOLDING COURT

Southern District of New York	Manhattan
	White Plains
	Middletown
	Poughkeepsie
Eastern District of New York	Brooklyn
	Central Islip
Northern District of New York	Binghamton
	Albany
	Utica
	Syracuse
	Auburn
	Watertown
Western District of New York	Rochester
	Buffalo
District of Connecticut	Bridgeport
	New Haven
	Waterbury
	Hartford
District of Vermont	Brattleboro
	Rutland
	Burlington

CHIEF JUDGES' REPORTS OF THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Chief Judge John M. Walker, Jr.

In August of 2003, our Court suffered an enormous loss with the unexpected death of Circuit Judge Fred I. Parker of Vermont. Judge Parker or "FIP", as he was affectionately known to his circuit court colleagues, was a member of our Court for almost ten years. On July 7, 2004, FIP's seat was filled by Peter W. Hall, the United States Attorney for Vermont. Judge Hall, or "PWH," as he is now known to his colleagues served as the United States Attorney from 2001 until his appointment to our Court. A graduate of the University of North Carolina at Chapel Hill and Cornell Law School, Judge Hall clerked for Vermont District Judge Albert W. Coffrin following his graduation from law school and now occupies the same chambers in which he worked as a law clerk to Judge Coffrin. On October 25th, I had the pleasure and privilege of presiding at Judge Hall's public induction held at the United States Courthouse and Federal Building in Burlington, Vermont. Judge Hall's appointment to our Court completes our complement of thirteen active circuit judges. We welcome Judge Hall to our Court and look forward to many years of serving together.

On November 20, 2004, Senior Circuit Judge Ellsworth Van Graafeiland died at the age of 89, one month short of his thirtieth anniversary on our Court. Judge Van Graafeiland, or "Van" to his family, friends and colleagues served with great distinction on our Court, writing hundreds of opinions, carefully crafted and hewing to the belief that the judge's limited, but important role is to interpret the law as he finds it. Although many considered Van a "law and order" judge, this reputation belies the true nature of a judge who was most firm when his keen sense of justice told him that a defendant had been unjustly treated. An example of this is in a case from one of the last three-judge panels on which he sat. Van was initially the only judge to believe that a criminal defendant was sentenced erroneously based on his co-conspirator's conduct. Personally agitated by this perceived sense of injustice, Van began drafting a dissent. Ultimately, however, through an exchange of memoranda with his two colleagues, his dissent ultimately became the basis for a unanimous opinion.

The name Van Graafeiland evokes memories of New York State's original Dutch settlers who became the members of New York's landed aristocracy in its northern counties and along the Hudson Valley. Those who assume that Van was descended from these elites could not be more mistaken. To the contrary, Van came to the law from a Depression-era childhood of disadvantaged circumstances. As a child, he suffered a disability, scoliosis, which caused him to spend five years in a full body cast. The silver lining, however, was that Van developed a life-long love of reading. A graduate of Cornell University Law School, he joined the Rochester, New York law firm of Wiser, Shaw, Freeman, Van Graafeiland, Harter and Secrest (now Harter Secrest & Emery) where he practiced law until then New York Senator James L.

Buckley tapped him to fill the vacancy created when Judge Henry J. Friendly assumed senior status. At the time President Gerald R. Ford nominated him to our Court, Van was the immediate Past-President of the New York State Bar Association, having previously served as its Vice-President, as well as a past President of the Monroe County Bar Association. Van's rise from these humble beginnings to the pinnacle of his chosen profession exemplifies the meritocracy of the American bar.

Although Van enjoyed an almost folkloric reputation for irascibility on the bench and for his occasionally sharply worded dissenting opinions (he wrote about one hundred dissenting opinions in his thirty years on our Court), his character was marked by humility. Van called Judge Friendly "the last great judge" of the Second Circuit. When interviewed as part of the Court's oral history project, Van told the interviewer, "I'm walking in his footsteps, but I'm not filling his boots. I can claim to be an ordinary run of the mill judge who does the best he can, that's all." This statement is a characteristic understatement by someone who was far from "a run of the mill" jurist. Van was not a member of the social aristocracy of Dutch origin, but he was a brilliant specimen of the legal and judicial aristocracy that De Toqueville extolled in his writings in the first half of the nineteenth century and which we continue to celebrate today. As I write this report, I, together with my colleagues, feel a poignant sense of loss at Van's passing. All of us will remember Van with affection, admiration and profound respect. We extend our deepest sympathies to Van's wife, Rhodie, and their children, Gary, Anne, Suzanne, Joan, and Jack.

In 2004, our Court continued to struggle under a crushing burden of immigration appeals. These cases come to the federal courts through the Bureau of Immigration Appeals ("BIA") in the Immigration and Naturalization Service ("INS"). An alien who loses their appeal from an adverse decision of the BIA, following a decision rendered by an immigration judge, must file directly in a federal court of appeals. In FY 2001, 170 BIA appeals were filed with our Court. Over the last three years, our Court has witnessed a steady increase in these cases until it reached 2,632 in FY 2004, a 1,448% increase.

Initially, we believed this onslaught of appeals was the result of a concerted effort by the Department of Justice ("DOJ") to eliminate an enormous backlog of cases before the BIA. While the INS enforcement functions were transferred to the new Department of Homeland Security, the INS adjudicative functions remained with the DOJ. From 2002 to 2003, filings of appeals of BIA decisions nationwide climbed 153% from 2001 to 2002 and 99% from 2002 to 2003. Due to venue provisions in the immigration law, most of these increases were felt in the Second and Ninth Circuits. The appeals finding their way to our Court are generally asylum cases filed by people claiming relief from oppression in their native countries. More specifically,

approximately 75% of the immigration appeals pending in the Second Circuit are filed by Chinese appellants claiming asylum based on their homeland's family planning policies. Despite expectations that most of these cases would be predominately *pro se*, in 80% of the cases the petitioner is represented by legal counsel. The Court is reviewing its longstanding practices as it undertakes to cope with the immigration backlog and is exploring innovative ways to deal with the problem.

At the same time, our Court's caseload continued to rise, increasing 10.2% from the prior fiscal year (the twelve-month period from October 1st to September 30th) or from 6,359 appeals filed in FY 2003 to 7,008 cases filed in FY 2004. To handle this severe caseload increase, our Court held 8 double panels during this Term and scheduled three triple-panel week sittings. While our present information as to the number and timing of additional cases ready for calendaring is imperfect, our goal is to try to build in as much flexibility as possible to deal with this caseload challenge over the next Term of our Court.

In 2004, each active judge sat for forty days which translates into about 250 appeals. In addition, our judges heard numerous motions both counseled and *pro se*. As in previous years, about 80% of our panels were comprised entirely of our own circuit judges and, although we continued our tradition of including visiting judges, we relied primarily on visitors from within the Circuit. Once again, enjoying a nearly full complement of judges for most of 2004 allowed us to schedule sittings that maximized opportunities for our judges to work closely with one another, thereby improving collegiality and building levels of trust and respect that are at the heart of good appellate decision-making.

In 2004, our Court marked the fiftieth anniversary of *Brown v. Board of Education*, by sponsoring, "Marching Toward Justice," an exhibition on the history of the Fourteenth Amendment to the United States Constitution. This exhibit, which we co-sponsored with Cardozo Law School, was set up for several months this year in the Main Lobby of our magnificent building at 40 Foley Square in Manhattan, which is named for the late Supreme Court Justice Thurgood Marshall, who successfully argued *Brown* before the United States Supreme Court.

On May 21, 2005, Senior Circuit Judge Amalya L. Kearse celebrated her twenty-fifth anniversary on the bench. Judge Kearse was appointed to our Court in 1979 when Congress created two additional new judgeships for our Court.

Notwithstanding rising caseloads in the federal courts nationwide, Congressional funding appropriations to the Third Branch over the past several fiscal years have been insufficient to sustain the judiciary's operations much less provide for

much needed increases. In FY 2004, the federal judiciary, as a whole, lost the services of 1,350 employees, the only branch of government so effected by budget constraints. The departure of so many court personnel came at a time of increasing workloads, rising rental payments to the General Services Administration ("GSA") and the increased cost of providing necessary judicial services to the public and the bar.

This year, our Court also felt the impact of the judiciary's budgetary difficulties. As a consequence, we were forced to close our independent Office of Public Affairs forcing us to let go our Assistant Circuit Executive for Public Affairs, Stephen Young. During his three-year tenure, Stephen raised the public profile of our Court and our Circuit by expanding our community outreach program, reviving our Court's oral history program and documenting the experiences of our Court and our Circuit in the days following the tragic events of September 11, 2001. We thank Stephen for his service to our Court and our Circuit and wish him well in his new endeavors. Also, in recognition of our constrained fiscal circumstances, we cancelled our scheduled judges-only Circuit-wide judicial conference and our Court held its 2004 Court Retreat on site in the Judges Conference Center at the Thurgood Marshall Courthouse.

On October 22, 2004, Senior Circuit Judge Wilfred Feinberg became the 22nd recipient of the Edward J. Devitt Distinguished Service to Justice Award of the American Judicature Society in recognition of his outstanding legal scholarship and contributions to jurisprudence. Bill Feinberg is the first judge of our Court to receive this prestigious award. Joined on the bench by Circuit Justice Ruth Bader Ginsburg and Southern District Chief Judge Michael B. Mukasey, our Court sat in special session in the ceremonial courtroom of the Daniel Patrick Moynihan United States Courthouse in lower Manhattan. Speakers included Justice Ginsburg, Chief Judge Mukasey, Larry Hammond, President of the American Judicature Society, New York University School of Law Dean Richard Revez and Southern District Judge Gerard Lynch, two of Bill's former law clerks and yours truly. Sixth Circuit Judge Julia Gibbons, a member of the selection committee, formally presented the Devitt Award to Bill.

First appointed to the Southern District bench in 1961 by President John F. Kennedy, Bill joined our Court on March 18, 1966. Throughout his almost forty-year judicial career, Bill made extensive contributions both to the jurisprudence of our Circuit by his thoughtful and well-crafted opinions and to the administration of justice in the federal courts by his service as Chief Circuit Judge from 1980 to 1988, as a member of the Judicial Conference of the United States, the national policy-making body of the federal judiciary, and many of its committees. The October ceremony was a fitting celebration of a remarkable jurist whose brilliant career has been

characterized by his unassuming and humble approach to his craft and his colleagues. We happily extend our most heartfelt congratulations to Bill, his wonderful wife Shirley and their family on the occasion of Bill's receipt of the Devitt Distinguished Service to Justice Award.

For the past three years, I have been reporting on the progress of our efforts to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse. I am pleased to report that Congress has approved GSA's FY 2005 request for $16.5 million in design monies for our prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse, providing the "green light" for GSA and the courts to proceed to undertake a prospectus project to upgrade and replace the building's heating, air conditioning, electrical and plumbing systems. Our joint project committee, co-chaired by Circuit Judge Barrington D. Parker, Jr. and Southern District Judge Barbara S. Jones, have been hard at work with the Circuit and District Executives and their staffs and members of GSA Region 2 to select an architectural and engineering firm to design our project and a construction management firm to provide quality oversight.

Our project is off to a good start with the selection of the pre-eminent New York City-based architectural firm of Beyer Blinder Belle in joint venture with architects Davis Brody Bond and engineers from Flack & Kurtz as the project's designers. Beyer Blinder Belle partner John Belle, who will oversee the design team for our project, was the principle architect for the renovation and restoration of historic Grand Central Terminal and Ellis Island, among other high profile projects. Bovis Lend Lease, whose construction work is visible throughout New York City, including the Brooklyn district courthouse construction project and renovation of the Beaux Arts General Post Office Building, was selected as the Construction Manager for our project. As this calendar year draws to a close, our "space" judges and Court staff are working hard to prepare both the Court of Appeals and the Southern District to vacate the courthouse in Summer 2006, just prior to the beginning of the project's construction phase. Both courts will remain out of the courthouse until completion of the project in 2010. Undertaking a project of this magnitude is requiring an enormous sacrifice by the judges and staff of these two courts for many years, but it is essential that the aging infrastructure of the Thurgood Marshall Courthouse be replaced with new modern systems that can support court operations well into the twenty-first century.

Our success in this almost three-year endeavor was thanks to the steadfast assistance of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts ("AO") and his Assistant Director for Security and Facilities Ross Eisenman, who helped us develop a viable prospectus project which respected

costs without sacrificing the scope of the much-needed infrastructure upgrade. We also thank GSA Administrator Stephen Perry, Public Buildings Commissioner Joseph Moravec and their staffs and GSA Region 2 Administrator Eileen Long-Chelales and her staff for their continued support in helping us make this project a reality.

In closing, I am pleased to report that the news from the Court of Appeals is good and continues to improve. Even as our Court experiences a greater number of filings, we continue our tradition of scholarship, collegiality and respectful dissent. While our median disposition time has lengthened due to an increased caseload without an increase in judges, I fully expect that it will be reduced in the new year as we adopt more efficient practices. The important administrative issues that confront this Court and the federal judiciary as a whole remain unchanged. Although judicial vacancies are being filled, rising caseloads and shrinking budgets are creating challenges for our Court that must be dealt with in the near future. Thanks to our thirteen active and ten senior judges, I am confident that we will carry into the future the Second Circuit's proud traditions of craft in decision-making and expeditious docket management.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

[PHOTO UNAVAILABLE]

Chief Judge Robert N. Chatigny

On November 1, 2004, the Honorable Dominic J. Squatrito took senior status. Judge Squatrito was appointed to the bench by President Clinton on October 6, 1994. He intends to continue to maintain a courtroom and chambers in the Hartford courthouse.

On January 12, 2004, the Honorable Robert C. Zampano, a major figure in the history of the District of Connecticut, passed away in New Haven at the age of 75. Judge Zampano was appointed to the bench by President Johnson in 1964. Following his retirement in 1994, after nearly 30 years of judicial service, he continued to serve the Court as a special master. A memorial service honoring Judge Zampano was conducted at the New Haven Courthouse on May 14, 2004.

On July 24, 2004, the Honorable Warren W. Eginton celebrated his 25th anniversary on the bench. Judge Eginton continues to maintain chambers in the Bridgeport courthouse and often sits as a visiting judge in other Districts.

The District continues to benefit tremendously from the contributions of its senior judges. In addition to Judge Eginton and Judge Squatrito, the Court is served by the Honorable Ellen Bree Burns, the Honorable Peter C. Dorsey, and the Honorable Alan H. Nevas and Honorable Alfred V. Covello.

On May 28, 2004, the Honorable Gerard L. Goettel of the Southern District of New York, who sat by designation in Connecticut on a full-time basis, took inactive status. Judge Goettel carried a full assignment of civil cases in Connecticut for 10 years.

On July 19, 2004, Magistrate Judge William I. Garfinkel was appointed to a second eight-year term commencing November 22, 2004. The Court's merit selection committee enthusiastically recommended that Judge Garfinkel be reappointed and took particular note of his outstanding work as a mediator.

Case Statistics

In 2004, the District Court opened 2,320 civil cases and 2,413 civil cases were closed. At year-end, 3,061 civil cases were pending.

The Court opened 305 criminal cases involving 501 defendants and disposed of 255 cases involving a total of 381 defendants. At the end of the year, 736 defendants had charges pending.

Clerk's Office Awards Ceremony

The annual awards ceremony honoring members of the Clerk's Office was held in the Hartford Courthouse on April 2, 2004. Cheryl Conte, Judith Fazekas, Peter Milner, Regina McDaniel-Martin, Darlene Warner, Carol Sanders and Melissa Ruocco received 5-year service pins; Janet Barrille, Marion Bock, Cynthia Earle,

Dinah Milton-Kinney, Corinne Pike, and Donna Thomas received 10-year service pins; Susanne D'Andrea, Thea Finklestein, Martha Marshall, Barbara Sbabli, Betty Torday, and Robert Wood received 15-year service pins; Frank DePino, Diane Kolesnikoff and Susan Lamoureaux received 20-year service pins; Barbara Stokes and Cassandra Warren received 25-year service pins; and Kevin Rowe received a 30-year service pin. Government Service awards were given to Kathleen Falcone and Paul Seabrooke, who received a 10-year certificate, Mary Wiggins, who received a 30-year certificate and Maria Carpenter, who received a 35-year certificate.

Training

Members of the Clerk's Office, Bankruptcy Clerk's Office, the Probation Office and Federal Public Defenders Office participated in a FAS4T training program conducted by Administrative Office.

The Clerk's Office continued its CM/ECF training program for members of the bar and their support staff.

Members of the Court family attended a security briefing conducted by the U.S. Marshal's Office and FBI related to handling suspicious packages, phone threats, and bomb scares.

In January 2004, members of the Court's integrated technology staff attended Dream Weaver/Cold Fusion training conducted by an outside vendor.

In September, the Court unit executives attended Certifying Officer training conducted by the Administrative Office in Providence, Rhode Island.

Automation

The Court implemented FAS4T on July 1, 2004 and went live on certifying officer on January 1, 2005.

ACE Communications installed a digital evidence presentation system at each seat of court during June, August and October 2004.

Construction Projects

In December 2004, GSA completed construction of a new courtroom on the third floor of the New Haven Courthouse. This courtroom will be used primarily by Magistrate Judge Joan G. Margolis. This new courtroom relieved the courtroom shortage that plagued the New Haven Courthouse for a number of years.

GSA provided the Court with preliminary drawings for the new jury assembly room on the second floor of the Hartford Courthouse which the Court approved in August. In December, GSA confirmed that they would pay the entire cost of this project.

PROBATION OFFICE

The budget crisis was once again the major event of the year, as it influenced every decision from purchases to hiring. The second most important event in 2004 was the implementation of FAS4T. Training and implementation took the entire year and included hours of training and some significant changes in financial processes and record keeping.

Staffing

The budget crisis had a huge impact on our staffing. At the start of fiscal year 2004, the Probation Office staff consisted of 57 individuals filling 56.2 full time positions. We had two pending officer appointments on September 30th. These officers came on board the first week of FY 2004, bringing our total staffing to 59. Then, in November, Deputy Chief James R. LeBlanc passed away suddenly and unexpectedly. This was devastating for staff. Because of the looming budget crisis, it was decided to leave the position vacant for at least the remainder of the year. The position categories were as follows, one chief and one assistant deputy, three supervising probation officers and 33 line probation officers, 19 administrative and clerical support and two automation support. Our statistical workload justified 67.94 positions, thus suggesting we were still understaffed by eight positions. Within months "cost containment" became the buzz word and we were informed that the staffing formulas were going to be refreshed and that there would also be an across the board staffing reduction. We were eventually informed that our authorized staffing for 2005 would be decreased to 62.5 but only 59.3 positions would be funded. We were fortunate and did not have to resort to involuntary staff reductions because, in addition to loss of my deputy, two probation officers voluntarily resigned before the end of the year and two clerks accepted buyouts. This loss of five employees brought our total staffing to 55, filling 54 full time positions, approximately 88% of the reduced staffing formula.

The District of CT recognizes the need for a diverse staff. The hiring practices of the Probation Office reflect our Court's policy with the two largest minority groups, Blacks and Hispanics represented in our professional and support staff. Our officer and administrative professional staff are just about evenly divided by gender.

Training

Although training continues to be a priority in the Probation Office, we reduced travel and costly training because fo the budget crisis. In FY 2004, a significant number of training hours were devoted to the implementation of FAS4T. The implementation team spent a week in Washington in February, then there were regular training and many meetings up through implementation in July 2004. We also sent two individuals to Contracting Officer training in New York in April 2004. Other in-service training provided during the year included, Ethics training; Officer Safety, including a three day Defensive Tactics program and certification for the use of capstun; a one day writing skills program; certification in Choice Point Searches; a one day training on the new presentence monograph; a one day training on supervision practices; and Sentencing Guidelines. It should also be noted that the new officers participated in a 30 day orientation and training program in October 2003 and ongoing in-services training throughout the year. They attended the new officers' orientation in Washington, D.C. in June 2004. We take advantage of training offered by other agencies, especially those that cost little to nothing and do not require travel outside the District. Staff also has access to the FJTN at all three locations. They are provided a schedule and encouraged to view relevant programs of interest. Excluding training for FAS4T and FJTN training, probation office staff participated in well over 1000 hours of training.

Pretrial

In 2004, the D/CT experienced a slight increase in the workload. We activated 549 pretrial cases; a 17% increase above FY 2003. Officers attended 903 hearings. According to the AO statistical reports, 27 violations were reported to the Court, with three of them resulting on bond revocations. These statistics are not accurate. In collecting this information we discovered an error in data entry. We should see more accurate violation data in the next report.

In FY 2004, our detention rate and the number of defendants on supervision increased. Of the 541 initial presentments, 61% were detained. Our supervision caseload increased from 262 in FY 2003 to 318 at the end of FY 2004.

Substance Abuse and mental health treatment were provided to approximately 196 defendants in 2004, more than double the number who received treatment in FY 2003. The total cost of treatment for all defendants was $257,946. Approximately 106 defendants were released on home confinement during pretrial supervision. The cost for home confinement was $41,473. Approximately 28% of all pretrial services costs were covered by co-payments from defendants, private insurance or State health insurance programs. Co-payments totaled $80,489, reducing the cost to the Probation

Office to $214,930. Our total cost for Alternatives to Detention increased by 40%, reflecting an increase in the use of alternatives to detention. But our collection of co-payments also increased by 3%.

Probation

The Probation Office completed 361 Presentence Investigations 2004, down 16% from the prior year. They expected this decrease. Rather than a decrease in prosecutions, the number reflects the final disposition of a number of cases that had been pending for several years.

We supervised 879 offenders in the community, nearly equal to the prior year. The vast majority of our supervision cases are on supervised release or probation. The various types of parole cases make up less than 1% of all supervision cases. Of all supervision cases, nearly 100% have one or more special conditions that include community confinement, fines or restitution, substance abuse or mental health treatment.

Expenditures for substance abuse treatment totaled $238,441. Our actual expenditures for treatment were reduced by client and insurance co-payments, totaling $77,726, reducing the actual costs to the Government to $160,716. Mental health treatment costs totaled $50,918. Co-payments totaled $5,571, reducing costs to the Probation Office to $45,347.

During FY 2004 55 post-conviction offenders were placed on home confinement. Costs for these services were $37,207. Offender co-payments collected totaled $19,187, reducing the cost to the Probation Office by one half, to $18,019.

The total cost for all treatment and alternatives to detention was $625,987. Co-payments collected totaled $186,074 reducing our actual costs for all services to $439,013.

The Probation Office is also a key player in monitoring the collection of fines and restitution. Per AO requests, we are working with the Clerk's Office to gradually reduce the number of collected payments coming through the Probation Office. During fiscal year 2004 the Probation office recorded collections of $56,755.30 in fines, $24,914.10 in Cost of Probation (fines), $356,874.70 in restitution and $3,180 in Special Assessments, for a total of $441,724.10.

Planned Events in 2005:

A major undertaking for 2005 is to hire and train new officers. We also plan to focus on improving our statistical reports.

Annual Report 2004
United States Bankruptcy Court for the
District of Connecticut

The Bankruptcy Court maintains three Divisions – Hartford, New Haven and Bridgeport – served by three judges. In addition, the Court remains the beneficiary of the service of recalled judge, Robert L. Krechevsky, who handles the full Hartford Division caseload.

During calendar year 2004, Bankruptcy Court cases totaled 11,257 new filings, with an additional 230 cases reopened. Chapter 7 filings declined 6.22% to 9228; Chapter 11 filings declined 17.17% to 82; and Chapter 13 filings declined 6.21% to 1947. In addition, 356 new adversary proceedings were opened, 430 were closed, with 500 pending at the year end. The Bankruptcy Court continued to train and prepare for commencement of mandatory Electronic Case Filing, scheduled for full implementation on August 1, 2005.

Also during 2004, the Bankruptcy Court launched Connecticut's CARE Program, under which judges and attorneys visit area high schools to speak to Junior and Senior Year students about the dangers of overspending and credit abuse. During 2004, the Court obtained a CARE Program endorsement from the Connecticut Association of Public School Superintendents, conducted training programs, and with the generous assistance of approximately 30 members of the Connecticut Bar, commenced numerous visits to Connecticut's High schools.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Chief Judge Edward R. Korman

The population of the Eastern District of New York, which is one of the most populous judicial districts in the United States, increased over the last decade by more than 8 percent, to 7.9 million. The 2000 Census indicated that much of that growth took place in the three counties of the City of New York that are part of the Eastern District of New York and in Suffolk County. A more recent update indicates that the

population now exceeds 8 million, or approximately 42 percent of the total population of the State of New York. The continued population growth, along with other factors, is responsible for the huge caseload borne by the judges of the Eastern District.

District Judge Appointments

Two longstanding Article III vacancies were filled in 2004 with the appointments of Dora L. Irizarry on July 8, 2004, and Sandra L. Townes on August 2, 2004. Judge Irizarry fills the vacancy created by the appointment of Judge Reena Raggi to the Court of Appeals. Judge Irizarry most recently served as an acting Justice of the Supreme Court, both in Kings County and New York County. She is also the first member of the Hispanic community, which comprises such a significant part of the Eastern District, to be appointed. Judge Townes fills the vacancy created when Judge Sterling Johnson, Jr. took senior status. Prior to her appointment, Judge Townes was elected a Justice of the N.Y. State Supreme Court in 1999 and was appointed an Associate Justice of the Appellate Division, Second Department, in 2001. She also has served as a Judge of the City Court of Syracuse and as Chief Assistant District Attorney of Onondaga County.

Senior Status

Two District Judges took senior status in 2004. Judge Arthur D. Spatt took senior status on December 1, 2004. Judge Spatt was appointed in November, 1989 and sits at the Long Island Courthouse. Judge Denis R. Hurley took senior status on December 18, 2004. Judge Hurley was appointed in November, 1991, and also sits at the Long Island Courthouse. Both Judge Spatt and Judge Hurley continue to carry a full caseload. The vacancies created when Judges Spatt and Hurley took senior status have not been filled.

Caseload Profile

The Eastern District's judicial caseload profile remained high in statistical year 2004, which ended September 30, 2004, but civil case filings declined. Weighted filings per judgeship were 536. The Eastern District of New York is second within the Second Circuit in weighted filings, and above the national average of 529. Several other rankings of actions per judgeship remain high, including total filings (490), civil filings (397), pending cases (635), terminations (543), and trials completed (23), which is first within the Second Circuit. All statistics are based upon fifteen active judgeship positions.

On September 30, 2004, total pending actions were 9,529, total terminated cases were 8,149, and total filings for the twelve-month period were 7,351. Total

filings declined by 12.2 percent in the reporting period, with almost all of this change due to an 11.7 percent decline in civil case filings. Still among the highest in the country, this workload could not have been managed without the extraordinary assistance rendered by our senior judges. Eight of the twenty-one judges in the Eastern District are senior judges. Substantial assistance was also received from visiting judges. A total of 155 trial and non-trial bench hours were logged by seven visiting judges who presided over seven trials. A number of settlements also resulted from their efforts.

The Judiciary Budget

The Judicial Branch continues to experience a significant budget crunch. The results of this funding shortfall are felt throughout the judicial system, most particularly in the district courts, their Clerk's Offices and other court agencies. In NY-E, the Clerk's Office, both District and Bankruptcy, Pretrial Services and the Probation Service have been affected by the current budget crisis. A declining civil caseload which reduces work measurement credits further complicates and worsens the salary fund shortfall. The Clerk's Office started a second consecutive year, in FY 2004, with a substantial shortfall in the payroll account of approximately half a million dollars. As recently as July, 2003, the Clerk's Office employed 162 permanent staff positions. Presently, the Clerk's Office is down to 140 positions, not including the Clerk of Court. There is a continuing hiring freeze on all replacement staff needs. The position of Chief Deputy which became vacant in February, 2005 has been filled in an acting capacity only for the current fiscal year to conserve salary funds needed for all staff. The balance of the payroll shortfall will be covered by filling a vacant personnel officer position from current staff; and by funding transfers from our already significantly reduced automation and general accounts. Court staff have been reduced to the lowest possible level, creating coverage issues on a routine basis. Any further reduction in staff likely will diminish services to the bench, bar and public and possibly reduce public access hours.

Brooklyn Courthouse

The Courthouse construction projects are scheduled to be completed by GSA before the end of 2005, if the latest GSA projection can be credited. At present, the U.S. Bankruptcy Court is scheduled to move to the renovated Brooklyn GPO in late July, 2005. The new Brooklyn Courthouse is scheduled to be completed by October, 2005, with an estimated relocation date for the District Court of December, 2005. The projected dates are four years behind schedule. The unhappy history of these two delayed construction projects is described below.

The construction of a new Brooklyn courthouse began with a groundbreaking ceremony on February 7, 2000. The project is way behind schedule. A second building project, the renovation of the Brooklyn Post Office, a part of which will be occupied by the Bankruptcy Court, is also behind schedule. The Brooklyn Courthouse Project has been troubled from the very beginning by the manner in which GSA managed the budget and contracting process. GSA's failure to recognize and act decisively in an escalating construction market resulted in a series of redesign efforts that took the project from an eighteen-story building to the fourteen-story building now under construction. The February, 1998 bid on the eighteen-story building was only seven million dollars over budget. Unaware of the amount of available funds, and unwilling to negotiate the difference, GSA ignored the advice of its consultants and insisted that the size of the project be scaled down to fourteen stories at a redesign cost of 2.7 million dollars. The final bid on the fourteen-story building which GSA accepted in September, 1999, was twenty-one million dollars over budget.

The fourteen-story building now under construction is capable of housing sixteen district courtrooms and chambers and eight U.S. magistrates courtrooms and chambers, barely enough for the present complement of judges and magistrates sitting in Brooklyn. Nevertheless, GSA proposed to build out only twelve district courtrooms and chambers and four courtrooms and chambers for U.S. magistrate judges. Since GSA demolished an otherwise useful office building adjoining the present courthouse, which contained four courtrooms and which would have cost tens of millions of dollars to construct, the project as contemplated by GSA would have resulted in a net increase of eight district courtrooms and four magistrates courtrooms at a cost of 208.57 million dollars.

This shortsighted plan would also have ultimately cost the taxpayers far more money in years to come when the combined facilities in the present courthouse (with ten district courtrooms) run out of space. Moreover, it has delayed and made more expensive the long-planned renovation of the present courthouse, because it will have to have been accomplished while the building was occupied.

Our concerted efforts succeeded in reversing the proposal of GSA to construct a fourteen-story building of which a third would have been an empty shell. The Omnibus Appropriation Bill for FY 2003 appropriated the additional 39.5 million dollars needed to build out the remaining eight courtrooms and chambers in the new Brooklyn Courthouse. Our efforts, which overcame the lack of support from GSA, were assisted by the Brooklyn/Queens/Staten Island delegation in the House of Representatives, especially Representative Jerrold L. Nadler, and by Senator Hillary Clinton who is a member of the Senate Public Works Committee. Nevertheless, the overall project is 28 million dollars over budget. The General Services Administration

identified sufficient funds for re-programming from other available funds. GSA eventually received OMB approval for the administrative transfer of these funds.

The projects, District and Bankruptcy, were yet again delayed due to the bankruptcy of the general contractor, JA Jones Construction. The General Contractor's surety company, Fireman's Fund, accepted their liability and entered into an agreement with Bovis Lend Lease to complete both projects. Again, the new estimated completion dates (although not official) are July, 2005 for the Bankruptcy Court, and October, 2005 for the District Court.

GSA has spent all of the $39.5 million appropriated for our eight additional courtrooms and chambers just to keep the project going. It received an additional $74.7 million in reprogramming authority in May of 2003 to complete both projects. The source of that money was the $65 million Congress appropriated for the Repair and Alteration project on the existing Courthouse, and $9 million from other sources. GSA has now again asked Congress for Repair and Alteration money for the existing Courthouse in the amount of $91 million in the 2006 budget. The extensive delays encountered in completing the new Brooklyn Courthouse required a re-evaluation of the longstanding plans for the renovation of the existing courthouse. The plan first designed ten years ago called for vacating the existing courthouse entirely to enable a long overdue and needed repair. While the construction project lagged, judicial staff increased. We now will have to retain three full floors in the existing courthouse after completion and occupancy of the new courthouse. The entire Repair and Alteration project will have to be re-designed as to scope, feasibility and cost.

Both projects are tens of millions of dollars over budget and four years behind schedule. Indeed, we estimate that at least $100 million of taxpayer dollars have been squandered by GSA. A number of GSA's estimated occupancy dates have come and gone. There is now–finally–some reason to believe that the current projected completion dates are realistic. The only positive aspect of this mess is that the current Administrator of GSA, Stephen Perry, has taken a personal role in the project and has removed responsibility for it from Region II. We are grateful to him for his efforts to complete the project.

United States Bankruptcy Court for the Eastern District of New York

Bankruptcy Court case filings in fiscal year 2004 increased by 4.2 percent. Total case filings were 26,802. Chapter 7 filings increased by 8.7 percent, to 21,586. In contrast, Chapter 11 filings decreased from 209 to 163, and Chapter 13 filings decreased from 5,667 to 5,053. In addition, 1,269 adversary proceedings were opened,

3,962 motions to lift stays were filed, and there were 20,423 discharges in Bankruptcy. A total of 32,746 cases were closed.

The Board of Judges honored the outstanding judicial service of Chief Bankruptcy Judge Conrad B. Duberstein with a dedication ceremony on February 10, 2005 naming the U.S. Bankruptcy Courtrooms and Chambers in the renovated General Post Office Building, scheduled for opening in July, 2005, for Judge Duberstein. The full text of the plaque which will be displayed in the U.S. Bankruptcy Courthouse appears below:

"Chief Judge Conrad B. Duberstein
United States Bankruptcy Judge, Appointed April 1, 1981
Chief Judge of the Bankruptcy Court, Appointed August 8, 1984

> These courtrooms and chambers are dedicated to honor Conrad B. Duberstein for his extraordinary public service, with the sincere appreciation of his friends, colleagues and the Judges of the Eastern District of New York.
>
> Admitted to the bar of the State of New York on March 9, 1942, after graduating from St. John's University School of Law, Conrad B. Duberstein became one of the nation's foremost experts in bankruptcy law, with the country's only bankruptcy moot court competition named in his honor. He was appointed as a Bankruptcy Judge on April 1, 1981 and has served as Chief Judge for more than twenty-one years. He was awarded the Purple Heart, the Bronze Star Medal and the Combat Infantry Badge for his service in World War II. He has truly earned the respect of the legal community, the affection of his colleagues and a well-deserved reputation for intelligence, wit, humility and compassion.
>
> The dedication of these courtrooms and chambers honors Chief Judge Duberstein's unwavering commitment to the fair administration of bankruptcy jurisprudence and the preservation of the dignity of those in financial distress."

The Magistrate Judges

Our magistrate judges are assigned the full range of civil and criminal case responsibilities authorized by 28 U.S.C. § 656. Magistrate judges were referred a total of 6,084 pending civil cases in fiscal year as of September 30, 2004 for pretrial preparation. Criminal case assignments include detention hearings, acceptance of guilty pleas, jury selections, and pretrial hearings. Civil trials, on consent of the parties, and misdemeanor criminal trials remain a significant responsibility of the district's magistrate judges.

The Board of Judges on November 29, 2004 dedicated the Arraignment Courtroom in the new Brooklyn Courthouse, scheduled for opening in December, 2005, in honor of Judge A. Simon Chrein, United States Magistrate Judge, for his almost thirty years of service to the Eastern District as a magistrate judge. The text of the plaque which will be installed outside the new arraignment courtroom appears below:

> "THE A. SIMON CHREIN ARRAIGNMENT COURTROOM
> United States Magistrate Judge, Appointed May 14, 1976
> Attorney-in-Charge, Federal Defender's Office 1968-1976
>
> This courtroom is dedicated in honor of the extraordinary public service of the Honorable A. Simon Chrein, with the sincere appreciation of his friends and colleagues, the Judges of the Eastern District of New York.
>
> After serving for nearly a decade as the Attorney in Charge of our Court's Federal Defender Office, A. Simon Chrein was appointed a Magistrate Judge on May 14, 1976, and served as Chief Magistrate Judge for fifteen years. He has earned the respect of the legal community, the affection of his colleagues, and a well-deserved reputation for intelligence, wit, fairness and compassion.
>
> The dedication of this courtroom honors Judge Chrein's unwavering commitment to the fair administration of criminal justice and the vigilant protection of the rights of the accused."
>
> Judge Chrein died on March 15, 2005 after a long illness. He will be missed.

Two additional full-time U.S. Magistrate Judge positions were filled during 2004, bringing the total of magistrate judges to fifteen, the district's full complement. Both magistrate judge positions are new appointments. James Orenstein was sworn in as a U.S. Magistrate Judge on June 16, 2004 and sits at the Long Island Courthouse. Judge Orenstein most recently served as Associate Deputy Attorney General and prior to that as an "Attorney-Advisor" in the Office of Legal Counsel at the Department of Justice. Previously, he served for eleven years as an Assistant United States Attorney in the Eastern District of New York and was a member of the trial team in the 1995 bombing of the Oklahoma City federal courthouse, and in the trial of mobster John Gotti. Kiyo A. Matsumoto was sworn in as a U.S. Magistrate Judge on July 12, 2004 and she sits in the Brooklyn Courthouse. Judge Matsumoto joined the U.S. Attorney's Office in 1983, and most recently served as Chief of the Civil Division, and as Senior Trial Counsel.

Probation Department

The work of the Probation Department remained at essentially the same high levels as in 2003, with 3,693 cases supervised, and 870 collateral reports (reports from other federal districts). Investigations decreased to 1,437 from the prior year, for a variance of 23 percent.

Pretrial Services

Pretrial Services conducted 1,809 bail investigations in FY 2004, a decrease of 19 percent. Separately, pretrial supervision cases totaled 704, a decrease of 21.7 percent. Collateral investigations totaled 146, and there were 32 diversion supervision cases.

ADR Program

A total of 276 civil cases were assigned to the mandatory Arbitration program for cases valued at $150,000 or less, and 245 Arbitration cases were closed. The Mediation program for complex civil actions had a total of 239 cases referred during Fiscal Year 2004. A total of 104 cases were settled and 64 cases were not settled, for a settlement of rate of 62 percent, in the reporting period.

Our ADR website (http://www.nyed.uscourts.gov/adr/) posts extensive information on the ADR program, including the names of mediators and arbitrators listed by speciality; a schedule of pending mediations and arbitrations, by case, date and time; and information on ADR procedures; Local Rules for Arbitration and Mediation and other general ADR information. The ADR Committee is chaired by Magistrate Judge Robert M. Levy.

The CJA Panel

The CJA Panel Committee, chaired by Judge Frederic Block with judicial members Judge Joanna Seybert, Magistrate Judge Michael L. Orenstein and Magistrate Judge Cheryl L. Pollak, completed its annual review of the CJA Panel membership, and held the district's fourth annual CLE workshop for Panel members, on Immigration Law, in November, 2004. Judge John Gleeson chaired the panel discussion. The CJA Panel Committee also fully reconstituted Panel terms in 2004 to provide for an equal number of membership expirations at the end of each panel year in the future.

Naturalization Ceremonies

The Eastern District of New York remained one of the busiest jurisdictions in the country for the naturalization of new citizens, despite a decline of 8.6 percent in the number of final naturalization hearings scheduled by INS, now part of the U.S. Department of Homeland Security. NY-E naturalized 36,770 new citizens in fiscal year 2004 at the Brooklyn Courthouse. The Court continues to hold four naturalization hearings each week throughout the year.

Court Administration

The District Court and the Clerk's Office took the last step toward complete electronic case filing when the Board of Judges issued an Administrative Order making electronic document filing by counsel in all civil and criminal cases mandatory, effective August 2, 2004. The Eastern District was one of four pilot federal district courts to start an electronic filing project in 1997. The Court, counsel, parties and the public now have federal court documents available on-line, saving time, effort and cost. The mandatory aspect of the Court's policy was required to comply fully with the E-Government Act of 2002; to achieve necessary personnel savings in an austere budget environment; and to provide ready access to Court documents. The increase in the number of electronically filed documents after August, 2004 was noticeable immediately. Almost 37,000 court documents were filed electronically from August 1 through September 30, 2004. Attorneys continue to receive free electronic filing training by the Clerk's Office. Our website now also provides attorneys with an electronic means to register as an e-filer and to apply for admission to the bar of the Eastern District. The convenience and efficiency promoted by mandatory electronic filing and the proactive use of websites by federal district courts can not be overstated. The current federal budget crunch, however, also has decreased significantly the funding available to maintain chambers and court agency computer equipment. This is short-sighted, and ultimately will diminish the ability of

federal courts to better serve the public and keep pace with our civil and criminal case workload. Automation equipment must be replaced cyclically, and constantly improved and upgraded. That important systems maintenance requires adequate funding by Congress.

Jury Administration

The district's percent of underutilized jurors dropped by almost 3 percent in 2004 to 38.2 percent through the end of the calendar year, December 31, 2004. The national average also declined, by 2 percent, to 36.1 percent in FY 2004. NY-E processed seven high-profile anonymous questionnaire *voir dire*s in 2004. The district met and exceeded its goal expressed in the 2003 annual report to bring the total unused percent below 40 percent in 2004.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

Chief Judge Frederick J. Scullin, Jr.

Judicial Resources

In November we celebrated the 25th anniversary on the Bench for the Honorable Neal P. McCurn. Judge McCurn was appointed by President Jimmy Carter on November 2, 1979. Judge McCurn continues to handle an active caseload in the district including some of the oldest and most complex litigation involving Indian land

claim cases. Judge McCurn served as Chief Judge from 1988 to 1993 when he assumed senior status.

On January 29th, 2004 Magistrate Judge Gary L. Sharpe was sworn in as the 24th District Court judge for the Northern District of New York, or as we believe here in Northern New York, the 28th District Court judge by virtue of our lineage to the Mother Court as articulated in the Honorable Roger J. Miner's 1984 annual report on the history of the Northern District. Judge Sharpe filled the vacancy created by Judge Thomas J. McAvoy when he assumed senior status on September 17, 2003. Judge Sharpe joined the Northern District bench in 1997, and served as a United States Magistrate Judge up until his appointment as a United States District Judge. Prior to joining the bench he served as the United States Attorney for the Northern District of New York. On February 10th, 2004 Magistrate Judge George H. Lowe was sworn as our newest Magistrate Judge. Magistrate Judge Lowe filled the vacancy created by the elevation of Judge Sharpe to the District Court bench. Magistrate Judge Lowe was previously a partner in the Law Firm of Bond, Schoneck and King, LLP in Syracuse. Magistrate Judge Lowe also served as the United States Attorney in the Northern District from 1978 to 1982.

During 2004 the Court received assistance from seven visiting judges to help us resolve our backlog of pending prisoner cases. Each of these seven judges agreed to sit by designation for a period of one-year, during which time they handled motions and trials on pending prisoner civil rights cases. The seven visiting judges closed 65 cases during 2004. Our thanks go out to the Honorable Warren W. Eginton - District of Connecticut; Honorable Lyle E. Strom - District of Nebraska; Honorable G. Thomas Eisele - Eastern District of Arkansas; Honorable Joseph M. Hood - Eastern District of Kentucky; Honorable John R. Tunheim - District of Minnesota; Honorable Paul A. Magnuson - District of Minnesota; Honorable James K. Singleton - District of Alaska; and the Honorable G. Thomas Eisele, District of Arkansas Eastern. For the upcoming year, we have already secured the services of five judges who have indicated their availability through the intercircuit assignment system to assist courts with pending motions. With these additional resources, we are hopeful that we will be able to further reduce our pending prisoner caseload.

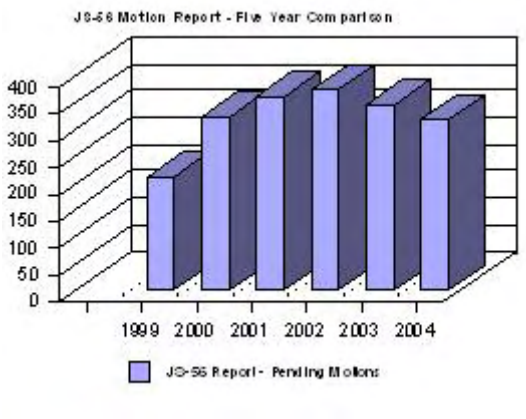
Senior Judge Howard G. Munson continues to take a variety of cases and provides valuable assistance to the Court. Senior Judge Thomas J. McAvoy completed his first full year as a Senior Judge - although Judge McAvoy has taken senior status, he continues to take a full caseload.

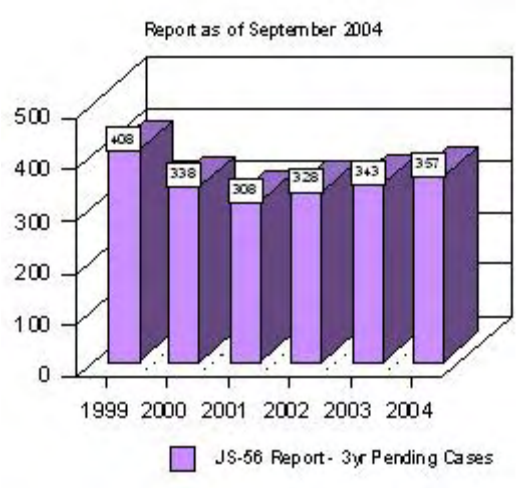
Statistical Data

New civil filings fell slightly from the previous year, filings were down by **2.1%** in Statistical Year-2004. The number of criminal filings rose in SY-2004 by **18.7%**. Some of the increased activity in our criminal filings was attributable to the increased law enforcement presence at our Northern border where criminal filings increased **82%** over the previous year. The number of trials completed per-judge in SY-2004 was identical to the number completed in SY-2003, this seems to be consistent with the continued decrease in trials experienced by courts on a national level.

Pending Motions and Three Year Pending Cases

The disposition of motions is critical to the efficient operation of the Court. The Court filed **2950** civil motions during statistical year 2004. During the same time period the court disposed of **3156** motions. As reflected in our JS-56 Report on Pending Motions and Cases Pending for Three Years or more, the district's pending motions (*as of September 30, 2004*) decreased **7%** from SY- 2003, and three year pending cases increased **4%** over 2003.





Space and Facilities

Albany: Construction on a new grand jury room got underway in December of 2004, we anticipate that the construction will be completed by May of 2005. We had hoped to have this project completed in 2003, however funding issues have delayed the project.

Syracuse: The Judicial Conference has recommended that a new United States Courthouse be constructed in Syracuse. The long range space plan was to include site selection and design which was scheduled for FY-2006, and funding in FY-2008. The schedule has been delayed due to the national budget crisis. Plans are

underway in Syracuse to design space to accommodate the future needs of the court in the Hanley building until such time as a new courthouse is constructed.

Plattsburgh: On December 23, 2004 Congress designated Plattsburgh, New York as an official place of holding Court. Plattsburgh is the home base for our part-time Magistrate Judge Larry A. Kudrle. Judge Kudrle handles initial appearances for defendants that are arrested crossing the St. Lawrence River from Canada into the United States. The federal law enforcement presence at our northern border has more than tripled since September 11, 2001. Criminal filings at the border rose 82% from SY-2003. The United States Attorney, Glenn Suddaby, is working to establish an office at Plattsburgh to help coordinate the law enforcement function and prosecution efforts on the border. Once his office is established, the Court will seek permission to establish a more formal court presence in Plattsburgh. In anticipation of this need, the District established a new jury division in Plattsburgh. The new division will include jurors from the counties of Clinton, Essex and Franklin.

District Court Clerk's Office

The Clerks Office went live on the judiciary's new electronic case filing system CM/ECF on January 1, 2004. All of the hard work and preparation that was done in 2003 has paid off. The Court is now receiving more than 60% of all filings electronically, and that number continues to grow each month. The Clerk's Office has worked very closely with our Federal Court Bar Association and the individual county bar associations to bring the training on CM/ECF to the lawyers and their support staff directly. The Clerk's Office offers training at each of our four staffed courthouses in the District, in addition to regular monthly training dates at each courthouse the Clerk took the CM/ECF program on the road to train members of the bar and their staff at the most northerly points in the district.

The Clerk's Office in conjunction with the FCBA has also developed a training program for the three law schools in our district. This public outreach effort will help to provide law school graduates in our district with the real world skills necessary to file electronically in any district in the United States. Since going live on January 1st, 2004 the Clerk's Office has trained over 5000.

Innovation is alive and well in Northern New York. Over the course of the last year one of our very talented consolidated automation staff members developed an automated inventory system that is linked to the Court's national accounting system (FAS4T). This project was made possible with the support of the Administrative Office. The program was designed to provide any Court unit with an easy to use, customizable, automated tool for maintaining accountable inventory items while incurring very little overhead costs. All the software needed to run this application can

be downloaded for free. Given the lean budgetary times that are upon us, we need to look at ways to improve productivity by eliminating needless data entry and tap into the tools and resources available to us, this new system does that while at the same time strengthening internal control processes.

In September of 2004 our Clerk of Court, Lawrence K. Baerman received the directors award for outstanding leadership. Larry was recognized for his contributions to the judiciary on a national level, and for his outstanding leadership and contributions to the bench and bar here in Northern New York. The Clerk and Chief Probation Officer continue to work closely on the consolidation of administrative support services. Automation, human resources, personnel, budget and finance have or will be consolidated within the next year. Good fiscal planning and stewardship by the unit executives has allowed the Court to weather the most recent budget crisis without the need for major layoffs or furloughs. This initiative will allow the units to continue to provide the highest possible level of service to the bench and bar while absorbing what we expect to be significant reductions in future staffing levels.

PROBATION / PRETRIAL OFFICE

Halfway House

After more than ten years of actively working to establish a halfway house in Syracuse, it was finally realized on November 1, 2004. It has 25 beds reserved for federal offenders. With halfway houses in operation in Albany and Binghamton, a total of 65 beds district-wide are available. The halfway house is run by a halfway house company with vast experience.

Automation

In the area of automation, many advances have been realized. Court units can now share the "R" drive for viewing and exchanging documents. In April, PACTS^{ECM} went live in the district. Chrono conversion followed in June. In conjunction with this, PDAs were issued to officers. Information can be downloaded to the PDA allowing them to take case information in the field and then uploaded upon their return to the office. Investigations into criminal history has been streamlined. This past year an officer has been working with a select group of "high tech data specialists" who are developing the ATLAS project which would allow for NCIC to be available on computer desktops rather than through a central terminal. This has widespread national implications.

Sex Offender

Supervision techniques continue to improve with the use of contract treatment providers, periodic polygraph examinations and internet use monitoring.

United States Bankruptcy Court for the Northern District of New York

As in previous years, the number of new bankruptcy cases filed in 2004 continued to increase over the number of filings of previous years. The Bankruptcy Court for the Northern District of New York was able to smoothly handle the increase in caseload without increases in staff because of the Court's continued focus on effectively using all resources available to it.

In calendar year 2004 the court trainers conducted ECF classroom training for over 444 attorneys and approximately 200 support staff. ECF logins and passwords were also provided to approximately 220 out of district attorneys. Attorneys and staff members of the U.S. Trustees offices were trained and are filing electronically.

On July 1, 2004 the court mandated electronic case filing and required most documents to be filed through the court's electronic filing system. Prior to July 1st approximately 53% of cases and 41% of all documents were filed electronically by attorneys and creditors. Within one month after mandatory electronic case filing was implemented, approximately 81% of cases and 88% of all documents were filed electronically. A project to permit the electronic submission of proposed orders was started in 2004 and is scheduled to be implemented by June 2005.

Improvements and renovations were made to existing space in the Albany office. The space housing the Operations Department was reconfigured to provide greater airflow, make better use of the space, and to take advantage of natural light. The space housing the Lunch Room was renovated by removing dark flooring and wall covering and replacing them with lighter, easy to clean surfaces. It is important to note that these renovations were paid for with the court's local funds and did not require any funding from the Administrative Office.

The Bankruptcy Court continually seeks to take full advantage of technologies available to it. Two technology driven projects were completed in 2004. The first project involved equipment upgrades for the courtrooms. The courtrooms in both Albany and Utica were upgraded with digital recording equipment for use by the ECROs. The judges and selected staff are now able to listen to court proceedings directly from their desktop computers. The second technology driven project involved the creation of electronic personnel folders housed on a secure server. Each personnel

folder contains an electronic index of items contained in it and can be quickly and easily accessed by authorized users. The need to transport paper personnel files between offices has been eliminated.

A third technology related project was started in 2004 and will be completed in 2005. The Automation Department and the Operations Department began an imaging project to enhance the ability to electronically search older bankruptcy case records. When the project is completed users will be able to electronically view dockets and party information from 1986 forward.

The past few fiscal years have been increasingly difficult for the courts and FY2004 was no exception. Many courts found it necessary to reduce staff even when faced with increased caseloads. Last year the Bankruptcy Court for the Northern District of New York was able to absorb an increased workload without adding or reducing staff. The Court was also able to complete several key projects with its existing funding. And finally, due to keeping a close eye on the court's bottom line, the Bankruptcy Court for the Northern District of New York was able to return $ 120,000 to the AO to help reduce the budget shortfall faced by the entire Judiciary.

Annual Report of the Northern District of New York on Gender, Racial and Ethnic Fairness in the Court

The Northern District of New York is committed to the fair and equitable treatment of all those that appear before the Court or are employed by the Court. The Court remains mindful of the need to protect against bias based on other grounds, such as sexual orientation, disability, national origin, religion and age.

The Court has continued the practice of providing pro se litigants with pro bono counsel to assist them at the trial stage of their cases. In addition, the Court has extensively used video conference technology to accommodate financially challenged litigants by providing them with an avenue to avoid travel costs associated with appearances before the Court.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Chief Judge Michael B. Mukasey

The Clerk's Office for the Southern District of New York operates with a staff of 206 employees with offices at Foley Square and 500 Pearl Street in Manhattan and at 300 Quarropas Street in White Plains. The Clerk's Office provides record keeping, case management, automation, financial and other services for the District Court. The operating budget for fiscal year 2004 was $ 13,447,473 for personnel, automation and administrative expenses.

During calendar year 2004, the Clerk's Office completed the transition to the CM/ECF (Case Management/ Electronic Case Filing) program. All civil and criminal docketing events have been converted from the old ICMS program to the new system. The first wave of District Judges and all Magistrate Judges began accepting electronic filings in new cases on December 1, 2003. The remaining Judges joined the system in two waves in March and June of 2004.

The financial and systems staff of the Clerk's Office completed the preparations for the implementation of FAS4T, a new automated financial system, which went live in March 2004. Conversion included training, workflow process mapping and development of new security controls.

For the period October 1, 2003 to September 30, 2004, there were 12,422 cased filed.

During the past year, the Board of Judges amended Local Civil Rule 1.3(a), Admission to the Bar and Local Civil Rule 1.5(d)(1), Discipline of Attorneys.

Individual departments of the Clerk's Office report the following activities in the year 2004:

White Plains

The year 2004 saw 1152 new civil cases filed at the White Plains courthouse, an increase of 18 cases. Court users and the public expressed satisfaction with the first full year of Electronic Case Filing. Ground was broken in Middletown, NY, for a facility to house a courtroom for a part time Magistrate Judge as well as offices for US Probation and the US Marshal. The facility is expected to be opened in the spring of 2005.

Jury Department

During the year 2004, the Jury Department was diligent in performing its tasks under strenuous circumstances. Since 2003 we have lost two positions to retirement and we cannot fill those positions because of the Court's budget constraints. 2004 was a very busy year, in which we provided very large jury panels to a few high profile cases including criminal prosecutions of Martha Stewart, Lynn Stewart, Worldcom, Adelphia Communications and the Quinones death penalty case. The Jury Department, though understaffed, not only performed the tasks under challenging conditions, but flawlessly continued to process all the other functions of the department.

In 2004 we also witnessed a trend that was quite different than prior years. During the summertime in 2004, the Jury Department summoned large numbers of jurors and provided large quantities of jury panels to requesting Judges. Usually we spend the summer processing and qualifying over 30,000 perspective jurors to maintain a large number of jurors in our qualified jury wheel. Even under larger than usual jury returns for the requesting Judges, we were able to still qualify over 30,000 jurors for the qualified wheel. This required members of the department to put in extra hours due to the unfilled positions. This trend also carried over during the holidays as we returned and processed 668 jurors to the various Judges for selections in December 2004 alone.

The Jury Management System (JMS) has been upgraded with newer features that help us perform some of its functions more efficiently. With the installation of Fas4T, JMS now has a compatible system that allows us to pay our jurors without the extra steps that plagued the prior financial system.

Finance

The calendar year of 2004 proved to be both challenging and rewarding for the Financial Department. On March 1, 2004, the Southern District of New York. and the Second Circuit Court of Appeals saw the introduction of the Financial Accounting System for Tomorrow (FAST). The FAST System is used to track and disburse funds which are allocated to the Court by the Administrative Office of the U.S. Courts. The Financial Department spent many months in preparation and training, with the Administrative Office, to successfully implement the FAST system. For the year of 2004, the Financial Department filed 10,322 complaints, issued 34,283 checks, receipted $606,619,931.19, disbursed $620,694,645.62 and maintained 328 interest bearing accounts with an aggregate value of $749,071,947.12.

Docket Services

During calendar year 2004 the Clerk's Office docketing section has been presented with many challenging situations. Despite the implementation of CM/ECF, a large number of documents continue to be filed manually. Reducing the number of manually filed documents has proven to be a slow process. This has been in part been a result of the large number of cases filed and accepted as related to previously filed non-ECF actions. Additionally, a number of very active Multi-District Litigation cases as well as a number of mega cases (also non-ECF) have contributed to the on-going deluge of manually filed documents. Only with the prioritization of documents to be processed and the assistance of employees from other sections have we been able to keep the work moving in an orderly manner.

Courtroom Support

In 2004 the Courtroom Deputies and Relief Courtroom Deputies assisted other departments in the Clerk's Office to a much greater degree than in the past. The Relief Deputies assisted the jury, finance and docketing departments on a daily basis. They were also available, as needed, to provide assistance to the Interpreter's Office and Supply. Relief Deputies assisted at the Naturalization Ceremony nearly every Friday. Courtroom Deputies assigned to judges also made themselves available throughout the year and provided assistance to the Jury and Docketing departments. In addition, they offered their time to cover courtroom assignments when needed.

Personnel

During the calendar year 2004, the Personnel Section processed personnel actions for the designated court staff such as appointments, separations, promotions, retirement information; and disseminated benefit information and the processing of forms. New procedures were put in place whereby staff, during Open Seasons for FEHB and TSP, could directly make on-line changes through a private vendor. The need for background checks on all new employees, interns and contracted staff has become routine. A continuance of a hiring freeze throughout the year has prevented the court from filling vacancies and has required that we develop and initiate new strategies to meet operating needs in the coming year. There are 14 vacant positions which have not been filled since the hiring freeze was imposed.

Training

During the last calendar year, the Training Department continued CM/ECF training for attorneys and incoming law clerks, and cross training classes for employees who were reassigned to docket units in view of the current fiscal crisis. The Training Department also developed a quarterly newsletter which will advise employees about training opportunities available for Clerk's office employees. In addition, a new program, entitled "Lunch and Learn ", was implemented whereupon employees can visit the training room during their lunch break to attend a videotape seminar on a variety of subjects to help improve their work and personal performance. Finally, the Training Department also implemented a new program entitled "Learning Day". All Clerk's Office employees may attend "Learning Day" to review training resources provided by the FJC and any in-house commercial materials available to them. Training specialists are on hand to answer any questions and to assist employees in completing applications or signing up for training activities.

Magistrate Judges Unit

The Southern District Magistrate Judges unit has seen several changes in the past year. We have developed a system to back up our Sealed Vital Records. They are currently being backed up onto 3.5" disc. A second copy is also prepared and forwarded to the White Plains courthouse. We have also merged our docketing system from ICMS to ECF. We now also prepare requisition forms for the public to bring to the Finance Office to purchase Certificate of Dispositions.

Mediation Department

The Mediation Department provides services for the courts in Manhattan and in White Plains. Hundreds of new and adjourned cases were scheduled for mediation sessions during the calendar year. Local Civil Rule 83.12 governs the Court's mediation program.

Interpreters Office

In FY 2004 interpreters of 36 languages provided foreign language interpretation during 6,667 separate proceedings, an 8% increase in activity over last year. Of these, 4,133 were in-court proceedings, only slighter fewer than FY 2003. Out-of-court matters (pretrial, probation, attorney-client interviews, document translations, phone conferences) totaled 1,613 for all languages, nearly the same number as last year.

Spanish continues to be the most frequently requested foreign language. In FY 2004, 75% of the interpreter unit caseload was in Spanish. The next most frequently requested languages remained the same as in previous years: Russian, Arabic, Mandarin and Fuzhou. Total expenditure for interpreter services, paid from a central Administrative Office account, was $445,196, a 20% decrease over last year despite a nearly similar caseload. A total of 24 criminal trials required foreign language interpretation, 18 in Spanish, 2 in Russian, 1 in Arabic, 1 in Turkish, 1 in Punjabi and 1 in Haitian Creole. This was a 50% decrease in the number of trials as compared to FY 2003.

Recruitment and coaching sessions of interpreter candidates in hard-to-find languages continue on an as-needed basis. Interpreters in lesser-used languages require in-depth orientation because of differing skill levels in the available pool and the lack of traditional testing in those languages. Seven exotic language interpreters had individual orientation sessions this year. A growing challenge is to identify reliable interpreters of African languages.

The Interpreters Unit website, www.sdnyinterpreters.org, is linked to the court intranet and provides instant scheduling information for interpreted proceedings. Its public face provides useful information for the legal community and for interpreters in search of resources.

Milestones

During the past year, one judicial vacancy was filled. Kenneth M. Karas was inducted on September 7, 2004. I note with extreme sadness the passing of two of our distinguished colleagues, the Honorable Whitman Knapp on June 14, 2004 and the Honorable Milton Pollack on August 13, 2004. They made important contributions to the Court, and their presence will be missed.

PRETRIAL SERVICES

As the component of the federal judiciary responsible for the bail investigation of defendants, the Pretrial Service Office is committed to providing verified information and assessments of the risks of non-appearance and danger to the community for every defendant appearing before the court following arrest. While working under the guidance of the court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process and seek alternatives to detention.

The Pretrial Services Office interviewed 98% of the defendants who appeared on criminal charges during FY 2004. Ninety-six percent of the interviews were conducted prior to the initial court hearing. While bail investigations decreased from the previous year, the court released more defendants with supervision conditions as compared to last year.

Our district continues to have a low detention rate, especially when compared to other large metropolitan districts. Our release rate at the initial bail hearing was 15% higher than the national average and among the highest when compared to other large metropolitan districts.

At the end of the fiscal year, 9/30/04, there were 1,025 defendants reporting to Pretrial Services for supervision as required by their court-ordered release conditions. Ninety six percent of those released appeared in court as required and 97 % of defendants were not arrested during their bail period.

The year was challenging, as our staff and operations were affected by budget reductions. While operating with reduced funding and loss of staff, we had to impose spending limits on services particularly inpatient residential services. In attempting to

maintain services to defendants we initiated a pre-screening of defendants to identify Medicaid eligibility at an early stage and assisted defendants with the application for Medicaid. This initiative reduced our drug treatment costs to enable us to provide services to a greater volume of defendants. The Chief presented our Medicaid initiative at the Chiefs' conference in Atlanta and it was selected as one of the three most helpful cost containment initiatives for use by other districts.

There were several innovations developed during the year. We developed and implemented a random drug testing program, requiring defendants to call a toll free telephone number to be informed by a voice mail message whether to report for testing the next day. Results have shown the program to be effective in assuring compliance with court ordered drug testing conditions, and establishing more efficacy than a testing program where a defendant can "time" his drug use to evade detection.

Pretrial Services has entered into a partnership with the New York State Division of Criminal Justice Services to implement a new criminal record system that provides several improvements and advancements to complement the existing criminal record retrieval system. This system, known as eJustice ,will eventually replace the existing NYSPIN criminal record system. The most ambitious project involves establishing a live scan electronic fingerprint system to provide the court with identification of a defendant based on fingerprints rather than a name check. We could electronically transmit fingerprints and receive a criminal record within an hour of transmission, enabling our office to provide positive fingerprint identification of the defendant appearing before the court at the initial hearing. In addition, the fingerprints could be registered with New York State for notification, should the defendant be arrested while released on bail. This would provide for timely notification of the violation to our US Attorney and court and reduce the need for manual record checks conducted by officers.

Pretrial Services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be their last, and so prevent the front door of the system from becoming a revolving door.

U.S. PROBATION

Fiscal year 2004 represented the most difficult time faced by the Southern District of New York's Probation Office in its history. The task of continuing to provide high quality work in the face of severe funding shortfalls challenged both staff and administrators. Probation faced a 10% cut in funding for salaries and was

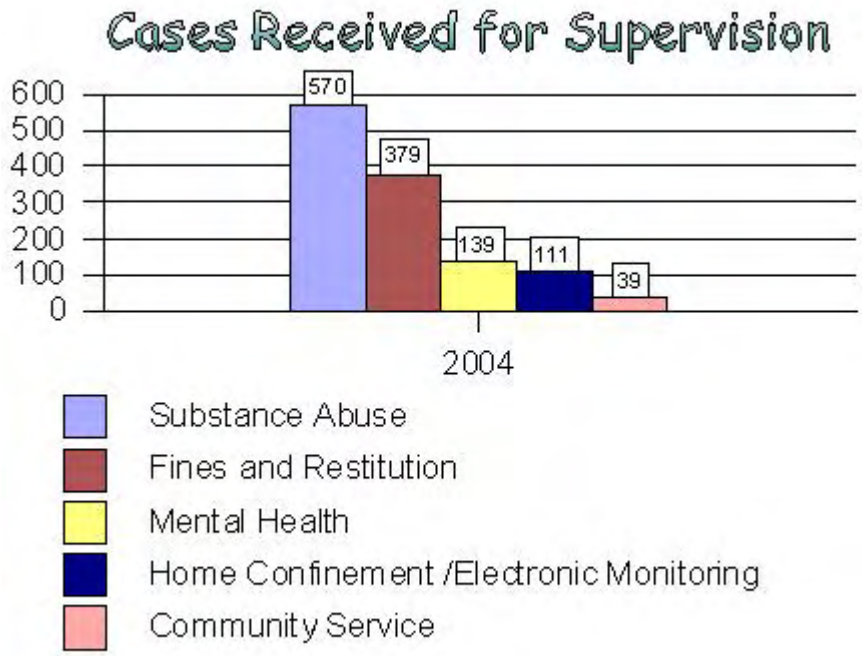
forced to downsize staff by way of buy outs, early outs and position abolishment. At total on 16 staff members left our agency via one of the three methods. At the end of the fiscal year, our total staff was down to 157 after having been 173 the previous year. Each of the three divisions that make up our agency - Supervision, Investigations and Administrative Services- were forced to restructure and rethink our methods of operation.

Even in the face of these changes, the probation office was able to continue and even improve upon, our service to the Court and to the community.

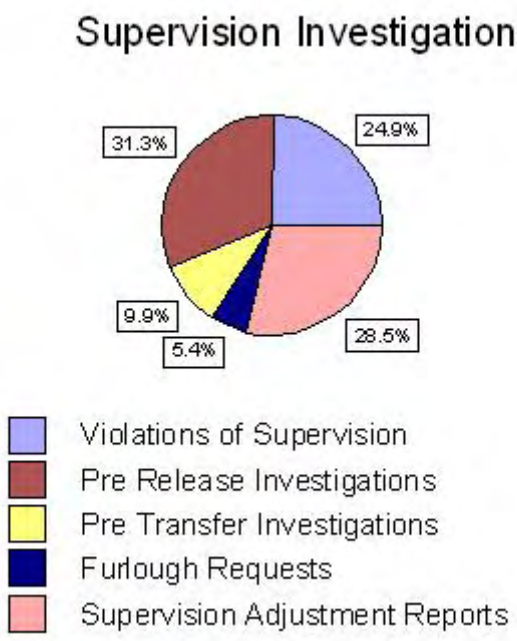
Supervision:

The number of supervision cases has been stable during the past three years, while the number of probation officers and support staff has been reduced. The resulting higher caseloads and workloads has been difficult. Yet, the supervision division has continued to provide protection to the community and services to offenders. Supervision officers continued to concentrate on spending the majority of their time in the field, meeting offenders where they live and work. This renewed focus on field work has been effective in helping offenders comply with the conditions of supervision and helping them to lead productive lifestyles. Officers in supervision continue to specialize in the areas of substance abuse, mental health, sex offenders, electronic monitoring/home confinement, special offenders/ organized crime, community service, financial crimes and general crimes.

The total number of ***new*** case received for supervision in FY 2004 was 1399. They are represented as follows:



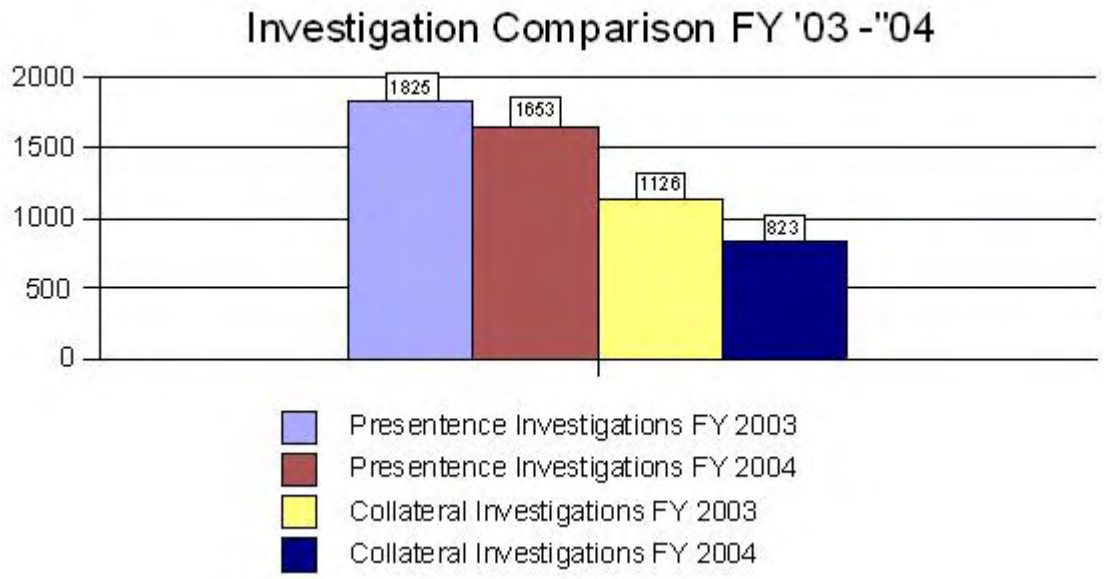
The division also improved upon our protection of the community by way of innovative field operations. The numbers of searches and surveillance were up, resulting in an increase in violations of supervision. During FY04, several of our search and surveillance operations have resulted in new criminal charges on both the local and federal levels. The division also continued to conduct *high intensity field operations* (HIFOs) each month, where the concentration is on at risk offenders. These operations, conducted during the late evening hours and weekends, have been highly effective in bringing offenders facing violations to the point of renewed compliance. Notwithstanding our successful special operations, the supervision division initiated 472 violation of supervision in FY 2004. Additionally, supervision officers completed 595 prerelease investigations, 188 pre transfer investigations and 102 furlough requests.



Investigations:

Probation officers working in the presentence investigations division continue to complete a significant number of investigations and reports in FY 2004. These report often involve sophisticated crimes and high profile offenders. Also faced with decreased probation officer and support staff, the presentence division developed an innovation of its own. Our district receives countless requests for collateral assistance from other district throughout the country. Answering each request while operating under decreases funding became very difficult for us. Our office, therefore, developed a collateral assistance web site. This web site provides information that allows our colleagues the information they need to request assistance directly from New York City agencies. This process effectively cuts out the middle man (i.e. our office) and allows districts to receive request information in a more timely fashion. This process did not take us out of collateral assistance entirely. On the contrary, we are still assisting our colleagues who are having difficulty obtaining information. It has, however, decreased the amount of time spent on collaterals and has allowed us to utilize staff in other areas.

In FY 2004, the presentence division completed 1653 presentence investigations and 823 collateral investigations.



Administrative Services:

The administrative services branch includes automation, data quality analysis, personnel, budget, purchasing and overall support to probation officers. The office's administrative assistants suffered significantly when downsizing became a reality. Those administrative assistants that remain with us are charged with accomplishing much more. These professionals rose to the task during FY 2004, filling in and taking on added responsibilities. It was not unusual to see administrative staff staying late and coming in on weekends to meet their obligations. The staff members that make up our administrative support are dedicated to engaging in quality behind-the-scenes work that support the overall operation of our office.

Annual Report 2004
United States Bankruptcy Court for the
Southern District of New York

During Fiscal Year 2004, this court experienced a 21% overall increase in filings. Most notable is the 220% increase in chapter 11 filings. This court's weighted case filings per judge are 6,321 as compared to the national median of 1,571. Therefore, the judges in this district are carrying a caseload more than four times the national median. In response to the fact that the judges in this district continuously administer caseloads at least twice above the national median, the Judicial Conference of the United States has endorsed the Second Circuit's request for two additional judgeships.

There are more than 8,000 attorneys registered to use the court's Electronic Case File System (ECF) and during fiscal year 2004, approximately 1,400 new attorneys were added and 1,963 orders to appear *pro hac vice* were signed. The court continues to conduct training classes for new users of the system on an average of twice a week.

FILINGS DURING FY YEAR 2004

Chapter	Number of Filings	Percent Change
7	15,661	10%
11	2,955	220%
12	1	-0-%
13	2,177	5.6%
304	76	52%
Adversary Proceedings	7,935	15.2%

A total of 2,387 chapter 11 "mega" cases were filed with the court during FY 2004. The majority, 2,361, were affiliated with the Footstar case commenced in White Plains. In addition, orders were entered confirming the Enron and WorldCom "mega" cases during FY04, and these and other "mega" cases commenced in previous years continue to be administered**.**

During FY04, efforts to improve the court's service to the public has been enhanced. The old analog courtroom recording systems have been upgraded and more sophisticated digital recording devices have been installed in the court's divisional locations in White Plains and Poughkeepsie.

Long term planning for the clerk's office is becoming a reality. The "Records Room" in the New York City location is all but closed as old files are shipped to the archives; the three divisions have been sharing the workload more evenly; and the court's inventory has been transferred to an electronic tracking system, which enables us to more accurately account for the court's property and its location at all times.

The court has adopted a program based on the C.A.R.E. program started in the Western District of New York and has modified it to fit the needs of the local community. We have done the groundwork to introduce the program to public and private schools in the New York metropolitan area.

Judge Cornelius Blackshear, who retired March 31, 2005, conducted two 10-week classes educating a total of 40 court employees in bankruptcy. These classes were very successful and the end result has been a benefit to the court. An educated

staff is better equipped to understand the importance of their role in the administration of cases through the court.

As the caseload continues to rise, so does the involvement in the bankruptcy system by people and entities unfamiliar with bankruptcy. Having a highly educated staff to assist the public with procedural information has enhanced the court's reputation and has eased the complexity of navigating the system for many of these constituents. The court is committed to providing current, correct information and continues to explore better ways to do so.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Chief Judge William K. Sessions III

Clerk's Office

During calendar year 2004, the Clerk's Office continued to evolve in response to major policy initiatives promulgated by both the Executive Committee of the Judicial Conference and Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts. The Clerk's Office took advantage of the buyout and early-out retirement initiatives offered during the year and underwent a reorganization of its management structure. A mid-level supervisory position was

eliminated at the Rutland divisional office along with a corresponding courtroom deputy position supervised from this divisional office. This management change "de-layered" the Clerk's Office organizational hierarchy and reduced its management structure from three separate levels to two. The end result is a "flatter" organization with a "stream-lined" management structure which will be more responsive to the operational needs of the court. Two employees affected by this change qualified for early retirement and buyout initiatives offered by court management. Additionally, one new employee who possessed a skill set more in line with the future automation needs of the Clerk's Office was subsequently hired to fill the Brattleboro divisional office vacancy. This restructuring change was made effective on October 1, 2004 and was implemented uneventfully.

Based upon the new district court staffing formula adopted by the Judiciary and fielded by the Court Administration Division, the authorized staffing level for the Clerk's Office for 2004 increased from 21.5 to 21.7 authorized positions. This minimal staffing increase equated to the very small increase in civil and criminal case filings which occurred from the prior statistical year. Although 21.7 work units were authorized for fiscal year 2004, the Clerk's Office continued to effectively manage all of its workload with an on-board staffing total of 18.2 positions. The District's *pro se* law clerk staffing allocation remained stable during calendar year 2004 and remained authorized at one-full time, permanent position. Based upon its on-board staffing level coupled with a relatively stable operating environment, the Clerk's Office once again managed to return – for a second year in a row – a portion of its operating budget in order to assist the Judiciary with its national financial plan.

Information Technology and Automation Activity

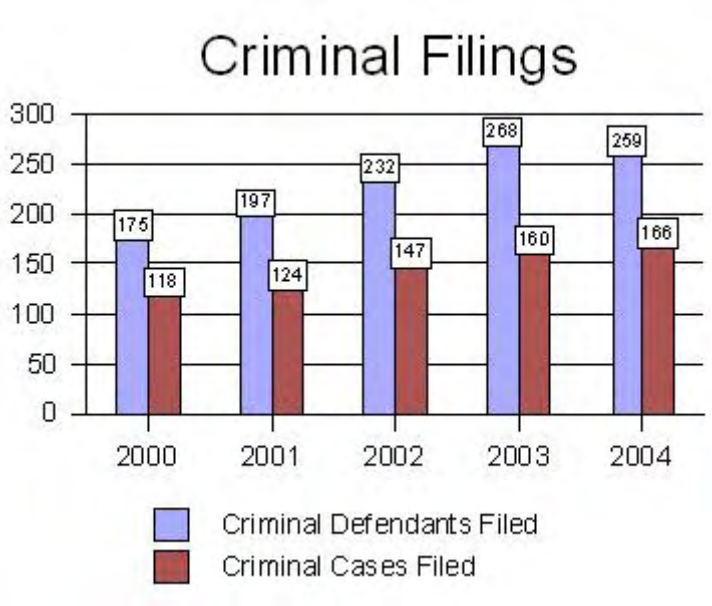
During calendar year 2004, the district spent the majority of its automation-related efforts preparing for CM/ECF implementation as a Wave 17 court. During December 2003, individuals from both the Clerk's Office and judges' chambers' staff attended CM/ECF applications training at the Systems Development and Support Division (SDSD) training center in San Antonio, Texas. At the start of the new calendar year, the District's chief deputy clerk for operations and its director of technology attended dictionary training in San Antonio, Texas. The District's operational managers and the clerk of court then made a one-day site visit to the Northern District of New York to determine how to best implement the CM/ECF system.

In conjunction with the district court's Court Advisory Group – a successor to the District's Civil Justice Reform Act Committee – a consensus decision was reached to implement electronic filing using a two-phased approach. It was decided that the "CM" or case management component of electronic filing would be implemented

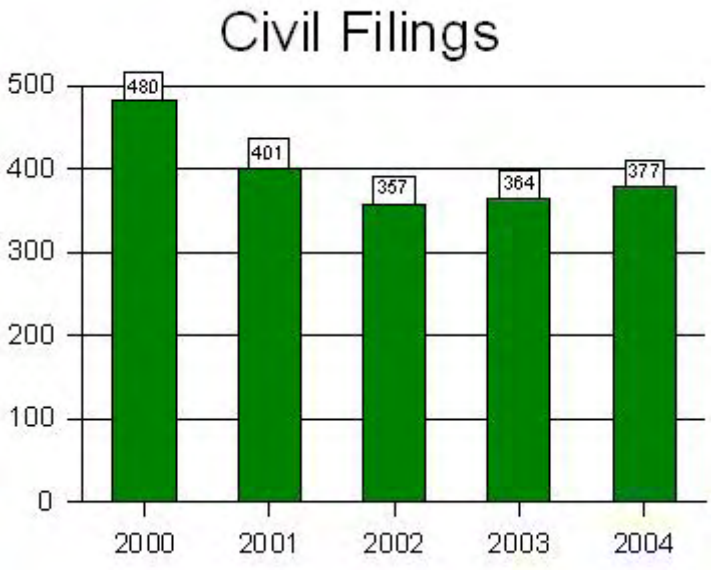
first, allowing system users to become familiar and confident with the operational aspects of the system. After an indefinite trial period consisting of some six to nine months, the district would then implement the second phase or "ECF" portion of electronic filing which permits file transfers over the internet. In preparation for conversion to CM/ECF, the district's Solaris-based servers were converted to the new Linux operating system and the most current version of the CM/ECF application software (Version 2.3) was installed. One management employee and another deputy clerk also received formal data quality assurance (DQA) training in San Antonio, Texas. During late October, the remainder of the Clerk's Office staff were trained locally on CM/ECF operation procedures. Data and image migration then took place with multiple validation efforts also occurring. Rather than implement the new CM system during the last quarter of the calendar year, a strategic decision was made at this time to convert and "go-live" on the first business day of the new calendar year. Conversion to the new system at this time would allow for a "clean break" from the legacy system and would establish a definite milestone date for the District's conversion to electronic filing.

In addition to CM/ECF preparation, the Court's Lotus Notes server was converted to Microsoft Windows Version 2003 from its existing Windows 2000 operating system. The electronic evidence presentation system for Chief Judge William K. Sessions' courtroom was also upgraded with touch screen technology. This effort was funded fully from the court's operating budget without the need for supplemental or other project-based funding. Lastly, both of the district court's intranet and internet websites were redesigned using Macromedia Dreamweaver software to give each website a more professional and uniform look. Each individual judicial chambers also continues to post electronic versions of selected court opinions to the Court's external website using the CourtWeb judicial opinion posting system.

Caseload Statistics



As indicated by the graphs below, civil case filings for calendar year 2004 once again increased slightly from the prior calendar year and interestingly enough, again by the exact same figure – 7 cases. Based upon long-term statistical data, the District expects that the trend of increased civil filings to continue until the District once again reaches its long-standing filing base of approximately 400-420 civil flings on a per annum basis.



Regarding the district court's criminal caseload, as indicated by the graph below, while the total number of criminal case filings showed a slight increase over the prior year, for the first time during the last five calendar years, actual defendant

filings showed a slight decrease. This leveling trend in criminal defendant filings is attributed to the increased number of criminal jury trials expected to occur during the upcoming calendar year and the degree of prosecutorial resources required to try cases.

The District continued to manage its single, long-term, capital offense case – *United States v. Fell.* This case was initiated by the filing of a criminal complaint on December 1, 2000 with the government subsequently filing an indictment some nine weeks later on February 1, 2001. The government proceeded to file its notice of intent to seek the death penalty on January 30, 2002. From October 2002 through November 2004, the case was on interlocutory appeal at circuit on the issue whether the death penalty was constitutional. On October 28, 2004, the Second Circuit Court of Appeals issued its mandate and remanded the case back to the district court consistent with the opinion of the appellate court. The District plans for an extended, two-phase criminal trial to begin sometime during May 2005.

Jury Operations

Calendar year 2004 was a General Election year. During late November, the District commenced refilling its master jury wheels by contacting all 251 Vermont city and town clerk offices for the purpose of securing current voter registration lists. Pursuant to the District's *Jury Selection Plan*, all jury wheels must be completely refilled and fully operational no later than July1st of the calendar following a presidential election.

During the early part of the year, 1,000 jurors from the District's existing Northern Jury Division were pre-qualified and segregated as potential jurors for the District's death penalty case using the automated Jury Management System (JMS).

Early Neutral Evaluation (ENE) Program

The Court's Early Neutral Evaluation (ENE) program celebrated its tenth year of operation during calendar year 2004. The Court continues to rely upon this particular form of alternative dispute resolution program for reducing both the cost of litigation and case delay to the parties. During 2004, the Court's ENE program was slightly expanded in scope in order to allow bankruptcy cases to qualify for the program.

Since the program's inception on July 1, 1994, a total of 2,145 cases have passed through the program and more than 50 attorneys have participated in evaluator training. During calendar 2004, a total of 85 ENE sessions were conducted, a figure which is up slightly from a total of 74 cases conducted during 2003. Vermont's long-

term, full-settlement rate continues to hold steady and for calendar year 2004, once again calculated out to be 34 percent for all cases participating in the program. The only significant, long-term change to the District's program appears to be an on-going trend for the parties to utilize independent evaluators rather than evaluators comprising the Court's Early Neutral Evaluation panel. During 2004, this trend continued in that 55 non-panel evaluators were utilized, up from a total of 47 independent evaluators used during the prior calendar year. This trend for the parties to use "off-panel" evaluators will continue to be monitored in order to determine the basis for this trend and the potential need for the Court to modify its program.

Criminal Justice Act (CJA) Panel Operations

Vermont made a total of 276 appointments pursuant to the Criminal Justice Act during calendar year 2004. This total is exactly one less than the total number of appointments made during 2003 and appears to mirror the "leveling" trend experienced with the District's criminal case filings. The District's all-time high for CJA appointments took place during calendar year 2002 when a total of 291 appointments were made.

Vermont has shared a public defender with the Northern District of New York since September 1977. On August 19, 2002, the District of Vermont amended its *Criminal Justice Act Plan* to allow for the creation of a separate public defender office based upon the number of CJA appointments being made on an annualized basis. Vermont's request to establish an independent FPD office was approved by the Second Circuit Judicial Council on June 5, 2003, subject to ratification by the Judicial Conference of the United States. On December 15, 2004, Vermont was formally notified that the Defender Services Division (DSD) had certified the district as eligible for a separate federal public defender office. Late in the year, the Court of Appeals for the Second Circuit informed the district court that a national search for a qualified federal defender would commence sometime during early 2005.

Local Rules Revision

During calendar year 2004, the district court's Local Rules of Procedure were amended after substantial input from the civil law subcommittee of the District's Court Advisory Group. Substantive changes include the adoption of a new local rule which conforms to the policy requirements of the E-Government Act of 2002 regarding how confidential and sensitive information is to be filed; adoption of new rules dealing with pretrial conferences, exhibits and costs. Two existing criminal rules involving pretrial, presentence and probation records also underwent slight

modification regarding how confidential information is to be maintained by the U.S. Probation Office.

Space and Facilities

No major tenant-alteration projects took place during the year other than the formal approval of the Clerk's Office Computer Room Expansion Project slated for the Headquarters Office in Burlington. This project was fully funded from the court's operating budget and work commenced late in the calendar year. The project is scheduled for completion during early spring 2005 and will allow for additional expansion space for the district's DCN network, Lotus Notes, FAS_4T, JMS and CM/ECF servers.

The General Service Administration's Burlington-based, prospectus-level HVAC project was completed slightly ahead of schedule during November 2004. As such, the heating, cooling and ventilation systems for the Burlington Federal Building & Courthouse have now been totally replaced and modernized. A roof replacement project is scheduled for the Burlington Federal Building & Courthouse during calendar year 2005.

Naturalization Proceedings

The district court conducted fourteen separate naturalization hearings during calendar year 2004. A total of 437 naturalization candidates became citizens. The months of June and November each had one additional naturalization hearing scheduled in order to assist the Immigration and Naturalization Service with processing a long-standing citizenship backlog.

PROBATION & PRETRIAL SERVICES

The Vermont Probation Office is a combined court unit fulfilling both the Probation and Pretrial Services functions, with three units providing service to the Court; Pretrial Services, Presentence Investigations and Post-Conviction Supervision. We began the fiscal year with 21.6 employees. We were authorized 23.6 units and funded at 23.1, a small increase over last year. Reductions in the Judiciary's budget necessitated our performing a record high workload with limited staff. One employee transferred to the District Court Clerk's Office and a second accepted a buy-out effective December 31, 2004. Thus we finished the fiscal year with 20.6 employees and the prospect of less next year.

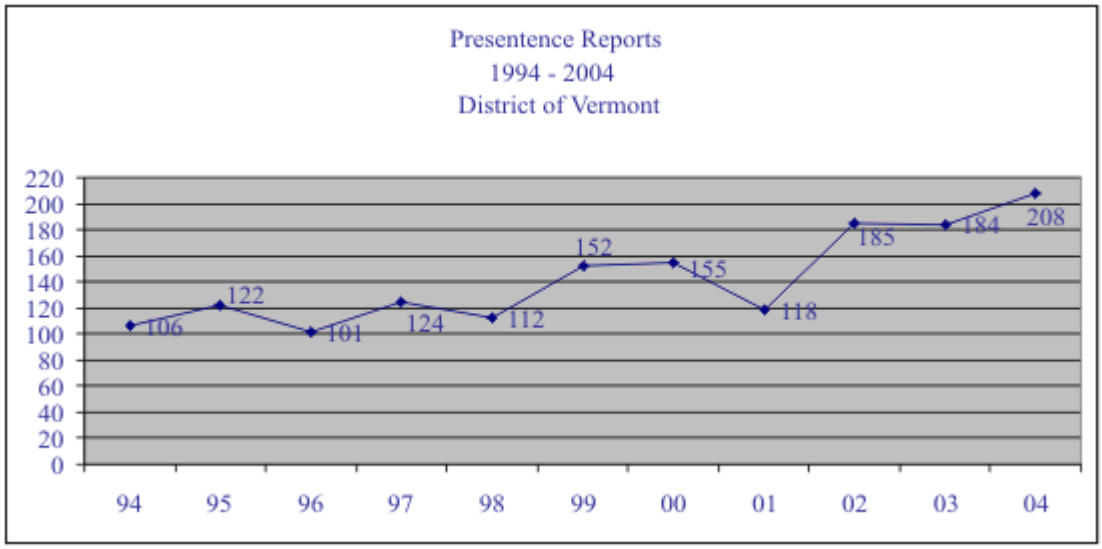
The Burlington Office includes the administrative staff, Canadian Liaison, Pretrial Services Unit, Presentence Unit and Post-Conviction Supervision Unit as well

as support staff. The Burlington location also houses the drug testing laboratory. The Brattleboro, Vermont Office is staffed by two probation officers. There is also an un-staffed office in Rutland, used by officers to meet with offenders and to attend Court hearings in Rutland. We have maximized the use of space in all facilities and have no room for expansion in Burlington and Brattleboro. We await GSA's action on renovations to our Burlington Office to make it more functional.

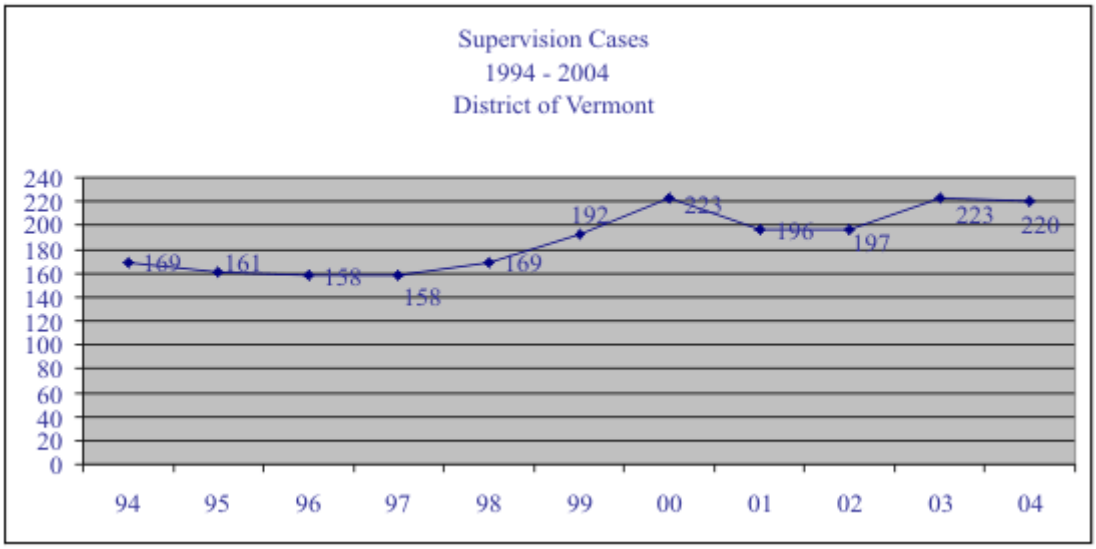
The Probation Office has a Training Committee, which includes a training coordinator and other professional, support and administrative staff. This Committee arranges and provides training to the general staff. The Probation & Pretrial Services Office also has a Tuition Assistance Program which affords training opportunities for staff on a selective individual basis from outside sources. Internal resources include a video library, packaged training programs offered by the Federal Judicial Center, local consultants and other resource materials as well as training through the FJTN. Staff participated in numerous training programs this year including Officer Safety, Sexual Harassment, and a National Guidelines Seminar.

We have continued our association with small districts from New England in a regional Critical Incident Stress Management Team. The Administrative Manager served as a mentor in the continuing implementation of FAS4T. The Chief serves as the Northeast Region's representative to the Chief's Advisory Group as well as a member of the STATS Working Group.

Despite reducing staff and limited funding, the District of Vermont's Presentence Investigation workload increased 13% this year. We completed a record high number of presentence investigation reports this year.



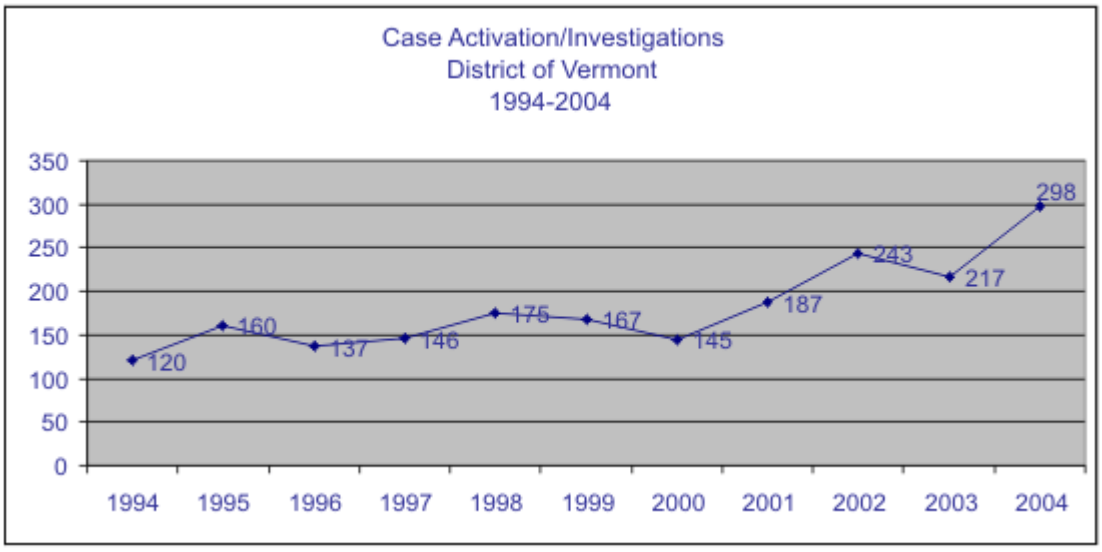
Our Post-Conviction Supervision cases remained steady at 220.



During FY 2004, we continued to have substance abuse and mental health contracts in all fourteen counties of Vermont. The contracts are monitored by the District's DATS officer with the assistance of one of the probation officers assigned to the pretrial services function. We had a decrease in collateral investigations conducted locally and had no change in the number of violations brought to the Court.

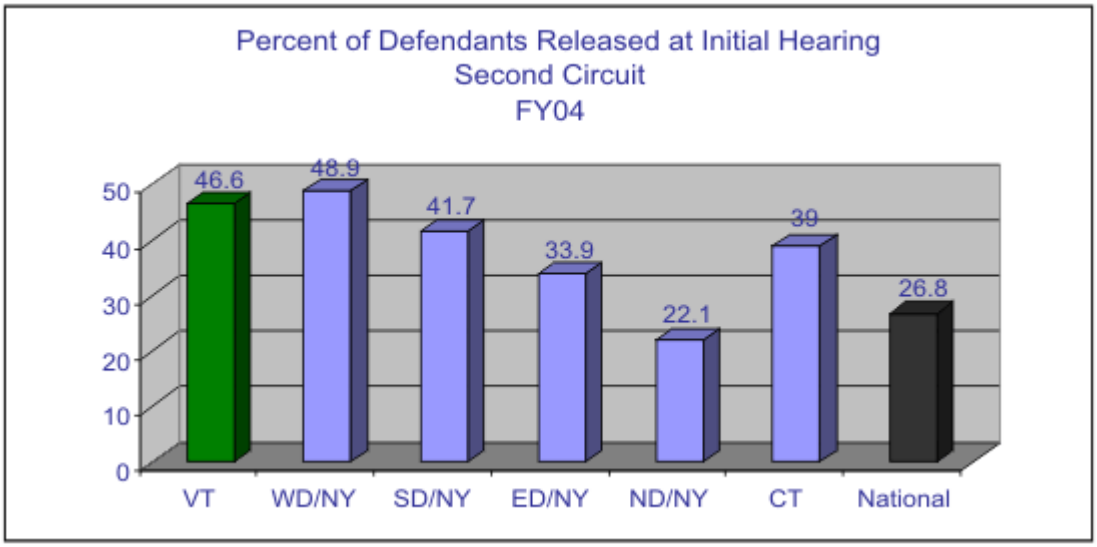
We continued to use electronic monitoring as a sanction and in lieu of half-way house placements. As Vermont has no half-way house facilities, Bureau of Prisons inmates are re-integrated into the community through the electronic monitoring program.

During FY 2004, we experienced a 37.3% increase in Pretrial Services cases activated, with a total of 298 cases for the year. As with the presentence investigations, this is an all time high for the District of Vermont and somewhat remarkable given the funding and resource limitations.



At the end of FY 2004, we had 115 defendants under supervision, a 22% increase over last year. Within the Second Circuit, Vermont remains one of the highest in releasing defendants at initial hearing and one of the lowest, 32.3%, of defendants detained and never released. The majority of offenses charged in the District of Vermont were drug related offenses, totaling 58.3%, up from 53.2% last year. 7.4% of offenses were fraud while 13.4% were weapon/firearm related. Our post-conviction supervision caseload results from 58.6% of drug law violators and 16.8% firearms violators.

We continue to provide liaison services between the Federal Probation System and Canadian Law Enforcement. During the fiscal year, we provided 122 investigative reports to other districts relating to Canadian offenders. In addition, the Canadian Liaison officer has participated in a number of conferences related to anti-terrorist and border issues, both as a participant and presenter.



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United States Bankruptcy Court
District of Vermont

CM/ECF

We trained an additional 36 attorneys and approximately 10 non-attorneys in 2004; most of them at the court's training room. As of December 31, 2004, we had trained a cumulative total of 222 attorneys and approximately 100 non-attorneys. Additionally, we registered 40 additional attorneys in 2004, bringing our cumulative total to 224. We also began registering Limited Participant CM/ECF users, thus enabling non-attorneys to file electronically proofs of claim, notices of transfers of claims, notices of appearance and requests for notice, and claim withdrawals. As of December 31, 2004, we had registered 152 individual limited participant users.

Attorneys filed documents online on behalf of their clients 10,517 times in 2004, with trustees adding an additional 2,170 filings, and our newest category of filers, Limited Participants, kicking in an additional 91 transfers of claims and 821 claims. For the

year, this accounts for approximately 75% of all filings and 21% of all claims, up from 49% and 0% in 2003, respectively. Attorneys opened 1,120 bankruptcy cases and 52 adversary proceedings electronically, which constituted approximately 66% (up 15% from 2003) and 62% (up 40% from 2003) of those categories, respectively. By December 31, 2004, over 86% (up 22% from 2003) of all attorney transactions were being completed online.

Community Outreach

Court staff continued to offer our interactive educational mini-course entitled **$tart $mart**, which we developed in 2003. We offered the course five times in 2004, at both high schools and colleges. The course continues to be well-received by participants.

Court staff also worked with local attorneys and the Vermont Bar Association to develop **Vermont Bankruptcy Information Clinics**. Court staff provided the content and coordination, and volunteer attorneys presented four free clinics (two in Rutland and two in Williston) for persons having financial difficulties and who may be considering filing for bankruptcy without the aid of an attorney, for persons who have already filed for bankruptcy and for anyone else who wanted to learn more about the bankruptcy process.

Inter-Court Cooperation

To expedite the determination of a hotly contested motion to dismiss in a Chapter 11 case in which the parties anticipated over two weeks worth of testimony, the bankruptcy court in Connecticut asked Judge Brown if she would preside over the trial on this motion. Judge Brown agreed and, upon agreement of the parties, venue of the motion was transferred to Vermont. Throughout February 2004, the court heard eight days of testimony and admitted over 80 exhibits, and thereafter issued a memorandum of decision granting the creditor's motion to dismiss. The debtor has appealed the decision and the parties are currently at the briefing stage before the U.S. District Court for the District of Vermont.

Space and Facilities

In October 2004, Judge Brown's chambers moved from the U.S. Post Office and Courthouse back to the Opera House.

Also in 2004 . . .

- We sponsored our second annual CM/ECF Users' Forum, where attorneys and court staff had an open dialog about the status of, pros and cons of, and desired modifications to CM/ECF.
- The court created a Teleworking Policy. Currently, more than 50% of our staff – and all but one of our eligible Clerk's Office employees who have DSL access – use the VPN to telework on a regular, recurring basis. The Clerk of Court and Judge Brown both participated in a live FJTN broadcast entitled *Implementing Telework in the Judiciary: Successful Strategic Techniques and Tools*.
- Judge Brown served as a judge in a Mock Advocacy Trial at the Vermont Law School.
- All staff completed 1.5 days of sexual harassment awareness training.
- All staff participated in a workshop on *Serving the CM/ECF Customer*.
- All staff participated in an advanced Myers-Briggs workshop, for the purpose of enhancing communications within the court.
- We began the process of updating our Local Rules.
- We began the process of switching over to electronic court reporting.
- We continued to hold the same number of regular monthly hearing calendars in Burlington as in Rutland.
- We handled a mega-case that was filed in April 2004.
- Judge Brown was appointed to the AO's Bankruptcy Judges' Advisory Group.
- Judge Brown continued to use the services of an outside attorney "liaison" to solicit the opinions and assessments of attorneys and other court users about the performance of the judge, customer service of the Clerk's Office, and overall quality of the court's service. The liaison then conveyed the information to Judge Brown in an anonymous and constructive fashion.
- Automation Manager Gary Gfeller's term on the CM/ECF Working Group and MR Subcommittee was extended for an additional year.
- Our Systems Technology Administrator, Kevin Plew, was called to active duty in the Vermont National Guard and began serving a tour of duty in Southwest Asia.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Chief Judge Richard J. Arcara

Summary of Highlights and Activities

Statistical Year 2004 was once again another year during which case filings, both civil and criminal, continued to increase in the Western District. The District Court, while at a full complement of district judges and magistrate judges, nevertheless struggled significantly to keep pace with the workload demands placed upon this extraordinarily busy court.

As has been the case for more than a decade, the workload continues to be substantial. The District Court ranks first in the Circuit and 15th in the nation with regard to terminations per judgeship. Although the latter statistic represents an 5 point shift over the preceding year's ranking, it nevertheless reflects a significant rate of case disposition by this Court. The Western District ranks first in the Circuit and 20th nationally in civil filings. The District ranks 13th nationally and first in the Circuit with respect to criminal filings. In terms of pending cases per judgeship, the WDNY ranks 6th nationally with 819 cases per judgeship. The Court ranks first in the Circuit with respect to the latter statistic. Overall, civil filings were up 2.6% over the preceding reporting period while criminal filings also increased by 16% for the same

period. These total filing statistics place the Western District 8th in the national rankings for this category.

No new judicial officer positions were created in the Western District during this reporting period. Although the Court has been working diligently towards reducing the significant caseload, more help is needed. The Judicial Conference of the United States has recognized this and has recommended, since 1992, that an additional judgeship be created for the Western District of New York. It is only recently that Congress began to create additional judgeships. Fortunately for the Western District, one additional permanent judgeship was included in the bill pending Congressional action in 2004. Weighted filings per judgeship, a statistical factor of great significance when justifying the need for new judgeships, places this Court first in the Circuit and 13th nationally. This district is well above the national average at 603 weighted filings per judgeship versus 588 nationally.

Plans proceed apace with one major construction project in the district. This project, originally designed as an annex to the Michael J. Dillon Courthouse in Buffalo, was subsequently determined to be impractical in light of the September 11th terrorist attacks and increased security regulations for new construction.

The General Services Administration (GSA), the Administrative Office of the U.S. Courts, and the District Court concluded that the project should be scrapped in favor of a separate, stand alone Courthouse. The project's ranking in the Judiciary's five-year plan for courthouse construction projects for Fiscal Year 2003 resulted in a Congressional appropriation for site acquisition and design. These funds became available shortly after October 1, 2002. The General Services Administration has reached agreements with three property owners for the purchase of their parcels of land on which the new courthouse will be constructed. GSA has initiated condemnation proceedings against the remaining four properties which should be finalized in 2005. Demolition of existing structures and site preparation efforts should be getting underway in September, 2005. Construction funding, originally scheduled for appropriation in Fiscal Year 2006, has been delayed until Fiscal Year 2007. The GSA expects to begin construction in January, 2007. Occupancy is planned for November, 2009.

The site selected for the new courthouse is on Niagara Square, the main civic center of downtown Buffalo. The new building will provide courtrooms and chambers for all of the district and magistrate judges in the Buffalo Division, a new grand jury facility, work spaces for the United States Attorney's Office and the Federal Public Defender, and offices for the United States Marshals Service, the District Court Clerk and U.S. Probation and Pretrial Services. The existing federal courthouse, which is a historical building, will be preserved in the new housing plan and will become the

home of the U.S. Bankruptcy Court and other federal agencies. The Dillon Courthouse will continue to provide for the government's needs well into the future.

The Rochester project possesses a lesser ranking in the Judiciary's five-year courthouse construction program. Because of the Judiciary-imposed moratorium on new construction, funding for an annex to the Kenneth B. Keating Federal Building and U.S. Courthouse is not expected until Fiscal Year 2008 at the earliest. It is anticipated that the annex will house four district courtrooms and chambers plus related support office space for the Court and the U.S. Marshals Service. The annex will be connected to the existing facility by way of an atrium.

During Fiscal Year 2004, a number of judicial officers continued their service on national committees, advisory groups and organizations. U.S. Magistrate Judge Hugh B. Scott continued to serve on the District Court Advisory Council to the Administrative Office. Senior District Judge Michael A. Telesca continues his term on the Anti-Terrorist and Removal Court. U.S. Bankruptcy Judge Michael J. Kaplan continued to serve as a member of the Second Circuit's Library Committee. Bankruptcy Judge Carl L. Bucki was selected to serve as a member of the Board of Governors of the National Conference of Bankruptcy Judges. Chief Bankruptcy Judge John C. Ninfo, II continued to serve on the Second Circuit Judicial Council Committee on Bankruptcy. Chief Judge Ninfo continued his efforts to expand the Credit Abuse Resistance Education (CARE) program throughout the Second Circuit and nationally. CARE has received continued support from the Second Circuit. Additionally, Larry Friedman, Director of the Office of the United States Trustee, has highlighted CARE in the U.S. Trustee's national Financial Education Program. The Federal Judicial Center also highlighted CARE by filming a half-hour feature for the FJC's "Court to Court" program, scheduled to be shown in early 2005. Chief Judge Ninfo is pleased to report that CARE is now being presented to students or being developed in twenty-three states.

The District Court, selected as one of ten courts nationwide for early implementation of the new financial accounting system known as FAS_4T, continued to serve as a mentor court at the request of the Administrative Office. Most notably, during this reporting period, the District Court assisted the Administrative Office in the presentation and development of an implementation strategy for the Eleventh Circuit Court of Appeals whereby the team was tasked with formally documenting issues and specific areas needing to be addressed prior to implementation.

The District Court continued to gain experience with the new Case Management and Electronic Case Files system (CM/ECF). The district ranks ninth among CM/ECF courts nationwide in attorney utilization of electronic filing, with 66% of potential

achieved. 2014 attorneys have registered for e-filing through the CM/ECF system. The district's ability to keep up with its increased workload is due in large part to chambers' and operations staff utilization of the capabilities inherent in CM/ECF. The district's Chief Deputy Clerk, who is the CM/ECF Project Manager, was appointed to the CM/ECF Working Group and is actively involved in that group's discussions and decisions on enhancements to CM/ECF. The district sent three CM/ECF Implementation Team members to the Administrative Office's August 2004 CM/ECF Operational Practices Workshop.

Magistrate Judges

All magistrate judges in the Western District of New York continue to be utilized to the fullest extent possible under existing law. Consent cases before magistrate judges are encouraged and each magistrate judge has a substantial number of consent cases pending. Virtually all discovery matters, including Rule 16 Conferences, are referred to magistrate judges. In many cases, magistrate judges also supervise much of the pre-trial criminal work, including motions. Magistrate judges are also used extensively in settlement conferences.

Because there are 14 state correctional facilities and numerous local correctional facilities in the District, the Court has a significant number of prisoner filings. The Court has successfully experimented with a system for direct assignment of prisoner petitions in habeas corpus cases to magistrate judges in equal proportion to those assigned to district judges. There is a very high rate of consents in these cases which allows for more efficient use of the magistrate judges.

Magistrate judges are an integral and indispensable part of the Court. They also participate with the district judges in all aspects of court management in the district.

Statistics

District Court

Civil filings for the year ending 9/30/2004 were 1741, which is a 2.6% increase over the prior year's civil filings. Total criminal case filings for the year ending 9/30/2004 were 497, a 16% increase over the prior year. The district is first in the Circuit and 8th nationally in percentage change in total filings (civil plus criminal).

In August 2004, a new District Court Case Weighting formula was implemented, which changed this district's ranking from 19th to 13th in the nation in weighted filings per judgeship for 2004 filings. This change directly influenced the Judicial

Conference's recent decision to change their long-standing recommendation for an additional temporary judgeship for Buffalo to an additional permanent judgeship.

As of September 30, 2004, the district is first in the Circuit and 6th in the nation in the number of pending cases per judgeship. Despite this caseload, the district is still first in the Circuit and 15th in the country in the number of terminations per judgeship.

Prisoner case filings accounted for 28.3% of the total civil case filings for the reporting period. Prisoner cases account for 34.5% of the district's pending civil caseload.

United States Bankruptcy Court
Western District of New York

Paul R. Warren, Clerk of Court, reports that during statistical year 2004 a total of 15,248 bankruptcy cases were filed in the Western District of New York, which represents a district-wide increase of 4.59%. The increase in bankruptcy filings in the Western District continued to exceed the national average, which declined by 2.6%. Chapter 7 cases continue to comprise the majority of cases in the district, representing approximately 75% of the total cases filed. A total of 610 Adversary Proceedings were filed during the reporting period, representing an increase of 15.75% from the previous statistical

According to Bankruptcy Program Indicators for the 2004 statistical year, the Court ranked nationally in the median range with respect to the number of case filings, in the average range for disposition time and in the 75th percentile range for pending cases. The Court's active case management of Adversary Proceedings has resulted in it being ranked first in the Circuit with respect to the average age of pending dischargeability cases and second in the Circuit with respect to the average age of other Adversary Proceedings. The Court continued to rank highly in the Circuit in these categories despite the continued increase in caseload and a continued decline in staffing levels.

Probation and Pretrial Services

Joseph A. Giacobbe, Chief Probation Officer, reports that during statistical year 2004, the U.S. Probation and Pretrial Services office continued in the development of its biennial strategic plan which focuses on striving for continuous improvement in every aspect of the functions involved in core areas such as pretrial services, presentence investigation and post sentence supervision. Staff members representing every job type are assigned to work toward the goals that support the outcome areas.

During this reporting period, staff participated in national initiatives. Mr. Giacobbe appeared on an FJTN program designed for chief probation officers addressing officer fitness for duty issues. A senior officer who sits on the Sentencing Commission Advisory Board participated as a panel member on sentencing issues at the National Sentencing Institute.

At the close of statistical year 2004, 861 cases were activated on pretrial release, representing a bail release rate of 67%. The percentage of pretrial defendants who successfully completed supervision was 85%. The majority of violations while on pretrial release were technical violations as opposed to re-arrests. The total number of pretrial service defendants received for supervision during this reporting period was 589, which includes pretrial diversion defendants. Of this number, 407 defendants were referred for substance abuse treatment. A total of 81 pretrial services defendants were referred for mental health treatment.

A total of 103 defendants were released on electronic monitoring surveillance at the pretrial services stage. Defendants paid $11,872 toward co-payment orders. The successful EMS completion rate is 85%. Use of pretrial EMS resulted in a potential savings to the government of $90,993.

The presentence investigation unit completed 703 investigations. District-wide, 70% of sentenced defendants were remanded, 30% were placed on probation, 23% were ordered to pay a fine and 18% were directed to make restitution.

During the reporting period, 1,329 post-sentence offenders were under supervision. Of this number, 1,223 offenders, or 95%, completed their term of supervision successfully. A total of 547 offenders received drug treatment, while 156 offenders received mental health treatment. A total of 335 offenders were placed under electronic monitoring conditions which produced a successful completion rate of 95%. Offenders paid $11,829 towards co-payment orders. The use of post sentence EMS in the district resulted in an approximate savings to the government of $71,961. A total of 4,500 hours of community service were completed by offenders. Restitution collections totaled $1,099,836. Fine collections totaled $112,868 during the same time period.

Automation

District Court

Integrated technology support for the Court continues to evolve as the emphasis on automated systems becomes more pronounced. Additionally, the increased budget

pressures require the court to do more with less resources being made available. The IT staff are striving to meet these challenges.

During the past several years, the Court has embarked on an effort to reduce telecommunications costs across the district. In 2004, the District Court and Bankruptcy Court in the Rochester divisional office consolidated telephone systems and dropped GSA provided dial tone services in favor of a less costly local area provider. The savings achieved from eliminating GSA as the local telephone provider in both Buffalo (eliminated in 2003) and Rochester is conservatively estimated to $3,700 per month. In addition to these savings, the District Court and Bankruptcy Court IT staff jointly maintain and support the telephone systems which eliminates the need to incur thousands of dollars annually in third party maintenance costs. The Court has also begun to explore the use of Voice Over Internet Protocol (VOIP) technology within each divisional office in an effort to reduce cabling costs and maintenance while at the same time improving telecommunication flexibility.

The Court has also embraced the Telephone Interpreting Program (TIP) to reduce overall interpreter costs. Wireless headsets have been installed in the magistrate judge courtrooms providing access to the TIP provider sites.

Long term courtroom technology projects in Judge Larimer's and Judge Skretny's courtrooms have been completed and the systems are now fully functional and greatly utilized.

The Second Circuit's Committee on Automation has approved the district's remote access plan for access to the Virtual Private Network (VPN). The IT staff have begun to deploy the necessary software to enable all judges and senior administrators to connect to the Judiciary's Data Communications Network (DCN) from remote locations. Given the pressure from Congress to reduce costs through telecommuting, the VPN shows great promise for achieving further reductions in operational costs. Expansion of the VPN to users other than judicial officers and senior managers will improve support efforts and give greater flexibility to the rest of the court staff.

CM/ECF has been operational for one full year. Although the IT department continues to be faced with compatibility issues with browsers and printing, on the whole, the project seems to be a great success. While the ability to obtain a variety statistical reports disappeared when the conversion from ICMS to CM/ECF was made, the IT staff have been working diligently to replace the quality control and statistical reporting capability through the use of Crystal Reports and PERL software packages.

Throughout the development of the 50% construction documents for the new Buffalo courthouse, the IT staff have played an integral role in planning for the

technology needs of the new facility. The staff have been working directly with the architects, the AO's technology professionals, and their contractors to insure that all available technology enhancements are considered and provided for in the designs. These efforts will continue throughout 2005 as the architects develop the drawings to the 100% construction ready state.

Bankruptcy Court

The Bankruptcy Court continued to focus its IT efforts and resources on CM/ECF. Mandatory electronic filing for attorneys became effective October 1, 2004. During Statistical Year 2004, CM/ECF attorney-filer training was provided by the court to 483 attorneys, as compared to 130 attorneys trained during the previous year. In addition, the Court issued e-filing registration accounts to 661 attorneys, as compared to 90 attorneys issued registration accounts during the previous year. In addition, during 2004, the Court adopted a standing order to permit related e-filings by institutional creditors. As a result, 261 creditor/limited participant filers were registered and began to file claims and claim related documents electronically.. The Court installed computers and scanners in the public intake areas to assist registered users in complying with the court's electronic filing requirement. Electronic filing appears to be successful, as is evidenced by the more than 350,000 documents, consisting of over 1,300,000 pages, electronically filed during the reporting period. The Court implemented two release cycles of CM/ECF and is currently using version 2.6. The Bankruptcy Court, in partnership with the District of Delaware Bankruptcy Court, is proud to have developed a significant enhancement to the CM/ECF program which the courts named "Reduced Paper Module" (RPM). RPM was developed to eliminate redundant paper notices in response to negative feedback voiced by practicing attorneys in many districts nationwide since the release of CM/ECF. By eliminating the redundant and often unwanted paper notices, RPM has the added potential to generate significant postage and noticing cost savings for the Judiciary. Bankruptcy courts have been encouraged by the Bankruptcy Noticing Working Group to implement RPM.

Financial Operations

District Court

The financial department experienced many challenges and achieved numerous accomplishments in the past year. The greatest challenges involved personnel-related issues. The continuing vacancies of one part-time CJA Clerk and one part-time Financial Assistant were intensified by two extended absences (4 months and 6 months respectively) and one termination resulting in the transfer of one full-time

position from the operations staff. This reduced staffing was extremely demanding and many extra hours were devoted to maintaining relatively current workloads.

Despite this, workload measures indicate the volume of financial transactions continued to peak during fiscal year 2004. Fees forwarded to the United States Treasury, including payments to the Crime Victims Fund, totaled over $6.3 million representing a 112% increase over the prior year, with the actual number of receipts issued (10,654) increasing by 2%. This growth appears to be the result of increased payments received from the Bureau of Prisons each month, which arose by 13%, as well as an increase in joint and several restitution payments which increased by 11%. Additionally, registry deposits grew by 256% with $4.5 million now being collateralized through the Federal Reserve.

Nothing on the horizon signals a slow down of the surging trends in criminal monetary debt statistics experienced in the past few years, which remains a key initiative within the department. The volume of criminal debt activity overseen by the financial staff significantly increased again this year particularly due to joint and several restitution cases. The current caseload involves the monitoring, tracking and collections on debt totaling almost $30 million for these types of cases alone which represents an 11% increase in active cases over last year. Furthermore, continuing efforts with the U.S. Attorney and Probation Offices to resolve issues immediately after sentencing have resulted in the ability to increase total restitution disbursements by 83%. Overall, the financial department is responsible for monitoring, tracking and paying over 12,600 victims on a regular basis.

During the year, the Court's financial staff processed over 6,100 payment vouchers and issued 11,329 checks representing a decrease of 13% primarily due to limited spending within the Judiciary's current budget environment. Combined Registry and Treasury disbursements, however, exceeded $10 million which is actually an increase of 57%. This increase results directly from the receipt and transfer of $3.5 million to our local depositary, Greater Buffalo Savings Bank, for interpleader funds in two pending civil matters.

The Court's Criminal Justice Act program maintained its commitment to the timely processing of CJA payment vouchers. A total of 414 vouchers were certified for payment during the year, with over $1.3 million being paid to attorneys, experts and related service providers on behalf of indigent defendants. This activity represented increases of 7% and 1% respectively primarily due to the authorization of interim payments to multiple panel attorneys assigned in the death penalty case, USA vs. Diaz, et al.

Last year also brought many FAS_4T-related activities (Financial Accounting System for Tomorrow). This district assisted the Administrative Office in the presentation and development of an implementation strategy for the 11th Circuit Court of Appeals whereby the team was tasked with formally documenting issues and specific areas needing to be addressed prior to implementation. During March, staff successfully completed the conversion to FAS_4T Release 3.7.3.2, as well as two subsequent versions 2.2 and 2.3 a few months later. At the request of the Administrative Office, staff also completed the testing of a new accounting field for FJC travel, and provided recommendations for modifications prior to national release in June. That same month, the setup, testing, and implementation of a new document type for Bankruptcy Court's case-related payments was completed.

Technological advancements were also realized in the area of Treasury deposits. Early in the year, financial staff successfully implemented one of the Department of Treasury's newest cash management tools, CA$H-LINK II, which provides detailed information related to transactions processed by financial institutions for deposits. This has allowed staff to investigate deposit differences between the Court and Treasury's accounting records. A procedure manual was subsequently developed for accessing the system, researching the database, and generating the necessary reports now used on a daily basis.

Additionally, staff was asked to formally review and offer suggestions to the Administrative Office on two exposure drafts for revisions to the ***Guide to Judiciary Policies and Procedures***. The first draft pertained to the Criminal Justice Act reflected in Volume I, Chapter VII, and the other draft applied to financial management issues, specifically on the subject matters regarding receipting, disbursing, and reporting, also under Chapter VII.

The financial staff also received numerous hours of training that addressed the newest release of CA$H-LINK II; FAS_4T migration training; human resources planning in austere budget times; and implementing telework in the Judiciary through successful strategic techniques and tools, offered through the FJTN. Additionally, the Financial Operations Supervisor was invited to attend the Department of Justice Criminal Collection Issues Regional Training program offered to the 1st, 2nd, and 3rd Circuits. Many fresh ideas were gained that have already proven useful to this district.

It goes without saying that throughout the busyness experienced this year, the financial staff was never willing, under any circumstance, to compromise the quality of services and support provided to the judges, the bar, and the public.

Bankruptcy Court

The Bankruptcy Court continued to adopt initiatives intended to cultivate a productive stewardship environment, with regular financial, budget and procurement briefings between the court and senior administrative staff. The Court's inventory control system was the subject of a Court to Court program taped by the FJC in October, 2004 (to be aired in 2005). Several courts have reported very positive property management audit experiences when using the Court's inventory control system. It is noted that the software used for this program is free-ware, an important consideration in the present fiscal climate. Four clerk's office staff members participated in the first phase of the Contracting Officer Certification Program, by attending a week-long program sponsored by the Second Circuit. The Court's goal is to obtain contracting officer certification by the January, 2006 deadline established by the AO. During the reporting period, there was a significant increase in the use of credit cards by attorneys for payment of filing fees, as those attorneys took advantage of the ability to e-file documents. Approximately 40% of all fees collected were paid by attorneys using credit cards, nearly double the amount collected in the previous year. The decline in payments by check and cash to pay filing fees has allowed the Court to discontinue the use of an armored car service for transportation of negotiable instruments.

JUDICIAL ADMINISTRATION

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

Top row, left to right:
Circuit Judge Chester J. Straub
Chief Judge Robert N. Chatigny, District of Connecticut
Circuit Judge Guido Calabresi
Circuit Judge Dennis Jacobs
Circuit Judge Rosemary S. Pooler
Chief Judge William Sessions III, District of Vermont
Circuit Judge Robert D. Sack

Bottom row, left to right:
Chief Judge Michael B. Mukasey, Southern District of New York
Circuit Judge José A. Cabranes
Chief Circuit Judge John M. Walker, Jr.
Chief Judge Edward R. Korman, Eastern District of New York
Chief Judge Richard J. Arcara, Western District of New York

Absent:
Chief Judge Frederick J. Scullin, Jr., Northern District of New York

SECOND CIRCUIT JUDGES SERVING ON U.S. JUDICIAL CONFERENCE COMMITTEES AND SPECIAL COURTS MARCH 2005

John M. Walker, Jr.	Court of Appeals	The Executive Committee
Jed S. Rakoff	S.D.N.Y.	Committee on the Administration of the Bankruptcy Sy
Victor Marrero	S.D.N.Y.	Committee on the Budget
Denis R. Hurley	E.D.N.Y.	Committee on Codes of Conduct
Sonia Sotomayor	Court of Appeals	Committee on Court Administration & Case Managem
Norman A. Mordue	N.D.N.Y.	Committee on Criminal Law
John Gleeson	E.D.N.Y.	Committee on Defender Services
Janet C. Hall	Connecticut	Committee on Federal-State Jurisdiction
Robert D. Sack	Court of Appeals	Committee on Financial Disclosure
Rosemary S. Pooler	Court of Appeals	Committee on Information Technology
Janet Bond Arterton	Connecticut	Committee on International Judicial Relations
Robert A. Katzmann	Court of Appeals	Committee on the Judicial Branch
William K. Sessions, III	Vermont	Committee on the Judicial Branch
Nicholas G. Garaufis	E.D.N.Y.	Committee on Judicial Resources
Nina Gershon	E.D.N.Y.	Committee on the Administration of the Magistrate Jud
Ralph K. Winter, Chair	Court of Appeals	Committee to Review Circuit Council Conduct & Disa
J. Garvan Murtha	Vermont	Committee on Rules of Practice & Procedure

Mark R. Kravitz	Connecticut	Committee on Rules of Practice & Procedure
Laura Taylor Swain	S.D.N.Y.	Advisory Committee on Bankruptcy Rules
José Cabranes	Court of Appeals	Advisory Committee on Civil Rules
Shira A. Scheindlin	S.D.N.Y	Advisory Committee on Civil Rules
David G. Trager	E.D.N.Y.	Advisory Committee on Criminal Rules
David G. Trager	*Ex-Officio* E.D.N.Y.	Advisory Committee on Evidence Rules
Richard C. Wesley	Court of Appeals	Committee on Security & Facilities

COMMITTEES OF THE SECOND JUDICIAL CIRCUIT OF THE UNITED STATES

Sidney H. Stein	S.D.N.Y.	Bankruptcy Committee
Rosemary S. Pooler, Chair	Court of Appeals	Information Systems & Technology Committee
José A. Cabranes, Chair	Court of Appeals	Library Committee
Richard C. Wesley, Chair	Court of Appeals	Space & Facilities Committee
Carol Amon, Chair	E.D.N.Y.	Committee on Judges' Obligation under 28 U.S.C. § 455
Robert D. Sack, Chair	Court of Appeals	History & Commemorative Events Committee
John M. Walker, Jr., Chair	Court of Appeals	Public Affairs Committee
Alfred V. Covello, Chair	District of Connecticut	Committee on Local Holding Procedure for Filing Motions
Robert N. Chatigny, Chair	District of Connecticut	Connecticut Federal/State Judicial Council
William K. Sessions, III, Chair	District of Vermont	Vermont Federal/State Judicial Council
George B. Daniels, Chair	S.D.N.Y.	New York Federal/State Judicial Council

SECOND CIRCUIT JUDICIAL CONFERENCE AND JUDICIAL COUNCIL

The Judicial Conference of the Second Judicial Circuit is held pursuant to 28 U.S.C. § 333. It is composed of the Judges of the Circuit and representatives of the

Administrative Office of the United States Courts, The Federal Judicial Center, the bar associations and the law schools in the Circuit, and other invited representatives of the Bench and Bar. The 2004 judges-only Circuit-wide Judicial Conference was cancelled in an effort to reduce burdens on the judiciary's national budget.

On September 29, 2004 Chief Judge Walker, Second Circuit Judge Dennis Jacobs, and New Hampshire Superior Court Judge Patricia C. Coffey, Circuit Trustee of the American Inns of Courts Foundation, presented the third annual Second Circuit American Inns of Court Professionalism Award to Mr. Thomas J. Concannon. Circuit Judge Dennis Jacobs, who chaired the selection committee, introduced Mr. Concannon and explained to the audience the basis for his selection by the Committee.

Principal items of discussion at the Judicial Council meetings during the year included judicial misconduct complaints, the states of the dockets of the courts of the Circuit, and Circuit-wide space, security and automation issues. The Council was especially concerned about the Judiciary's fiscal situation. In 2004, the judiciary laid off about 1,300 employees out of a nationwide workforce of 22,000. The largest expenditures, nationally, are employee salaries and the cost of courthouse space rentals. The Council determined that it was necessary to proceed with a new leasehold in Middletown, New York. The space will be occupied by a part-time Magistrate Judge, the Probation office for the Southern District of New York and the United States Marshal Service. Construction on the Buffalo courthouse was delayed to seek construction monies in FY2007. The District of Connecticut received Council permission to continue to hold space in the Waterbury, CT facility until such time as it was determined whether Senior Judge Dominic Squatrito's replacement would be located in Waterbury or Hartford.

The Council approved the closure of three video conferencing sites in the Second Circuit. The sites are: Central Islip, New York; New Haven, Connecticut; and Brattleboro, Vermont.

The Council approved the request to create an independent Vermont Federal Public Defender Office. The Federal Public Defender (FPD) for the Northern District of New York oversees the District of Vermont as part of a combined office. Chief Judge William Session provided the Council with a statistical analysis of the work in the Vermont office which support the request for an independent facility. The caseload is sufficient to justify the split and Chief Judge Scullin concurred.

PROTECTING THE QUALITY OF THE JUDICIAL PROCESS

Attorney Discipline

Attorney discipline in the Second Circuit is carried out pursuant to local rules adopted by the individual courts.

At the appellate level, the Second Circuit Committee on Admissions and Grievances was formed to assist the Court of Appeals in administering Local Rule 46(f)-(h). Pursuant to Local Rule 46(f), in 2004, the Court took reciprocal action to enforce disciplinary orders entered in other jurisdictions against two members of the Court of Appeals' bar. The Court disbarred two attorneys.

In the District of Connecticut, Local Rule 3 provides for a grievance committee with nine members, who serve for three-year terms. Two attorneys appointed by the Court serve as counsel to the committee. The Court opened 17 grievance cases; 17 grievance cases were closed. Of the 17 closed cases, eight were dismissed; suspension orders entered in seven cases; one resulted in a resignation and one resulted in disbarment. At year-end, 19 grievances were pending.

Attorney discipline in the Southern and Eastern Districts of New York is governed by a local rule common to the two districts. Effective in April, 1997, the operative provision is Local Civil Rule (1.5). Pursuant to subsection (a) of the rule, the Southern District of New York has established a committee on grievances composed of six district judges and one magistrate judge, which is chaired by Judge Jed S. Rakoff. In addition, a panel of attorneys is available to advise and assist the committee on grievances by investigating complaints and serving on hearing panels. In 2004, there were 77 disbarments, 35 suspensions, four interim suspensions, eight public censures and nine reinstatements in the Southern District. The Court had 7 cases pending at the end of the calendar year. There were 35 Statements of Discipline issued to attorneys.

In the Eastern District of New York, 87 disciplinary orders were issued in 2004: 57 disbarments, 28 suspensions, and two censures. Chief Judge Edward R. Korman is responsible for oversight of attorney disciplinary matters and is assisted by a committee of three judges.

There were no disbarments or suspensions in the Western District of New York. The District had five attorney resignations.

During 2004, the District of Vermont had a total of six attorney suspensions and two separate public reprimands. No disbarments occurred during the year. All attorney discipline actions which occurred within the district involved reciprocal proceedings taken in conjunction with the State of Vermont's Professional Conduct Board and no disciplinary proceedings originated solely within the District of Vermont's federal Bar.

In calendar year 2004 the Northern District had the following attorney discipline cases: five attorneys were disbarred; thirteen attorneys were suspended; a stay of suspension was issued for four attorneys; two attorneys were censured; two attorneys were sanctioned; six attorneys were reinstated; and three attorneys resigned.

Judicial Misconduct

The Judicial Council's Reform and Judicial Conduct and Disability Act of 1981, 28 U.S.C. §372C), creates a mechanism for addressing complaints of judicial misconduct or disability. The statute's objective is to correct conditions that interfere with the proper administration of justice. To facilitate that end, the Act sets out procedures for reviewing allegations that a federal judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts "or" is unable to discharge all the duties of office by reason of physical or mental disability."

Under the Act, the Judicial Council of the Circuit has primary responsibility for resolving complaints. The Second Circuit's Judicial Council has adopted Rules Governing Complaints Against Judicial Officers that closely follow a national set of "illustrative" rules. The Local Rules, together with the forms to be used in filing complaints, are available from the Court of Appeals Clerk's Office.

Complaints are filed with the Clerk of the Court of Appeals and are reviewed by the Chief Judge of the Circuit. The statute permits the Chief Judge, after a timely review, to dismiss complaints that are not covered by the statute, such as "frivolous" complaints and those "directly related" to the merits of a decision or ruling. The Circuit Executive's Office conducts initial staff review on behalf of the Chief Judge.

Complainants may petition for review of the Chief Judge's dismissal orders. Petitions for review are considered by a six-member panel of the Judicial Council. The full membership of the Council will consider a petition for review upon the vote of any member of the review panel.

If a complaint is certified by the Chief Judge for investigation, it is sent to a statutory Committee on Judicial Conduct. After the Committee reports, the Judicial Council conducts any additional investigation it considers necessary and then may take appropriate action. Options available to the Council include dismissing the complaint, certifying the judge's disability, asking the judge to retire, temporarily suspending new case assignments, and public or private censure or reprimand. 28 U.S.C. §372(c)(6)(B) &(C). The Judicial Council may also refer the entire matter to the Judicial Conference of the United States.

During 2004, 83 judicial misconduct complaints were filed in the Second Circuit.

OPERATIONAL SUPPORT

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
2004 FAIR EMPLOYMENT PRACTICES REPORT
October 1, 2003 - September 30, 2004

The Court of Appeals for the Second Circuit is made up of the offices of the Circuit Executive, the Clerk, Legal Affairs, the Circuit Library, and the Second Circuit Judges and their Chambers. The Equal Opportunity and Employment Resolution Plan for the United States Court of Appeals for the Second Circuit became effective January 1, 1999, replacing the Court's Affirmative Action Plan which was in effect since 1980. The Court's Equal Opportunity and Employment Resolution Plan is adapted from the Federal Judiciary Model Employee Dispute Resolution Plan. The Plan applies to all judicial and nonjudicial officers and employees of the Court, to applicants for employment with the Court, and to former employees with respect to events occurring during their employment. It specifically does not apply to externs, to law clerks of judicial officers or applicants for such positions, to private attorneys who represent indigent defendants under the Criminal Justice Act or applicants for such positions, or to any other individual who is not an officer or employee of the Court. The Court's Plan reflects its long-standing objective of providing a safe work environment and the widest possible employment and advancement opportunities, objectives shared by all courts in this Circuit. During this reporting period, no changes were made to the Second Circuit Court's Plan.

As of September 30, 2004 there were 24 judges on board and 257 personnel employed by the Court of Appeals in the offices of the Circuit Executive, the Clerk, Legal Affairs, the Circuit Library, and chambers' staff of the Court of Appeals judges. Of that number, 130 were male and 151 were female. The total number of African Americans represented was 52, Hispanics 26, and there were 14 Court personnel who were identified as Asian. The minority representation in the Court decreased by 2% to 33%. Two percent of Court personnel reported disabilities, one employee retired and no EDR complaints were filed during this reporting period.

Women occupied 54% of all positions in the Court and 43% of all professional positions. Among all the professional positions, African-Americans, Hispanics, and Asians comprised 12%.

The Second Circuit Court of Appeals continues to make concerted efforts to recruit qualified minority and women candidates for positions at all levels. Greater access to technology, specifically access to the Internet, has enhanced the Court's ability to reach out to a wider population. In order to keep current with advancements and technology, the Court continues to update its Intranet and Internet website.

In addition to posting position vacancies in nationwide and local publications, the Court's recruitment efforts are directed toward both local and national educational institutions. In recruiting for law clerk positions in the Office of Legal Affairs, the Court of Appeals participates in on-campus career days and interviewing at local law schools.

The Second Circuit's internship program continued to expand to local high schools, colleges, law schools and community programs. The Court of Appeals participates in these institutions' placement programs and, in doing so, provides interns with an understanding of the Court and its operations as well as an opportunity to develop marketable skills. In fact, many of the interns obtain educational credits through their internships with the Court. In 2004, the Court of Appeals and several district courts throughout the Second Circuit hosted "Take Our Children to Work Day" programs and, in conjunction with the New York Women's Bar Association, opened the program to high schools within each district. During the year, the Court of Appeals also provided opportunities for students in high schools and law schools to tour the Thurgood Marshall United States Courthouse and visit with members of the Court.

Table 39
FAIR EMPLOYMENT PRACTICES
2004

		GENDER		RACE					
SECOND CIRCUIT COURT	TOTAL	MALE	FEMALE	WHITE	AFRICAN AMERICAN	HISPANIC	ASIAN	NATIVE AMERICAN	PAC ISLA

OF APPEALS									
	281	130	151	189	52	26	14	0	
% of Total	100%	46%	54%	67%	19%	5%	0.0%	0.0%	0
DIST. CT. CONN.	273	81	192	218	36	14	4	0	
% of Total	100%	30%	70%	80%	13%	5%	1.5%	0%	.5
EASTERN DIST. NY	673	228	445	405	144	80	43	0	
% of Total	100%	34%	66%	60%	21%	12%	6.5%	0%	.5
NORTHERN DIST. NY	263	104	159	246	8	6	2	1	
% of Total	100%	40%	60%	93%	3%	2%	1.5%	.5%	0
SOUTHERN DIST. NY	805	376	429	473	173	105	53	0	
% of Total	100%	47%	53%	59%	21.5%	13%	6%	0%	.5
DIST. CT. VERMONT	69	30	39	68	0	0	1	0	
% of Total	100%	43%	57%	98.5%	0%	0%	1.5%	0%	0
WESTERN DIST. NY	251	97	154	199	20	18	11	3	
% of Total	100%	39%	61%	79%	8%	7%	4.5%	1.5%	0

SECOND CIRCUI TOTALS									
CIRCUIT WIDE	2615	1046	1569	1798	433	249	128	4	
% of Total	100%	40%	60%	69%	17%	9%	5%	0%	0
ALL DISTRICTS	2334	916	1418	1609	381	223	114	4	
% of Total	100%	39%	61%	69%	16%	9.5%	5.5%	0%	0
COURT OF APPEALS	281	130	151	189	52	26	14	0	
% of Total	100%	46%	54%	67%	19%	5%	0%	0%	0

JUDGES AND JUDGESHIPS *

Judgeship Summary

District	Auth. Judges	Active Judges	Vacancies	Senior Judges	Bank'cy Judges	Magistrate Judges
Connecticut	8	7	1	6	4***	5
EDNY	15	13	2	8	8***	14
NDNY	5	4	0	3	2	6**
SDNY	28	28	0	21	9***	15***
Vermont	2	2	0	0	1	1
WDNY	4	4	0	3	3	6***
Total Dist. Ct.	62	59	3	41	27	47
Total Court of Appeals	13	13	0	10	--	--
Total 2nd Circuit	75	72	3	51	27	47

***As of May 1, 2005**
****Includes part-time magistrate judges, and/or recalled magistrate judge**
*****Includes recalled retired bankruptcy judges**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT*
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

John M. Walker, Jr., Chief Judge

Dennis Jacobs
Guido Calabresi
José A. Cabranes
Chester J. Straub
Rosemary S. Pooler
Sonia Sotomayor
Robert A. Katzmann
Barrington D. Parker, Jr.
Reena Raggi
Richard C. Wesley

Robert D. Sack Peter W. Hall

Senior Judges

Wilfred Feinberg Richard J. Cardamone
James L. Oakes Ralph K. Winter
Thomas J. Meskill Roger J. Miner
Jon O. Newman Joseph M. McLaughlin
Amalya L. Kearse Pierre N. Leval

Karen Greve Milton, Circuit Executive
John Coffey, Deputy Circuit Executive
Janice D. Kish, Assistant Circuit Executive, Administration
Raouf Farag, Acting Assistant Circuit Executive, Automation & Technology
Scott Teman, Assistant Circuit Executive, Space & Facilities
Evelyn Ortiz, Director of Human Resources
Richard K. George, Administrative Services Manager
Elizabeth Cronin, Director of Legal Affairs
Roseann B. MacKechnie, Clerk of Court
Margaret J. Evans, Circuit Librarian

*** As of May 1, 2005**

UNITED STATES DISTRICT COURTS

District of Connecticut*
141 Church Street
New Haven, Connecticut 06510
(203) 773-2140

Robert N. Chatigny, Chief Judge

Alvin Thompson Christopher F. Droney
Janet Bond Arterton Stefan R. Underhill
Janet C. Hall Mark R. Kravitz

Senior Judges

Ellen Bree Burns Alan H. Nevas
Warren W. Eginton Alfred V. Covello
Peter C. Dorsey Dominic J. Squatrito

Bankruptcy Judges
Albert S. Dabrowski, Chief Judge

Robert L. Krechevsky**
Lorraine Murphy Weil
Alan H. W. Shiff

Magistrate Judges

Thomas P. Smith
Joan Glazer Margolis
Holly Fitzsimmons
Donna F. Martinez
William Garfinkel

Kevin F. Rowe, Clerk of District Court
Debra Hunt, Clerk of Bankruptcy Court
Maria Rodrigues McBride, Chief Probation Officer
Thomas G. Dennis, Federal Public Defender
Barbara Close, Branch Librarian, Hartford, CT
Carole Martin, Branch Librarian, New Haven, CT

***As of May 1, 2005**
****Recalled Retired Judge**

UNITED STATES DISTRICT COURTS
Eastern District of New York*
225 Cadman Plaza East
Brooklyn, New York 11201
Phone: (718) 260-2260
Fax: (718) 260-2622

Edward R. Korman, Chief Judge

Raymond J. Dearie
Carol B. Amon
David G. Trager
Joanna Seybert
Frederic Block
Allyne R. Ross
John Gleeson
Nina Gershon
Nicholas G. Garaufis
Sandra J. Feuerstein
Sandra L. Townes
Dora L. Irizarry

Senior Judges

Jack B. Weinstein
Thomas C. Platt
Sterling Johnson, Jr.
Charles P. Sifton
I. Leo Glasser
Leonard D. Wexler
Denis R. Hurley
Arthur D. Spatt

Bankruptcy Judges

Conrad B. Duberstein, Chief Judge**

Jerome Feller
Dorothy D.T. Eisenberg**
Melanie L. Cyganowski

Stan Bernstein
Carla E. Craig
Dennis E. Milton
Elizabeth S. Stong

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Michael L. Orenstein, Chief Magistrate Judge

Steven M. Gold
Marilyn D. Go
Arlene R. Lindsay
Roanne L. Mann
Joan M. Azrack
Viktor V. Pohorelsky

Robert M. Levy
E. Thomas Boyle
Cheryl L. Pollak
William D. Wall
Lois Bloom
James Orenstein
Kiyo A. Matsumoto

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Tony Garoppolo, Chief Probation Officer
Cynthia Lawyer, Chief Pretrial Services Officer
John Saiz, Branch Librarian, Brooklyn, NY
Astrid Stalis, Branch Librarian, Central Islip, NY

***As of May 1, 2005**
****Recalled Retired Judge**

UNITED STATES DISTRICT COURTS

Northern District of New York*
James T. Foley Courthouse
445 Broadway
Albany, NY 11207
Phone: (518) 257-1800
Fax: (518) 257-1801

Frederick J. Scullin, Jr., Chief Judge

Lawrence E. Kahn
David N. Hurd

Norman A. Mordue
Gary L. Sharpe

Senior Judges

Thomas J. McAvoy
Howard G. Munson
Neal P. McCurn

Bankruptcy Judges
Stephen D. Gerling, Chief Judge

Robert E. Littlefield

Magistrate Judges

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David E. Peebles
David R. Homer
Randolph F. Treece
George H. Lowe
Larry A. Kudrle***

Lawrence Baerman, Clerk of District Court
Richard G. Zeh, Sr., Clerk of Bankruptcy Court
Paul W. DeFelice, Chief Probation Officer
Alexander Bunin, Federal Public Defender

***As of May 1, 2005**
*****Part-Time**

UNITED STATES DISTRICT COURT

Southern District of New York*
United States Courthouse
500 Pearl Street
New York, New York 10007
Phone: (212) 805-0500
Fax: (212) 805-0383

Michael B. Mukasey, Chief Judge

Charles L. Brieant
Alvin K. Hellerstein
Kimba M. Wood
Richard M. Berman
Loretta A. Preska
Colleen McMahon
Deborah A. Batts
William H. Pauley, III
Lewis A. Kaplan
Naomi Reice Buchwald
Denise Cote
Victor Marrero
Denny Chin
George B. Daniels
Shira A. Scheindlin
Gerard E. Lynch
Sidney H. Stein
Laura Taylor Swain
Barbara S. Jones
P. Kevin Castel
Jed S. Rakoff
Richard J. Holwell
Richard Conway Casey
Stephen C. Robinson
Kenneth M. Karas

Paul A. Crotty

Senior Judges

Charles M. Metzner
Constance Baker Motley
Morris E. Lasker
Thomas P. Griesa
Robert L. Carter
Kevin Thomas Duffy
William C. Conner
Richard Owen
Gerard L. Goettel
Charles S. Haight, Jr.
Robert W. Sweet
Leonard B. Sand
John E. Sprizzo
Shirley Wohl Kram
John F. Keenan
Peter K. Leisure
Louis L. Stanton
Miriam Goldman Cedarbaum
Robert P. Patterson, Jr.
Lawrence M. McKenna
Harold Baer, Jr.

Bankruptcy Judges
Stuart M. Bernstein, Chief Judge

Burton R. Lifland**
Prudence Carter Beatty
Adlai Hardin, Jr.
Arthur J. Gonzalez
Cecelia G. Morris
Robert E. Gerber
Allan L. Gropper
Robert D. Drain

Magistrate Judges
Andrew Peck, Chief Magistrate Judge

Theodore W. Katz
Michael H. Dolinger
James C. Francis, IV
Mark D. Fox
Martin R. Goldberg***
Ronald L. Ellis
Lisa Margaret Smith
Douglas F. Eaton
Henry B. Pitman
George A. Yanthis
Kevin N. Fox
Frank Maas
Debra Freeman
Gabriel W. Gorenstein

Clifford P. Kirsch, District Executive
J. Michael McMahon, Clerk of District Court
Kathleen Farrell-Willoughby, Clerk of Bankruptcy Court
Chris Stanton, Chief Probation Officer
Dennis Spitzer, Chief Pretrial Services Officer
Kenneth Edmonds, Branch Librarian

***As of May 1, 2005**
****Retired Recall Judge**
*****Part-Time**

UNITED STATES DISTRICT COURTS
District of Vermont*
506 Federal Building and Courthouse
Burlington, Vermont 05402-0945

William Sessions, III, Chief Judge
U.S. District Judge

J. Garvan Murtha

Bankruptcy Judge

Colleen A. Brown

Magistrate Judge

Jerome J. Niedermeier

Richard P. Wasko, Clerk of District Court
Thomas J. Hart, Clerk of Bankruptcy Court
Philip K. Albertson, Chief Probation Officer
Vacant, Federal Public Defender

***As of May 1, 2005**

UNITED STATES DISTRICT COURTS
Western District of New York*
U.S. Courthouse
68 Court Street
Buffalo, New York 14202
(716) 551-4211

Richard J. Arcara, Chief Judge

William M. Skretny
David G. Larimer
Charles J. Siragusa

Senior Judges

John T. Curtin
Michael A. Telesca
John T. Elfvin

Bankruptcy Judges
John C. Ninfo, II, Chief Judge

Michael J. Kaplan
Carl L. Bucki

Magistrate Judges

Leslie G. Foschio
Hugh B. Scott
Jonathan W. Feldman
H. Kenneth Schroeder, Jr.
Marian W. Payson
Victor E. Bianchini**

Rodney C. Early, Clerk of District Court
Paul R. Warren, III, Clerk of Bankruptcy Court
Joseph A. Giacobbe, Chief Probation Officer
Joseph B. Mistrett, Federal Public Defender
Diane Zientek, Branch Librarian, Buffalo, NY

***As of May 1, 2005**
****** Recalled Retired Judge**

THE SECOND JUDICIAL CIRCUIT OF THE UNITED STATES

Judicial Status Update*

New Appointments

Court of Appeals for the Second Circuit	Circuit Judge Peter W. Hall
Southern District of New York	District Judge Kenneth M. Karas
Eastern District of New York	District Judge Sandra L. Townes
Eastern District of New York	District Judge Dora L. Irizarry
Eastern District of New York	Magistrate Judge James L. Orenstein
Eastern District of New York	Magistrate Judge Kiyo Matsumoto

Reappointments

Southern District of New York	Magistrate Judge Henry Pitman
District of Connecticut	Magistrate Judge William I. Garfinkel

Senior Status

District of Connecticut	District Judge Dominic J. Squatrito
Southern District of New York	District Judge Harold Baer, Jr.

Retirements

Southern District of New York	Bankruptcy Judge Cornelius Blackshear

Deaths

Court of Appeals for the Second Circuit	Circuit Judge Ellsworth VanGraafeiland
Southern District of New York	District Judge Whitman Knapp
Southern District of New York	District Judge Milton Pollack
Eastern District of New York	Magistrate Judge A. Simon Chrein

***As of May 1, 2005**

STATISTICS*

***Adobe Acrobat Reader Required**

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REAPPOINTMENT OF
BANKRUPTCY JUDGES
MICHAEL J. KAPLAN and JOHN C. NINFO, II

The current term of office of Bankruptcy Judges Michael J. Kaplan and John C. Ninfo, II, United States Bankruptcy Judge(s) for the Western District of New York are due to expire on October 6, 2005 and January 2, 2006, respectively. The United States Court of Appeals for the Second Circuit is considering the reappointments of Judges Kaplan and Ninfo to a new term of office and has determined that each appears to merit reappointment subject to public notice and opportunity for public comment.

Upon reappointment, the incumbents would continue to exercise the jurisdiction of a bankruptcy judge as specified in title 28, United States Code; title 11, United States Code; and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, §§ 101-122,98 Stat. 333-346. In bankruptcy cases and proceedings referred by the district court, the incumbent(s) would continue to perform the duties of a bankruptcy judge that might include holding status conferences, conducting hearings and trials, making final determinations, entering orders and judgments, and submitting proposed findings of fact and conclusions of law to the district court.

Members of the bar and the public are invited to submit comments for consideration by the Court of Appeals regarding the reappointment(s) of Bankruptcy Judge Michael J. Kaplan and Bankruptcy Judge John C. Ninfo, II, to a new term of office. All comments will be kept confidential and should be directed to:

Karen Greve Milton
Circuit Executive
U.S. Courts for the Second Circuit
40 Foley Square, Room 2904
New York, NY 10007

Comments must be received not later than **March 30, 2005.**

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

March 17, 2005

Ms. Karen Greve Milton
Circuit Executive
U.S. Courts for the Second Circuit [tel. (212) 857-8700 fax (212) 857-8680]
40 Foley Square, Rm 2904
New York, NY 10007

Re: public comments on the reappointment of Judge John C. Ninfo, II

Dear Ms. Milton,

I hereby bring to the attention of the Second Circuit Court of Appeals and Judicial Council facts on the basis of which they should decide not to reappoint Bankruptcy Judge John C. Ninfo, II, WBNY, to a new term of office because of his participation in a pattern of wrongdoing and bias.

Those facts are found in the 15 orders of Judge Ninfo (235 et seq., infra) and other documents and statements entered in the dockets of two cases which I, as a party, know first-hand, i.e., Pfuntner v. Gordon et al, no. 02-2230 (401), and In re DeLano, no. 04-20280 (425). These writings are supplemented by the stenographic recordings of the 15 hearings in those cases (56). These materials produced by or in connection with Judge Ninfo describe action taken by him since 2002 that so repeatedly and consistently disregards the law, the rules, and the facts (cf. 7§2) to the benefit of local parties (15C), including debtors (471 et seq.) that the evidence indicates have concealed assets (18§1;24§3), and to my detriment, I being the only non-local and pro se party, as to establish his participation in a pattern of non-coincidental, intentional, and coordinated (89F; 168§II) wrongful acts (66§I) supporting a bankruptcy fraud scheme (216§V).

In a judicial misconduct complaint (111) and in motions filed in this Court (125; 201) in In re Premier, dkt. no. 03-5023 (451), I informed of these facts Chief Judge John M. Walker, Jr., (cf. 151; 219) and members of this Court and of the Judicial Council, who dismissed them without any investigation. So routinely this is the way that judges dispose of complaints about their peers that last June Justice Rehnquist appointed Justice Breyer to head a committee to study the judges' misapplication of the Misconduct Act of 1980. Indeed, judges have turned the self-disciplining mechanism of judicial complaints into a sham, a term used advisedly upon the foundation of facts. Do judges also disregard systematically comments from the public before reappointing a bankruptcy judge, thereby turning the request for such comments into a public relations sham (cf 23§2)? The term is justified given that under 28 U.S.C. §152 the appointment does not even require such request, let alone the holding of public hearings, cf. §44(a).

If the judges of the Court or the Council are serious about judicial integrity, they can review the exhibits (51) and ask themselves whether Judge Ninfo abides by his oath of office at §453 or knows the law (41D;131B-C). But if they cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case (31). Then they can ascertain what drives his conduct and the scheme through a DoJ and FBI investigation (44F). If the appearance, not the reality, of bias is enough under §455 to require the recusal of a judge, as was reaffirmed in *Microsoft v. U.S., 530 U. S. 1301, 1302 (2000) (Rehnquist, C. J.)*, how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for a judge to discharge his or her duty to investigate a complaint about it or report it for investigation under 18 U.S.C. §3057? How much must Judge Ninfo abuse a litigant or how public must his wrongdoing be before his peers care?

sincerely, Dr. Richard Cordero

Table of Exhibits

in support of the comments made on March 18, 2005
in response to the invitation of the Court of Appeals, 2nd Cir.
to the bar and the public to comment on the reappointment to a new term of office of Bankruptcy Judge John C. Ninfo, II, WBNY

submitted to the Court and to members thereof and of
the Judicial Council of the Second Circuit

by

Dr. Richard Cordero

I. Description of facts showing Judge Ninfo's bias and wrongdoing

1. Dr. Richard Cordero's **motion** of **February 17**, 2005, to request that Judge John C. **Ninfo**, II, **recuse himself** under 28 U.S.C. §455(a) due to his **lack of impartiality** ..... 1 [C:905]

2. Judge **Ninfo**'s **bias** and **disregard for legality** can be heard from his own mouth through the **transcript** of the evidentiary **hearing** of the DeLano Debtors' motion to disallow Dr. Cordero's claim against Mr. DeLano, held on **March 1**, 2005; and can be read about in a caveat on ascertaining its authenticity that illustrates the **Judge's tolerance of wrongdoing** [See the transcript of that hearing in the Transcript file in the D Add Pst Tr folder on the accompanying CD.] ..... 31 [C:951]

3. List of **hearings** presided over by Judge Ninfo **in *Pfuntner*** *v. Gordon et al.*, no. 02-2230, WBNY, **and** In re David and Mary Ann **DeLano,** no. 04-20280, WBNY [below] ..... 56 [C:992]

4. Dr. Cordero's **motion** of **August 8**, 2003, for Judge **Ninfo to** transfer *Pfuntner* to the U.S. District Court in Albany, NDNY, and **recuse himself** ..... 61 [A[1]: 674]

5. Dr. Cordero's judicial misconduct **complaint against** Judge **Ninfo,** submitted on August 11, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit through Clerk of Court Roseann B. MacKechnie ..... 111 [C:63]

6. Dr. Cordero's **motion** of **November 3**, 2003, to the **Court of Appeals,** 2nd Cir., 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 ..... 125 [A:801]

[1 A=Appendix to Dr. Cordero's opening brief in *In re Premier Van et al.*, no. 03-5023, CA2, which arose from *Pfuntner* A: files are in the A 1-2229 folder on the accompanying CD.]

7. Dr. Cordero's judicial misconduct **complaint** of **March 19**, 2004, as reformatted and resubmitted on March 29, **against** the Hon. John M. **Walker**, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit .....151 [C:271]

8. Dr. Cordero's **motion** of **August 14**, 2004, for **docketing** and issue the order, **transfer**, referral, examination, and other relief .....165 [C:752]

9. Dr. Cordero's **motion** of **September 9**, 2004, in the **Court of Appeals** for the Second Circuit to **quash** the **order** of Bankruptcy Judge John C. **Ninfo**, II, of August 30, 2004, to sever a claim from *In re Premier Van Lines*, docket no. 03-5023, CA2, currently on appeal in the Court of Appeals, to try it in the *DeLano* bankruptcy case, docket no. 04-20280, WBNY .....201 [C:719]

10. **Court of Appeals'** denial of **October 13**, 2004, of Dr. Cordero's motion to quash the order of Judge Ninfo of August 30, 2004, and statement that Chief Judge **Walker recused himself from** further consideration of ***In re Premier*** .....219 [C:393]

II. Orders of Judge Ninfo [updated to December 9, 2005]

A. *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY

11. Judge **Ninfo**'s Order of **December 30,** 2002, to **dismiss** Dr. **Cordero's cross-claims** for defamation as well as negligent and reckless performance as trustee **against** Trustee Kenneth **Gordon**, Chapter 7 trustee for the moving and storage company Premier Van Lines, Inc. .....235 [A:151]

12. Dr. Cordero's **application** of **December 26**, 2002, for **default judgment** against David **Palmer,** owner of Premier Van Lines .....237 [A:290]

13. Dr. Cordero's **letter** of **January 30**, 2003, **to** Judge **Ninfo** requesting that he **act on** his **application** of December 26, 2002, **for default judgment** against David Palmer .....238 [A:302]

14. **Certificate of** Paul R. Warren, **Clerk** of the Bankruptcy Court, of **February 4**, 2003, of **default of** David **Palmer** .....237 [A:303]

15. Judge **Ninfo**'s order of **February 4**, 2003, to **transmit record** in non-core proceeding to District Court, combined with findings of fact, conclusions of law and Recommendation not to grant Dr. Cordero's request for entry **of default judgment** against David Palmer .....239 [A:304]

16. Judge **Ninfo**'s Attachment of **February 4**, 2003, to **Recommendation** of the Bankruptcy Court that the **default judgment not be entered** by the District Court against David Palmer .....241 [A:306]

17. Judge **Ninfo**'s order of **February 18,** 2003, **denying** Dr. Cordero's motion to **extend time** to file notice of appeal from the dismissal of his cross-claims against Trustee Gordon in *Pfuntner* .....243 [A:240]

18. Judge **Ninf**o's Order of **April 4**, 2003, **denying** Cordero's motion for **relief** from order denying motion to extend time to file notice of appeal.....245 [A:259]

19. Judge **Ninfo**'s Order of **July 15**, 2003, to hold in Rochester a **"discrete" "discreet"** hearing on October 16, 2003, followed by **further hearings**.....247 [A:746]

20. Judge **Ninfo**'s Order of **October 16**, 2003, Disposing of Causes of Action in *Pfuntner*.....253 [A:754]

21. Judge **Ninfo**'s Order of **October 16,** 2003, "**Denying Recusal** and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial on October 16, 2003" .....257 [A:734]

22. Judge **Ninfo**'s Decision and Order of **October 23,** 2003, Finding a **Waiver** by Dr. Cordero's of a **Trial by Jury** in *Pfuntner*.....269 [A:782]

23. Judge **Ninfo**'s "**Scheduling** Order of **October 23**, 2003, in Connection with the **Remaining Claims** of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero" .....277 [A:768]

24. [Dr. **Cordero**'s motion of **October 23**, 2003, for Judge Ninfo to provide a definite statement of which of his oral version of October 16, 2003, or his written version entered in the record on October 17 is the official version of his "Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003").....A:785]

25. Judge **Ninfo**'s Order of **October 28,** 2003, **denying** Dr. Cordero's Motion for a **More Definitive Statement** of the Court's Order and Decision of October 16, 2003.....281 [A:787]

1) Related orders of U.S. District Judge David G. Larimer

a) *Cordero v. Gordon*, docket no. 03-CV-6021L, WDNY

26. Judge **Larimer**'s order of **March 27, 2003**, **denying** Dr. Cordero's motion for **reconsideration** of the grant of the motion of Chapter 7 Trustee Kenneth Gordon, trustee for Premier Van Lines, to **dismiss** Dr. Cordero's **appeal** from Judge Ninfo's dismissal of his cross-claims against the Trustee in *Pfuntner v. Trustee Gordon et al*., 02-2230, WBNY .....295 [A:211]

27. Judge **Larimer**'s Decision and Order of **March 12, 2003**, granting Trustee Gordon's motion to **dismiss** as untimely Dr. **Cordero's** notice **appeal**.....298 [A:200]

b) *Cordero v. Palmer*, docket no. 03-MBK-6001L, WDNY

28. Judge **Larimer**'s Order of **March 27, 2003**, **denying** Dr. Cordero's motion for **reconsideration** of the decision denying entry of default judgment **against** David **Palmer**, owner of the moving and storage company Premier Van Lines, Inc. and third-party defendant in *Pfuntner v. Gordon et al.*.....299 [A:350]

29. Judge **Larimer**'s Decision and Order of **March 11, 2003**, **affirming** Judge Ninfo's **recommendation not to grant** Dr. Cordero's application for **default judgment against** David **Palmer**.....302 [A:339]

B. *In re David & Mary Ann DeLano*, docket no. 04-20280, WBNY

30. Dr. Cordero's letter of July 19, 2004, to Judge Ninfo with the **proposed order** for document production by the DeLanos **asked for by** Judge **Ninfo at** the **hearing** on **July 19**, 2004.....325 [D[2]:207]

31. Dr. Cordero's **letter** of **July 21**, 2004, **to** J. **Ninfo** protesting his **failure** to **issue** the document production order **as agreed**.....329 [D:217]

32. Judge **Ninfo**'s Order of **July 26**, 2004, **for** production of some **documents** by the DeLanos, but **failing to issue** Dr. Cordero's **proposed order**, which was not even docketed.....337 [D:220]

33. Judge **Ninfo**'s Interlocutory Order of **August 30**, 2004, **severing** Dr. **Cordero**'s **claim** against Mr. David **DeLano from *Pfuntner v. Gordon et al.***, requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while **suspending** all other **proceedings until** the DeLanos' motion to **disallow Dr. Cordero's claim** is finally determined.....339 [D:272]

34. Judge **Ninfo**'s Interlocutory Order of **November 10**, 2004, **denying** Dr. Cordero all his request for **discovery** from Mr. DeLano.....347 [D:327]

35. Judge **Ninfo**'s order of **December 21**, 2004, setting down for March 1, 2005, the **evidentiary hearing** for the DeLanos' motion to disallow Dr. Cordero's **claim against Mr. DeLano**.....350 [D:332]

36. [**Transcript** of the **evidentiary hearing** of the DeLanos' motion to disallow Dr. Cordero's claim, held **in Bankruptcy** Court before Judge **Ninfo** on **March 1**, 2005, prepared **by** Bankruptcy Court **Reporter** Mary **Dianetti**.....Tr file on CD]

[[2] D:=Designated items, i.e. documents, in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY; see the PDF files in the D Add Pst folder on the accompanying CD.

Mr. DeLano is a third-party defendant who was brought into *Pfuntner* by Dr. Cordero. Subsequently, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against Mr. DeLano arising from *Pfuntner*.]

37. [Judge **Ninfo's Decision and Order** of **April 4**, 2005, in *DeLano* finding that Dr. **Cordero** has **no valid claim** against Mr. DeLano, **no standing** to participate in any further Court proceeding in the case, and **denying** any **stay** of the provisions of the Decision and Order, currently **on appeal** in Cordero v. DeLano, no. 05cv6190L, WDNY .....D:3]

38. [Judge **Ninfo**'s **order** of **August 8**, 2005, instructing **M&T Bank** to **deduct** $293.08 biweekly **from** his employee, Debtor David **DeLano**, and **pay** it to Trustee **Reiber**.....Add[3]:940]

39. [Judge **Ninfo**'s **order** of **August 9**, 2005, **confirming** the DeLanos' Chapter 13 debt repayment **plan** after considering their testimony and "the Trustee's Report" of Trustee Reiber (cf. ¶**Error! Reference source not found.**) and **allowing** payment of legal fees in the amount of **$18,005 to** Att. **Werner** by the DeLanos (who stated in Schedule B of their January 2004 bankruptcy petition that they had $535 in cash and account).....Add:941]

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

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

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

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

44. [Dr. **Cordero**'s **letter** of **November 11**, 2005, **to** the **parties**

[3 Add=Addendum to the D files in the D Add Pst Tr folder on the accompanying CD.]

advising them that the time of the **hearing** on November 16 is 11:00a.m. and that they should **contact** the **Court or** consult its electronic calendar in **PACER** (CM/ECF) before attending the hearing **given** Judge Ninfo's **denial** of Dr. Cordero's request to **appear by phone** ....Add:1068]

45. [Judge **Ninfo's order** of **November 22**, 2005 **denying** Dr. **Cordero's motion** to **revoke** due to fraud the confirmation of the **DeLanos'** debt repayment **plan** because Dr. Cordero has **no standing** in the case, is not a party in interest, and thereby cannot file the adversary proceeding necessary to seek revocation....Add:1094]

46. [Dr. **Cordero's** notice of motion and **motion** of **December 6**, 2005, **in Bankruptcy** Court to **quash** the order **denying** the motion to **revoke** due to fraud the order of confirmation of the DeLanos' plan, **revoke** the **confirmation**, and **remand** the case....Add:1095]

47. [Judge **Ninfo's order** of **December 9**, 2005, peremptorily dispatching with an **"in all respects denied" one-liner** Dr. Cordero's December 6 motion, issued on the day of the **motion**'s arrival and skipping any discussion of its detailed factual considerations and legal analysis of the Judge's **November 22 order sought to be quashed** for denying confirmation revocation ....Add:1125]

III. Dockets

48. Docket of *Pfuntner,* no. 02-2230, WBNY, as of [November 20, 2005]....401 [Add:531]

49. Docket of *In re DeLano*, no. 04-20280, WBNY, as of [March 6, 2006]....425 [Pst:1181]

50. Docket of *In re Premier Van et al*., no. 03-5023, CA2, as of [March 13, 2005] ....451 [C:422]

IV. Bankruptcy Petition by David & Mary Ann DeLano of January 26, 2004

51. Notice of the Clerk of Court of February 3, 2004, of Chapter 13 Bankruptcy Case filed by the DeLanos on January 27, 2004, **Meeting of Creditors**, Deadlines....471 [C:581]

52. Voluntary **Petition** of **January 26**, 2004, under Chapter 13 of the Bankruptcy Code, with Schedules, of David DeLano and Mary Ann DeLano ....475 [C:583]

53. Chapter 13 Debt Repayment **Plan** of January 26, 2004....507 [C:617]

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re PREMIER VAN LINES, INC., Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTER,

Plaintiff

Adversary proceeding
no. 02-2230

-v.-

KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK,

Defendants

MOTION FOR A MORE DEFINITE STATEMENT OF THE COURT'S ORDER AND DECISION

RICHARD CORDERO

Third party plaintiff

-v.-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

PLEASE TAKE NOTICE, that Dr. Richard Cordero on submission moves this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, for an order as soon as possible or at the next motion date stating unambiguously which of the Court's Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003, and accompanying Decision is the official version: the one that the Court read into the record on October 16 or the one in hardcopy that was mailed to Dr. Cordero, and presumably to the other parties, together with a notice of entry dated October 17, 2003.

The foundation for this motion lies in the ambiguity of the last paragraph of the Order, which reads thus:

> ORDERED, that the Recusal and Removal Motions are both in all respects denied and the Objection is in all respects overruled for

the reasons placed on the record by the Court at the October 16, 2003 hearing, which are as set forth on the attached written decision but as they may have been slightly modified when read into the record.

If the version of the Order and Decision read into the record is the official one, Dr. Cordero moves the Court to send him and the parties a copy of it.

Dated: October 23, 2003

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

CERTIFICATE OF SERVICE

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC., CASE NO. 01-20692
Debtor.

JAMES PFUNTNER,
Plaintiff,
vs. A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,
RICHARD CORDERO, ROCHESTER
AMERICANS HOCKEY CLUB, INC.
and M&T BANK,
Defendants.

RICHARD CORDERO,
Third-Party Plaintiff,
vs.

DAVID PALMER, DAVID DWORKIN,
DAVID DELANO, and JEFFERSON
HENRIETTA ASSOCIATES,
Third-party Defendants.

ORDER

The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, a copy of which is attached, is in all respects denied for the following reasons:

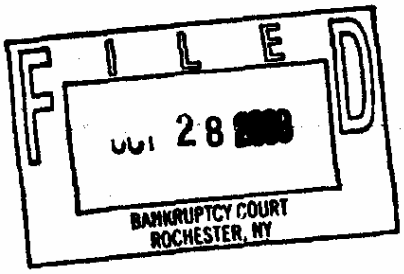
As correctly analyzed by the movant, the decision that the Court orally placed on the Court's record on October 16, 2003 is its decision. A copy of the writing that the Court used to place its decision on the record was attached to the October 16, 2003

Order as a courtesy and for the convenience of the parties. It is the Court's experience that when something written is placed on the Court's record, there are times when words are inadvertently added or deleted, tenses are changed, or other minor modifications result. It is not the Court's obligation under the Bankruptcy Code or the Rules of Bankruptcy Procedure to supply the parties with a transcript of a decision placed on the Court's record.

SO ORDERED.

DATED: October 28, 2003

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE



List of Hearings

presided over by Bankruptcy Judge John C. Ninfo, II, WBNY

in *Pfuntner v. Trustee Gordon et al*, docket no. 02-2230

and

In re David and Mary Ann DeLano, docket no. 04-20280

as of March 14, 2005 [updated to December 9, 2005]

by

Dr. Richard Cordero

1. **December 18, 2002**, Hearing of Trustee Kenneth Gordon's motion of December 5, 2002, to dismiss Dr. Cordero's cross-claims against him in the Pfuntner case
2. **January 10, 2003**, Pre-trial conference in the Pfuntner case
3. **February 12, 2003**, Hearing of Dr. Cordero's motion of January 27, 2003, in Bankruptcy Court to extend time to file notice of appeal
4. **March 26, 2003**, Hearing of Dr. Cordero's motion of February 26, 2003, in Bankruptcy Court for relief from Judge Ninfo's order denying the motion to extend time to file notice of appeal from his dismissal of Dr. Cordero's cross-claims against Trustee Gordon
5. **April 23, 2003**, Hearing of Plaintiff Pfuntner's motion of April 10, 2003, in Bankruptcy Court to discharge Plaintiff Pfuntner from liability other relief; and of Dr. Cordero's measures relating to the trip to Rochester and inspection of property
6. **May 21, 2003**, Hearing for Dr. Cordero to report to Judge Ninfo on the inspection of property at Plaintiff Pfuntner's warehouse on May 19, 2003
7. **June 25, 2003**, Hearing of Dr. Cordero's motion of June 6, 2003, for sanctions and compensation predicated on Mr. Pfuntner's and Mr. MacKnight's failure to comply with discovery orders; and of Dr. Cordero's application, resubmitted on June 16, 2003, for default judgment against David Palmer
8. **July 2, 2003**, Adjourned hearing for Judge Ninfo to set a series of hearings in the Pfuntner case, beginning with hearings in October and November and followed by monthly hearings for 7 to 8 months all of which Dr. Cordero would be required to travel from New York City to Rochester to participate in them in person (and having the clear intention to wear Dr. Cordero down)
9. **October 16, 2003**, First hearing of the series of Judge Ninfo's "discrete" "discreet" hearings

10. **March 8, 2004**, Hearing for confirmation of debtors' debt repayment plans, where Dr. Cordero protested that the attorney for Trustee George Reiber, James Weidman, Esq., prevented him from examining the DeLanos at the meeting of creditors earlier that afternoon; which action was then ratified by Trustee Reiber

11. **July 19, 2004**, Hearing of Trustee Reiber's motion of June 15, 2004, to dismiss the DeLano case

12. **August 23, 2004**, Adjourned hearing of Trustee George Reiber's motion of June 15 to dismiss the DeLano case; and hearing of Dr. Cordero's motion of August 14, 2004, for docketing and issue, removal, referral, examination, and other relief

13. **August 25, 2004**, Hearing of the DeLanos' motion of July 19, 2004, to disallow Dr. Cordero's claim

14. **December 15, 2004**, Hearing to set the date for the evidentiary hearing of the DeLanos' motion to disallow

15. **March 1, 2005**, Evidentiary hearing of the DeLanos' motion to disallow, where Dr. Cordero examined Mr. DeLano on the issue whether Mr. DeLano's handling of the Premier's storage boxes containing Dr. Cordero's property rendered him liable to Dr. Cordero [See the transcript of this hearing in a separate file among the D files.]

    a. Statement by **Court Reporter** Mary Dianetti of the **number** of stenographic **tapes** and **folds comprising** her recording of the evidentiary **hearing** in the DeLano case on **March 1**, 2005.....31 [C:1081]

16. **July 25, 2005**, Confirmation hearing at which the DeLanos' debt repayment plan was confirmed

17. **November 16, 2005,** Hearing of Dr. **Cordero**'s **motion** of **November 5**, 2005, (Add:1038) under 11 U.S.C. §330(a) for Judge Ninfo to **revoke** his August 9 **order** (Add:941) **confirming** the DeLanos' debt repayment plan (D:59) because it was procured by fraud; denied (Add:1094) after the Judge maneuvered the absence at the hearing in Rochester of Dr. Cordero, who lives in New York City, by denying without stating any reason (Add:1065) his request, included in the motion, to appear, as he had on 12 previous occasions, by phone (Add:1066); thereby the Judge made it possible that "Appearing in opposition: [was] George Reiber, Trustee…Order to be submitted by the Trustee" (D:508f, entry between 150 and 151; cf. Add:1097, 1125)

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[Sample of letters to 2nd Cir. judges]

March 18, 2005

Circuit Judge James L. Oakes
U.S. Court of Appeals
40 Centre Street
New York, NY

Re: public comments on the reappointment of Judge John C. Ninfo, II

Dear Judge Oakes,

I hereby bring to your attention and that of the Court of Appeals and the Judicial Council facts on the basis of which Bankruptcy Judge John C. Ninfo, II, WBNY, should not be reappointed to a new term of office because of his participation in a pattern of wrongdoing and bias.

Those facts are found in the 15 orders of Judge Ninfo (235 et seq., infra*) and other documents and statements entered in the dockets of two cases which I, as a party, know first-hand, i.e., Pfuntner v. Gordon et al, no. 02-2230 (401), and In re DeLano, no. 04-20280 (425). These writings are supplemented by the stenographic recordings of the 15 hearings in those cases (56). These materials produced by or in connection with Judge Ninfo describe action taken by him since 2002 that so repeatedly and consistently disregards the law, the rules, and the facts (cf. 7§2) to the benefit of local parties (15C), including debtors (471 et seq.) that the evidence indicates have concealed assets (18§1; 24§3), and to my detriment, I being the only non-local and pro se party, as to establish his participation in a pattern of non-coincidental, intentional, and coordinated (89F; 168§II) wrongful acts (66§I) supporting a bankruptcy fraud scheme (216§V).

In a judicial misconduct complaint (111) and in motions filed in this Court (125; 201) in In re Premier, dkt. no. 03-5023 (451), I informed of these facts Chief Judge John M. Walker, Jr., (cf. 151; 219) and members of this Court and of the Judicial Council, who dismissed them without any investigation. So routinely this is the way that judges dispose of complaints about their peers that last June Justice Rehnquist appointed Justice Breyer to head a committee to study the judges' misapplication of the Misconduct Act of 1980. Indeed, judges have turned the self-disciplining mechanism of judicial complaints into a sham, a term used advisedly upon the foundation of facts. Do judges also disregard systematically comments from the public before reappointing a bankruptcy judge, thereby turning the request for such comments into a public relations sham (cf 23§2)? The term is justified given that under 28 U.S.C. §152 the appointment does not even require such request, let alone the holding of public hearings, cf. §44(a).

If the judges of the Court or the Council are serious about judicial integrity, they can review the exhibits (51) and ask themselves whether Judge Ninfo abides by his oath of office at §453 or knows the law (41D;131B-C). But if they cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript [with C files] of the March 1 hearing in *DeLano* (31). Then they can ascertain what drives his conduct and the scheme through a DoJ and FBI investigation (44F). If the appearance, not the reality, of bias is enough under §455 to require the recusal of a judge, as was reaffirmed in *Microsoft v. U.S., 530 U. S. 1301, 1302 (2000) (Rehnquist, C. J.)*, how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for a judge to discharge his or her duty to investigate a complaint about it or report it for investigation under 18 U.S.C. §3057? How much must Judge Ninfo abuse a litigant or how public must his wrongdoing be before his peers care?

sincerely, Dr. Richard Cordero

* The documents on the Table of Exhibits (51) have been submitted to Circuit Executive Karen Greve Milton.

Table of Exhibits

sent on March 18, 2005, to judges of
the Second Circuit Court of Appeals and Judicial Council
in support of the comments against the reappointment
of Bankruptcy Judge John C. Ninfo, II, WBNY
to a new term of office
by
Dr. Richard Cordero

1. Dr. Richard Cordero's **motion** of **February 17**, 2005, to request that Judge John C. **Ninfo**, II, **recuse himself** under 28 U.S.C. §455(a) due to his **lack of impartiality** .....1 [C:905]

2. Judge **Ninfo**'s **bias** and **disregard for legality** can be heard from his own mouth through the **transcript** of the evidentiary **hearing** of the DeLano Debtors' motion to disallow Dr. Cordero's claim against Mr. DeLano, held on **March 1**, 2005; and can be read about in a caveat on ascertaining its authenticity that illustrates the **Judge's tolerance of wrongdoing** [See the transcript of that hearing in a separate PDF file in the accompanying D Add Pst Transcript folder.] .....31 [C:951]

3. Table of **Exhibits** submitted **to Circuit Executive** Karen Greve Milton on March 17, 2005 .....51 [C:983]

4. **List of Hearings** presided over by Judge Ninfo in *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY, and *In re David and Mary Ann DeLano*, docket no. 04-20280 .....56 [C:993]

List of Judges

of the Second Circuit Court of Appeals and the Judicial Council
to whom was sent the letter of March 18, 2005
with comments against the reappointment
of Bankruptcy Judge John C. Ninfo, II, WBNY
to a new term of office
by
Dr. Richard Cordero

Madam Justice Ginsburg
Circuit Justice for the Second Circuit
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543
tel. (202) 479-3000

Circuit Judge Jose A. Cabranes
Circuit Judge Guido Calabresi
Circuit Judge Dennis Jacobs
Circuit Judge Rosemary S. Pooler
Circuit Judge Robert D. Sack
Circuit Judge Chester J. Straub
Circuit Judge Sonia Sotomayor
Circuit Judge Robert A. Katzmann
Circuit Judge Barrington D. Parker
Circuit Judge Reena Raggi
Circuit Judge Richard C. Wesley
Circuit Judge Peter W. Hall
Circuit Judge James L. Oakes
Circuit Judge Ralph K. Winter
U.S. Court of Appeals
Thurgood Marshall Courthouse
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tel. (212) 857-8500

Chief Judge Michael B. Mukasey
U.S. District Court, SDNY
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New York, NY 10007
tel. (212) 805-0136; (212) 805-0234

Chief Judge Edward R. Korman
U.S. District Court, EDNY
225 Cadman Plaza East
Brooklyn, NY 11201
tel. (718) 330-2188

Chief Judge Frederick J. Scullin, Jr.
U.S. District Court, NDNY
James T. Foley U.S. Courthouse
Albany, NY 12207-2924
tel. (518) 257-1800 or-1661

Chief Judge Robert N. Chatigny
U.S. District Court
for the District of Connecticut
450 Main Street
Hartford, Ct 06103
tel. (860) 240-3659

Chief Judge William Sessions, III
U.S. District Court for the District of Vermont
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August 4, 2005

Ms. Karen Greve Milton
Circuit Executive [tel. (212) 857-8700 fax (212) 857-8680]
U.S. Court of Appeals for the Second Circuit
40 Foley Square, Rm 2904
New York, NY 10007

Re: supplement to comments against the reappointment of J. John C. Ninfo, II

Dear Ms. Milton,

Last March 17, I made a submission to the Second Circuit Court of Appeals and Judicial Council in response to the request for public comments on the reappointment of Bankruptcy Judge J.C. Ninfo, WBNY. This is a supplement (cf. FRCivP 26(e)) that evidences the pertinence of the statement that I made there: "If the judges of the Court or the Council…cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct"

Indeed, on March 1, 2005, the evidentiary hearing took place of the motion to disallow my claim against Mr. DeLano in the bankruptcy case of David and Mary Ann DeLano. Judge Ninfo disallowed it. Oddly enough, Mr. DeLano is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank. He declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years $291,470, whose whereabouts the Judge refused to request that he account for and, thus, are unknown to date.

At the end of the hearing, I asked Reporter Mary 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 and as part of making arrangements for her transcript, 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 exhibits pgs. 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. However, she asked me to prepay and explicitly rejected my request! If a reporter in this Circuit refuses to vouch for the reliability of her transcript, does this Court vouch in her stead to the Supreme Court? Would you want your rights and obligations decided on such a transcript?

There is evidence that Reporter Dianetti is not acting alone. Other clerks answerable to Judge Ninfo have also violated the rules to deprive me of that transcript and, worse still, did likewise concerning the transcript of a hearing before him in *Pfuntner v. Trustee Gordon et al*., where Mr. DeLano, who handled the bankruptcy for M&T, and I are parties. In both cases, timely and reliable transcripts carried the risk of enabling the peers of Judge Ninfo to 'listen' to his bias and disregard for the law, the rules, and the facts at those hearings. Therefore, I respectfully request that you submit the accompanying supplement and exhibits to the Court and the Council so that they 1) consider in the reappointment process the evidence showing that Judge Ninfo's conduct and that of others in his court form a pattern of non-coincidental, intentional, and coordinated wrongdoing that supports a bankruptcy fraud scheme and 2) report it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

C:998 Dr. Cordero's letter of 8/4/5 to CA2 with supplementing comments against the reappointment of J. Ninfo

List of Judges

of the Second Circuit Court of Appeals and Judicial Council
to whom the supplement of August 3, 2005
to comments against the reappointment
of Bankruptcy Judge John C. Ninfo, II, WBNY
to a new term of office was sent together with the letters of
August 4 and 5, 2005

by

Dr. Richard Cordero

Madam Justice Ginsburg
Circuit Justice for the Second Circuit
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543
tel. (202) 479-3000

Circuit Judge Jose A. Cabranes
Circuit Judge Guido Calabresi
Circuit Judge Dennis Jacobs
Circuit Judge Rosemary S. Pooler
Circuit Judge Robert D. Sack
Circuit Judge Chester J. Straub
Circuit Judge Sonia Sotomayor
Circuit Judge Robert A. Katzmann
Circuit Judge Barrington D. Parker
Circuit Judge Reena Raggi
Circuit Judge Richard C. Wesley
Circuit Judge Peter W. Hall
Circuit Judge James L. Oakes
Circuit Judge Ralph K. Winter
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[Sample of letters to 2nd Cir. judges]

August 5, 2005

Circuit Judge Barrington D. Parker
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: supplement to comments against the reappointment of J. John C. Ninfo, II

Dear Judge Parker,

Last March 18, I wrote you concerning my response to the request of this Court for public comments on the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY. This is a supplement (cf. FRCivP 26(e)) that evidences the pertinence of the statement that I made there: "If the judges of the Court or the Council…cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct"

Indeed, on March 1, 2005, the evidentiary hearing took place of the motion to disallow my claim against Mr. DeLano in the bankruptcy case of David and Mary Ann DeLano. Judge Ninfo disallowed it. Oddly enough, Mr. DeLano is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank. He declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years $291,470, whose whereabouts the Judge refused to request that he account for and, thus, are unknown to date.

At the end of the hearing, I asked Reporter Mary 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 and as part of making arrangements for her transcript, 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 exhibit 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. However, she asked me to prepay and explicitly rejected my request! If a reporter in this Circuit refuses to vouch for the reliability of her transcript, does this Court vouch in her stead to the Supreme Court? Would you want your rights and obligations decided on such a transcript?

There is evidence that Reporter Dianetti is not acting alone. Other clerks answerable to Judge Ninfo have also violated the rules to deprive me of that transcript and, worse still, did likewise concerning the transcript of a hearing before him in *Pfuntner v. Trustee Gordon et al*., where Mr. DeLano, who handled the bankruptcy for M&T, and I are parties. In both cases, timely and reliable transcripts carried the risk of enabling the peers of Judge Ninfo to 'listen' to his bias and disregard for the law, the rules, and the facts at those hearings. Therefore, I respectfully request that you submit the accompanying supplement and exhibits to the Court and the Judicial Council so that they 1) consider in the reappointment process the evidence showing that Judge Ninfo's conduct and that of others in his court form a pattern of non-coincidental, intentional, and coordinated wrongdoing that supports a bankruptcy fraud scheme and 2) report it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely, Dr. Richard Cordero

C:1000 Dr. Cordero's letter of 8/4&5/5 to 2nd Cir judges supplementing his comments v. reappointment of J. Ninfo

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SUPPLEMENT TO COMMENTS

against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted on August 3, 2005, to
the Second Circuit Court of Appeals and the Judicial Council
by
Dr. Richard Cordero

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

1. On March 17, 2005, Dr. Richard Cordero submitted comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, supported by exhibits showing how Judge Ninfo has engaged and allowed other court officers and local parties to engage since 2002 in a series of acts of bias and disregard for the law, the rules, and the facts so consistently to the benefit of the local parties and the detriment of Dr. Cordero in two related cases, namely, *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, and *David and Mary Ann DeLano*, no. 04-20280, WBNY, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.
2. In those comments, Dr. Cordero indicated that the judges of the Court of Appeals and the Judicial Council could witness by themselves the biased conduct of Judge Ninfo if they would "listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct and the scheme." (Exhibit page 257, infra=E:257) ♣ He added the caveat that they, however, would have to establish the authenticity of the transcript given the Judge's tolerance for wrongdoing. The pertinence of that statement has now been proved by the express refusal of the official court reporter in Judge Ninfo's court, Reporter Mary Dianetti, to agree to certify that her own transcript of her stenographic recording of that evidentiary hearing before the Judge on March 1 will be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence. How extraordinary!, for what is a transcript worth whose reliability the reporter herself will not vouch for?
3. The full significance of Reporter Dianetti's refusal is only deepened upon knowing that the transcript in question would confirm and reveal to the appellate and supervising peers of Judge Ninfo the role that he has played as on-the-bench advocate for Mr. DeLano before and during

♣Pages E:13-257 have been submitted to Cir. Executive K.G. Milton, but are available on demand.

the evidentiary hearing. Judge Ninfo called that hearing to hear the motion raised by the DeLanos to disallow Dr. Cordero's claim against Mr. DeLano and his disallowance of the claim was a foregone conclusion. Therefore, let's begin by establishing the circumstances of Reporter Dianetti's refusal to certify the reliability of her own transcript.

Dates of Letters Exchanged Between			**Exhibit Page E:#**
	Dr. Cordero	**Court Reporter Dianetti**	
1.	April 18, 2005		1 [Add:681]
2.		May 3	2 [Add:834]
3.	May 10		3 [Add:835]
4.		May 19	4 [Add:840]
5.	May 26		6 [Add:842]
6.		June 13	7 [Add:843]
7.	June 25		9 [Add:867]
8.		July 1, 2005	11 [Add:869]

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I. Reporter Dianetti declined stating on three occasions the count of the stenographic packs and folds that she had counted to arrive at her transcript cost estimate; Dr. Cordero requested confirmation that her reluctance was not motivated by her concerns about the transcript's content; but the Reporter requested prepayment while refusing to certify that the transcript would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence 1003

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A. Reporter Dianetti and other officers have disregarded the law and rules by their way of dealing with Dr. Cordero at hearings and his transcript requests 1009

III. The Clerk of the Bankruptcy Court disregarded the rules by transmitting the record to the District Court when it could not possibly be complete; yet District Judge Larimer disregarded the rules and repeatedly scheduled the appellate brief for a date before Dr. Cordero would receive and use the transcript to write it 1012

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

4. At the end of the evidentiary hearing on March 1, 2005, which lasted from 1:31 p.m. till 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Larraine Parkhurst was by her side. He asked the Reporter how many packs and folds of stenographic paper she had used. That question spun Reporter Dianetti into a profound state of confusion and nervousness, all the more astonishing since she was only gathering the materials that she had just finished using to record the single hearing that afternoon. (Exhibits page 207, section B, infra=E:207B) The Reporter and Attendant Parkhurst counted the packs and folds and both wrote down the numbers (E:203); but on that occasion, the Reporter did not provide an estimate of the cost of the transcript.
5. Over a month and a half later, contemporaneously with designating the items in the record for the appeal from the decision resulting from that evidentiary hearing, Dr. Cordero requested in his letter of April 18 to Reporter Dianetti (E:1) that she provide a cost estimate and indicate the number of stenographic packs and folds "that you will be using to prepare the transcript". In so doing, Dr. Cordero was simply exercising his right under 28 U.S.C. §753(b), providing that:

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

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

7. In her answer of May 3 (E:2), Reporter Dianetti failed to provide any count of packs and folds of stenographic paper because it "was given to you after the hearing was completed". Yet, she must have counted them since she provided "the estimated cost…of $600 to $650". But she added the caveat "Please understand this is an estimate only." Thereby she undermined the reliability of what in the normal course of business would have been deemed the lower and upper limits of the estimate.
8. Hence, in his letter to her of May 10 (E:3), he asked that she state by how much more her estimate could fluctuate and added "This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording."
9. In her letter of May 19 (E:4), Reporter Dianetti surprisingly stated that "I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it." Her statement was self-contradictory because if her estimate may not fluctuate "at all", then how could she provide an initial estimate with lower and upper limits, which by definition mark the margins of fluctuation? What would determine whether the final "cost…of $600 to $650" was $600, $650, anywhere in between, or even outside that range? Since Reporter Dianetti is an official reporter, who earns her living as such, who would prepare the transcript based on her own recording of a proceeding, and who had provided an estimate that already fluctuated by almost 10%, how could she not have an idea of by "how much my estimate can fluctuate"? After all, how many variables can possibly affect the final number of transcript pages? Is one of them censure by somebody else with indisputable authority?
10. Making her estimate even more incomprehensible, Reporter Dianetti again failed to provide in that letter of May 19 the count of stenographic packs and folds that she would use to prepare the transcript because "you already have that information" (E:4). Did she have it too?; if so, why not just restate it in a straightforward business fashion? Moreover, there was something very odd to her failure to appreciate the difference between the count of packs and folds that she had written down for Dr. Cordero on March 1 and what she had recently counted and would actually "be using to prepare the transcript", as Dr. Cordero had asked in his first letter of April 18 (E:1).
11. Thus, in his letter to her of May 26 (E:6), Dr. Cordero pointed out that:

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

12. In her response of June 13 (E:7), Reporter Dianetti agreed to an upper limit of $650 and stated a

cost per page of $3.30. This implied that for a meeting that lasted 5.5 hours, she had estimated a maximum of 197 pages. However, she added the astonishing statement that: (emphasis added)

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

13. How astonishing indeed, for Reporter Dianetti was emphatically avoiding any statement of the numbers of packs and folds that she would actually use to prepare the transcript! Why and to what extent would those numbers differ from the numbers of packs and folds that she had used to record the March 1 evidentiary hearing? Moreover, if she did not even have to count the packs and folds to arrive at her estimate of the transcript cost, why would she on her May 3 and 19 letters not simply restate "the same information…[with which] I had marked each pack", thus nipping in the bud any suspicion? Dr. Cordero pointed this out unambiguously in his letter to her of June 25 (E:9):

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

14. The fact is that Reporter Dianetti recorded the evidentiary hearing on a stenographic machine, presumably the same that she uses for recording every other bankruptcy proceeding, using the same type of stenographic paper, whose folds were pulled in and filled with recording content at the same rate, so that the same amount of content would fill transcription pages at the same rate.
15. Unquestionably, the very aim of a stenographic recording of a proceeding is to record it "verbatim" (§753(b)) so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications…determined by standards formulated by the Judicial Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content having the same length. That is a logical and practical imperative of the system of reporting court proceedings. As the Supreme Court put it, 'the §753(b) duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible, what transpires in court', *Antoine v Byers & Anderson*, 508 US 429, 124 L Ed 2d 391, 113 S Ct 2167 (1993).

16. Since her refusal made no sense from either a business or technical point of view, why was she so evasive about stating the number of packs and folds that "will be translated into the transcript"? Was she concerned about how much content of the evidentiary hearing recording would be allowed to make it into the transcript, which would determine its number of pages, which would in turn reveal the number of packs and folds from which the transcript was produced? If so, her con-cern cast in issue the transcript's reliability as well as the integrity of the court reporting process.
17. Hence, Dr. Cordero asked her in his letter of June 25 (E:10) to agree to:

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

18. In her July 1 letter (E:11) the Reporter required that Dr. Cordero prepay by "a money order or certified check in the amount of $650.00 payable to "Mary Dianetti"", made no provision for the final cost coming out, once she applied her own $3.30/page rate, at her own lower estimate of $600 or even lower because, as she had put it in her May 3 letter (E:2), "Please understand this is an estimate only", and then added without offering any explanation: "The balance of your letter of June 25, 2005 is rejected."
19. How come "rejected"?! It must be quite obvious that Reporter Dianetti has no justification to refuse to agree that her transcript will be accurate and complete, not distributed to others (aside from the clerk) yet paid for by Dr. Cordero, and not subject to anybody's tampering influence. Who in his right mind would pay $650 up front for a product that he has already been given evi-dence will be defective and unsuitable for the intended purpose? Would you want your rights and obligations determined on a transcript for whose reliability the reporter herself will not vouch?
20. The answers to those questions are obvious. In addition, the foundation for asking them becomes all the stronger by the fact that this is not the first time that Reporter Dianetti has tried to prevent Dr. Cordero from obtaining the transcript of her recording of a proceeding before

Judge Ninfo, whose disregard for the law, the rules, and the facts would have been revealed by a complete and accurate transcript.

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

21. In September 2002, *Pfuntner v. Gordon et al*, docket no. 02-2230, WBNY, was commenced and therein Dr. Cordero was named a defendant. He cross-claimed against Chapter 7 Trustee Kenneth Gordon for having negligently and recklessly performed his duties as trustee to the detriment of Dr. Cordero and for making defamatory statements against him to Judge Ninfo so as to induce the Judge not to cause an investigation of the Trustee, as Dr. Cordero had requested. (E:134¶¶6-11) Trustee Gordon moved to dismiss and his motion was heard on December 18, 2002, with Dr. Cordero appearing pro se by phone. Judge Ninfo dismissed the cross-claims summarily at the hearing despite the genuine issues of material fact raised by Dr. Cordero (E:135§§1-3) and even though discovery had not started on any aspect of the case, not even disclosure pursuant to FRBkrP 7026 and FRCivP 26(a)(1) had been provided by any party other than Dr. Cordero (E:150¶75) although the case had been commenced three months earlier (E:152¶80). At the end of the hearing, Dr. Cordero stated that he would appeal.
22. Interestingly enough, according to PACER, https://ecf.nywb.uscourts.gov/, between April 12, 2000, and June 26, 2004, Trustee Gordon appeared as trustee in 3,383 cases, in 3,382 out of which he did so before Judge Ninfo! By contrast, Dr. Cordero was a non-local litigant living hundreds of miles away in New York City and appearing in one case. Had Judge Ninfo developed a modus operandi with a trustee who had become a fixture litigant in his court so that to protect Trustee Gordon and their modus operandi the Judge got rid of what he could only deem to be one of the weakest of defendants, a one-time non-local pro se on the phone?
23. That question is warranted by the series of acts of disregard for the law, the rules, and the facts engaged in by Judge Ninfo (E:140§§2-4; 62A), District Judge David G. Larimer (E:142C; ¶35 below), clerks (E:92§II; 139B-§B1), trustees (E:134¶¶6-11; 36§V), and parties (E:145D; 68B-71§1) since even before *Pfuntner* was commenced in 2002. Their mutually reinforcing conduct points to systemic disregard for duty and legality among a group of people in daily contact in a small federal building, growing closely-knit by their related functions and the use of their power to do, not the right thing, but rather the good thing for their common interest because each member can count on all the others for similar supportive disregard, to the detriment of non-

members (E:151§§1-6; ¶41 below) and the integrity of the system (E:117C-E). The following statement of facts describes an instance of such clique in action.

24. After Judge Ninfo's order of December 30, 2002, dismissing the cross-claims against Trustee Gordon was sent from Rochester and delivered in New York City, Dr. Cordero phoned Reporter Dianetti at (585)586-6392 on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript. Yet, weeks went by without his hearing from her. He had to call her and the Bankruptcy Court on several occasions to ask why he had not received the transcript, but he could only either record messages on her answering machine or leave them for her with a clerk.

25. It was not until March 10, 2003, after Dr. Cordero called Reporter Dianetti and was already recording another message, that she, screening the call, finally picked up the phone. After giving an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She gave another untenable excuse and promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! It implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and that she was not supposed to include it in the transcript, so she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he, Dr. Cordero, was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said 'Good morning, Dr. Cordero.' He said no, that he wanted everything from the moment the Judge must have said 'Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

26. As attested to by her certificate, Reporter Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after Dr. Cordero first contacted her on January 8 to have her produce the trans-cript. However, there is evidence that she did not deliver it directly to him. Indeed, although the date on her certificate is March 12, the transcript was not mailed to him until

March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal (E:136§3) from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26. It is noteworthy that after Dr. Cordero made a statement at that hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. The transcript was then mailed and it reached Dr. Cordero on March 28. This reasonably suggests that it was unlawfully withheld from him until the Judge could learn what he had to say at the hearing. Was Reporter Dianetti told to submit her transcript to a higher-up court officer so that its contents could be vetted in light of that hearing before a final version would be sent to Dr. Cordero?

27. The transcript turned out to consist, not of 27 pages as Reporter Dianetti had estimated after consulting her notes on January 8, but only of 15 pages of transcription! She claimed that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. Her transcription of his statements has many "unintelligible" notes marking missing passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in their respective functions. These facts warrant asking whether she was told to disregard his request for the transcript; and when she could no longer do so, to garble his statements. Has she been told the same in other cases?

28. Was Reporter Dianetti also told and, if so, by whom, to leave out the exchanges between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after the Judge terminated the phone communication at the hearing on December 18, 2002? The foundation for this question is not only her comment so implying. In fact, on many occasions since then (E:225), Judge Ninfo has cut off abruptly the phone line to Dr. Cordero, in contravention of the norms of civility. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking his gavel, but simply by pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, Judge Ninfo brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left without uttering another word.

A. Reporter Dianetti and other officers have disregarded the law and rules by their way of dealing with Dr. Cordero at hearings and his transcript requests

29. It is more likely that on the subject of the hearing or meeting Judge Ninfo spoke with the other

parties in Dr. Cordero's absence, thereby engaging in ex parte communications with them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP 9003. (cf. E:119D) Likewise, by so abruptly cutting off a phone connection, the Judge gave any reasonable person at the opposite end of the phone line cause for offense and the appearance of animosity and unfairness. Moreover, by so doing, the Judge, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Of graver significance in legal terms is that by Judge Ninfo terminating a proceeding without giving notice thereof to a party he violated his duty to afford all parties to a hearing the same opportunity to be heard and hear the judge and the other parties. Thus, Judge Ninfo showed incivility and partiality, disregarded the rule prohibiting ex parte communications, and denied Dr. Cordero due process of law as required under the 5th Amendment.

30. As to Reporter Dianetti, by not delivering her transcript promptly and directly to Dr. Cordero upon completing it on March 12, 2003, she violated §753(b) which provides that:

> 28 U.S.C. §753(b)…Upon the request of any party to the proceeding which has been so recorded…the reporter…shall **promptly** transcribe the original records…and attach to the transcript his official certificate, and deliver the same to the party…making the request. (emphasis added)

31. The Reporter also violated FRBkrP 8007(a), providing thus:

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

32. If she could not have the transcript "completed within 30 days of receipt of the request", let alone the

10 days that she had said it would take her to transcribe the mere 27 pages that she herself had estimated, why did she not comply with her obligation that "the reporter shall seek an extension of time from the clerk"? If she did, why did the clerk in turn fail to comply with his obliga-tion that "the action of the clerk shall be entered in the docket and the parties notified"? In either event, Dr. Cordero was left without either the transcript or notice. Hence, either the Reporter or the clerk, or both violated the duty to proceed timely, promptly, and with notice. Discharging with promptness transcript-related duties is so important that the FRBkrP restate that obligation thus:

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

33. By so dealing with that transcript, Reporter Dianetti also violated §753(a), which provides that "…Each reporter shall take an oath faithfully to perform the duties of his office.…" However, her conduct takes on sinister significance because her violations in 2003 occurred in the context of *Pfuntner*, the case that contains Dr. Cordero's claim against Mr. DeLano (E:23 fn.1) and that Judge Ninfo linked to *DeLano* in his decision on appeal of April 4, 2005 (E:46§I, 51§IV. Therefore, it is reason-able to ask whether her refusal to certify the reliability of the transcript in *DeLano* is also linked to her mishandling of the transcript in *Pfuntner*; if so, with whom is she coordinating her conduct?; and why is it important thereby to influence adversely Dr. Cordero's appeals? (E:157F) What is the benefit gained or harm avoided by those engaged in such unlawful conduct?

34. Indeed, there is no reason to think that Reporter Dianetti was 'faithfully performing her duties', as required by the oath that she took under 28 U.S.C. §753(a), until Dr. Cordero just happened to drop in. This warrants asking whether in other cases she has in coordination with other officers manipulated transcripts to alter their contents or even prevent their receipt. Hence, her conduct is evidence of that broader, systemic disregard for duty and legality where manipulation of transcripts is only part of a larger scheme. (E:92§II; 158§1) The evidence providing the foundation for these queries should concern the Court of Appeals and the Judicial Council because such disregard by her and others not only denies due process to individuals, but also undermines the integrity of the administration of justice. That has grave implications, for there is evidence that disregard for duty and legality reaches higher in the judicial hierarchy than the

Bankruptcy Court. Do the circuit judges and the members of the Council know that Judge Ninfo has allowed disregard for duty and legality to spread throughout and outside his court?

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

35. The evidence points to Reporter Dianetti not having acted alone. Just as Bankruptcy Court Clerk Paul Warren disregarded the rules on that occasion (¶32 above; cf. E:139B-§B1), he has in the instant case, likewise with detrimental effect on any use by Dr. Cordero of the transcript. So Dr. Cordero sent pursuant to FRBkrP 8006 his Designation of Items in the Record to the Bankruptcy Court. Clerk Karen Tacy filed it on April 21, 2005, and on that same day –after strange hesitation, or was it consultation? (E:188 entries 108 and 109)- transmitted the record to the District Court.

36. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court." It is obvious that the record could not possibly have been complete on the very day in which it was filed since the 10 days provided under 8006 for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal" had not even started to run. (E:165) Moreover, contact with Reporter Dianetti for production of the transcript had only been initiated, as shown by the copy of Dr. Cordero's letter of April 18 to her (E:1) accompanying his designation. So when writing his appellant brief, he would hardly be able to take into consideration either the transcript or appellee's designation, submitted only on May 3 (E:229 entry 5) and delivered in NYC on May 10.

37. Nevertheless, District Judge Larimer issued a scheduling order on April 22, the day after receiving the record, providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". (E:167) Since the record contained a copy of Dr. Cordero's April 18 letter to Reporter Dianetti, the Judge too must have known that the Reporter had hardly received it and that no arrangement could have been agreed upon for the production of the transcript. In any event, FRBkrP 8007(a) (¶31 above) would allow the Reporter 30 days to complete the transcript and if she had not done so by that time, she could ask for an extension. Therefore, to require the filing of his appellate brief within 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in writing the brief or even making it part of the record

and thereby available in any subsequent appeal to the Court of Appeals or the Supreme Court.

38. On a phone conversation that Dr. Cordero had with Bankruptcy Clerk of Court Warren on May 2 concerning the premature transmittal of the record in disregard of FRBkrP 8007(b), the Clerk defended the transmittal and refused to withdraw the record. So on that date, Dr. Cordero faxed to the District Court his objection to its scheduling order and requested that Judge Larimer rescind it. (E:169) He pointed out that the "premature…acts [of both courts] have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record".

39. Disregarding the violation of the rules and that concrete detriment, Judge Larimer did not rescind his scheduling order. Instead, on May 3 he issued another order requiring Dr. Cordero to file his appellate brief by June 13. (E:171) In so doing, he did not even mention the legal and factual basis of Dr. Cordero's objection to premature transmittal of the incomplete record and the consequences in practical terms of the scheduling order.

40. As a result, Dr. Cordero was forced to write again to raise before Judge Larimer a "Motion for compliance with FRBkrP 8007 in the scheduling of appellant's brief". (E:172) It pointed out that the District Court did not receive a "record [that] is complete for purposes of appeal", as required under FRBkrP 8007(b), so that in contravention of the rules it received an incomplete one; therefore, it had not obtained and still did not currently have jurisdiction over the case to issue a scheduling order.

41. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only had he not received the transcript, but also nobody knew even when the Reporter would complete it, let alone deliver it to him. Hence, if the transcript were delivered before the brief-filing deadline, he would have to scramble to read its hundreds of pages and then rework his whole brief to take them into consideration and do in a hurry any necessary legal research. Worse yet, if the transcript were delivered after that filing deadline and before the District Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief. But if the transcript were not filed timely and the Bankruptcy Clerk notified Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not be known in advance, not to mention that the circumstances of the Reporter's failure to complete it timely could give rise to a host of issues. And what would happen, Dr. Cordero asked, if the transcript was delivered *after* the Court had issued its decision?! He concluded that there was no legal basis for putting on him the onus of coping with all that burdensome extra work and uncertainty.

42. In its third scheduling order of May 17 (E:175), Judge Larimer did not show any awareness of these issues, let alone that they were his concern. On the contrary, he issued his order as if:

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

43. No! Dr. Cordero had certainly **not** "requested additional time". What he had requested was for the Court to act in accordance with the law: (E:174)

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

44. Judge Larimer's last order means in practice that if Reporter Dianetti ever files her transcript and it is found objectionable, Dr. Cordero will once more have to move the District Court to rescind that order and undertake corrective measures. In terms of the law, it means that the Judge issued a third order with disregard for the legal issues depriving him of jurisdiction to do so. Did Judge Larimer intend for Dr. Cordero to file his brief without the benefit of the transcript? Did the Judge know that if Dr. Cordero insisted on obtaining the transcript, he would be given some sort of such thing whose reliability would be so compromised that Reporter Dianetti would not certify it?

45. These questions are justified because the instant event is an exact repetition of the way Judge Larimer proceeded when Dr. Cordero requested the first transcript: After his colleague Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002 (¶21 above), Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14 (E:191), where she informed him that the due date for his designation of items was January 27. Yet, already on January 16, 2003, Judge Larimer had an order filed scheduling Dr. Cordero's brief for 20 days hence (E:192) although the Bankruptcy Clerk had transmitted to the District Court a record so unquestionably incomplete that it consisted of merely the notice of appeal! Then Reporter Dianetti tried to avoid submitting that transcript to Dr. Cordero and mishandled its delivery after completing it so that it was sent to him only more than two and a half months later, after Judge Ninfo had found out what Dr. Cordero had to say at the hearing on March 26, 2003 (¶26 above).

46. These facts support the conclusion that just as in the instant case, on that occasion Judge Larimer tried to deprive Dr. Cordero of the transcript by scheduling his brief for a date before he would receive it and be able to take it into account. What a flagrant violation by administrative and judicial officers of FRBkrP 8006 and 8007 as well as coordinated manipulation of filing dates (cf. E:157F; 73§2) and abusive impairment of the right to appeal! (cf. E:123§III) Was Judge Larimer protecting Colleague Ninfo or Trustee Gordon or both? From what and what for?
47. In light of these precedents, what conceivable reason can Dr. Cordero have to believe that when a complete record is properly before Judge Larimer, the latter will decide the appeal in accordance with the law, the rules, and the facts? Once more, this question is particularly pertinent because in the past Judge Larimer disregarded the law, the rules, and the facts in deciding Dr. Cordero's two appeals from *Pfuntner*: Dr. Cordero's opposition to Trustee Gordon's motion to dismiss the appeal, docket no. 03cv6021 (E:237¶50b)); and his application for default judgment against David Palmer, docket no. 03mbk6001 (E:142§C; 235B-237¶50a)).

IV. Reporter Dianetti's refusal to certify the transcript's reliability is another manifestation of court officers who disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme

48. One must assume that all these officers know that 'the transcript is of critical importance to meaningful appellate review', *U.S. v Workcuff,* 137 App DC 263, 422 F2d 700 (1970), because, among other things, under FRCivP 80(c) 'the stenographically recorded testimony of a witness at a hearing can be used to prove that testimony at a later trial'; for its part, FRAP 10(a) provides that "…the transcript of proceedings, if any,…**shall** constitute [part of] the record on appeal in all cases" (emphasis added). Hence, 'foreclosing examination of a complete transcript renders illusory appellant's right to appeal', *U.S. v Selva,* 546 F2d 1173 (CA5 Fl, 1977).
49. Harmful assumptions are also made by court officers and parties upon seeing judges and supervisors exhibit lack of commitment to the rule of law and tendency to disregard the high ethical standards that should guide the administration of justice. (cf. E:239C) Their insidious example fosters a permissive environment that is self-reinforcing since 'we can do anything like the bosses do too…and they'd better cover our backs 'cause if we go down they come together with us'. Such everything goes, extortionist mentality ever more profoundly undermines the performance of administrative tasks, indispensable for the judicial process to follow its proper course. This breeds lack of candor, bias, and arbitrariness, which are attitudes inimical to due

process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden*, 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997).

50. In such environment, one can conceive of court officers engaging or allowing others to engage in conduct that can deprive or is intended to deprive Dr. Cordero of transcripts. In conceiving such conduct, a cautious and objective reader would ask what motive they could have to engage in it. To find the answer, he or she should know who the DeLanos are and what they have done (E:19§I): Among other things, they filed a bankruptcy petition in January 2004, wherein they named Dr. Cordero among their creditors because of his claim against Mr. DeLano pending since November 2002 in *Pfuntner* (E:23 fn.1). Their petition is facially implausible because Mr. DeLano is a 32-year veteran of the banking industry still employed by Manufacturers & Traders Trust Bank (M&T) as an executive handling, of all matters, bankruptcies, but he and his wife pretend to have gone bankrupt with merely $535 in cash and accounts while refusing to provide documents concerning the whereabouts of $291,470 that they earned in just the 2001-03 fiscal years! Yet, to keep those documents from Dr. Cordero they are willing to run up, and their attorney knows they can afford, a legal bill of $16,654. (E:219) A rational man, and a banker at that, would only incur such cost if after doing calculations he had determined that he had more to lose by producing the requested financial documents. Do you too now want to see those documents?

51. Dr. Cordero did and requested Chapter 13 Trustee George Reiber under 11 U.S.C. §1302(b)(1) and §704(4) to "investigate the financial affairs of the debtor", and under §704(7) to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". The reaction of the Trustee's attorney, James Weidman, Esq., illegally conducting the meeting of creditors on March 8, 2004 (C.F.R. §58.6(a)(10)), was to ask Dr. Cordero what he knew about the DeLanos having committed fraud, and when he would not answer, the Attorney terminated the meeting to prevent Dr. Cordero from examining them. (E:62A) Such termination violated the meeting's purpose under §341, §343, and FRBkrP 2004(b); yet the Trustee ratified it. Judge Ninfo condoned it (E:21§II) as "local practice" (E:23§III; 66§2), thus disregarding his duty under §1325(a)(3) to ascertain whether the petition was "in good faith [or] forbidden by law" and protecting the local parties again (E:116B-C).

52. Indeed, Trustee Reiber had, according to PACER, 3,907 *open cases* before Judge Ninfo! (cf. ¶22 above) He would not request the DeLanos to produce checking and savings account statements. Only at Dr. Cordero's repeated request did he pro forma ask them for other documents…only to

allow them to stall producing even the very few that he had asked for. (E:24¶¶14-19) Nevertheless, Trustee Reiber's supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre Martini, would not require him to investigate the DeLanos (E:20¶g; 36§V) or replace him with a trustee willing and able to do so (E:14§II).

53. On July 9, 2004, Dr. Cordero presented evidence that the DeLanos were engaged in bankruptcy fraud, particularly concealment of assets. He moved for an order to produce documents that could prove it, such as bank accounts. (E:90§I) To eliminate him before he could obtain them, the DeLanos filed on July 22 a motion to disallow his claim. Judge Ninfo supported it, although it was barred by laches and untimely (E:74¶¶46-54) and did not order any production (E:68B; 107). Only at Dr. Cordero's instigation did he issue a watered-down order that he allowed the DeLanos to violate (E:32§3) -just as he has allowed *Pfuntner* parties to do (E:145D)- Then he stopped all other proceedings in *DeLano*, thus forestalling a renewed opposition under §§1325(b) and 102(4) by Dr. Cordero to their repayment plan, and forced him to take discovery of Mr. DeLano to prove his claim against him in *Pfuntner* (E:195§§I-II). The result of his discovery would be presented at an evidentiary hearing on March 1, 2005. But Mr. DeLano and the Judge denied him *every document* that he requested. (E:77§§1-2) Yet, in his decision on appeal of April 4, the Judge disallowed the claim because 'Dr. Cordero did not introduce any document to prove it!' What a set up! (E:33B)

54. However, Dr. Cordero could still introduce on appeal one threatening document: **the transcript.** Indeed, at the March 1 evidentiary hearing he elicited from Mr. DeLano admissions corroborating all the elements of his claim and even new information strengthening it. Judge Ninfo dealt with that testimony in his April 4 decision by dismissing it on the allegation that Mr. DeLano had been "confused" by Dr. Cordero. The ludicrousness of such pretense of a reason for dismissing damaging testimony is all the more obvious because Mr. DeLano was testifying about his own actions as an expert handling the bankruptcy in *Pfuntner*. (E:23 fn.1) Also, he was assisted by two seasoned attorneys, Christopher Werner, Esq., who according to his own statement 'has been in this business for 29 years' now and, as shown in PACER, had already at the time appeared before Judge Ninfo in 525 cases; and Michael Beyma, Esq., who is the attorney for Mr. DeLano and M&T in *Pfuntner* and a partner in the firm of Underberg & Kessler, of which the Judge was also a partner before being appointed to the bench in 1992. The transcript will also allow Judge Ninfo's peers to hear from his own mouth his bias and contempt for due process. (E:209C-E)

55. Mr. DeLano's self-incriminating testimony and Judge Ninfo's performance as his on-the-bench advocate, if it were completely and accurately reflected in the transcript (E:216F), can have devastating consequences: It will show that the untimely motion to disallow and the abuse-of-process evidentiary hearing constituted a two-punch sham (E:33B) to justify stripping Dr. Cordero of standing as a creditor of the DeLanos so as to prevent him from obtaining the documents that can prove the bankruptcy fraud (cf. E:47§II) of well-connected Veteran Banker DeLano. In his 32-year banking career, he must have come to know too much to be left unprotected from his creditors or, worse, liable to criminal charges and, thus, tempted by a plea bargain to trade in his we-are-all-in-the-same-boat incrimination. (E:83§3)

56. Precisely, Mr. DeLano's admissions can open the way to proving that the long series of acts beginning in *Pfuntner* (E:134§I) of disregard for the law, the rules, and the facts by court officers, all consistently to the detriment of non-local pro se Dr. Cordero and the benefit of local parties (E:117C-E), form a pattern of non-coincidental, intentional, and coordinated wrongdoing in bankruptcy. Therein cases approved generate a commission of all payments by debtors to creditors as well as debt relief that spares concealed assets. That relief alone can save the DeLanos more than $144,000 in debt plus delinquent interest at over 25% per year. (E:248¶75) Money, lots of money, "the source of all evil", and a web of local relations giving rise to what is at stake here: a bankruptcy fraud scheme and its cover-up. (E:234D)

57. Indeed, when so many officers who meet daily in a small building to work as a formal unit of colleagues and appointers-appointees (28 U.S.C. §751(a), (b); §753(a)) disregard their duty and legality as they engage in 'diversity of city' discrimination against a far away litigant, one can infer that they are not simply performing their functions incompetently with a series of accidentally coinciding results. Instead, the law allows the application of common sense to circumstantial evidence to draw the inference of intentionality and coordination from the acts of reasonable persons operating as a team to attain the shared objective of a scheme. On such basis, juries of lay persons are asked every day to make inferences that can lead to a finding of guilt beyond reasonable doubt, which will deprive the accused of his property, his liberty, and even his life. That is what the schemers stand to lose, who can be exposed as such by the transcript of one of their reporters.

V. Conclusion and Requested Action

58. The court officers and local parties are determined not to allow Dr. Cordero to use the *Pfuntner*-

DeLano cases as a wedge to crack the bankruptcy fraud scheme. (E:51§IV) But they cannot prevent the Court of Appeals or the Judicial Council from conducting a conscientious and comprehensive investigation of Judge Ninfo's performance as part of the reappointment process. To that end, the Court and the Council can use Reporter Dianetti's refusal to certify the reliability of her transcript as a starting point to find out and evaluate Judge Ninfo's performance and the motives driving it during and leading up to the March 1 evidentiary hearing. Indeed, a complete and accurate transcript would show how Judge Ninfo used the tandem of the motion to disallow the claim and its hearing to oust Dr. Cordero from *DeLano* before he could obtain the documents from the DeLanos that can prove their bankruptcy fraud, particularly concealment of assets. The Judge's participation in that abuse of process and his performance from the bench at the hearing as an advocate for Mr. DeLano and the scheme would demonstrate his contempt for his duty to be an impartial administrator of justice in accordance to law and, as a result, his unfitness for reappointment to a new term in office. In addition to, and even more important than, determining the issue of Judge Ninfo's reappointment, an investigation from the handling of the transcript request can lead the Court and the Council from a recent wrongful act legally significant in itself through a series of similar acts in a pattern of disregard for duty and legality all the way to the source of wrongdoing infecting the core of judicial integrity in a court under their supervision.

59. It is for each member of the Court or the Council to determine how he or she will handle the people referred to in this supplement and the original March 17 comments. Will each discharge his or her own duty to apply the law even to colleagues and appointees who have broken it for their own advantage, even by denying due process to a non-local person on whom they have inflicted enormous material and emotional injury for years? Failure to do so will only condone and thereby encourage those officers and parties to commit ever bolder acts, which will accumulate until attaining a critical mass threatening to explode and expose them, which will induce them into a cover up requiring ever more egregious, even criminal acts. (E:243D) It is a vicious circle that can only end up in disaster and shame for its active participants as well as those who had the duty to stop them but who instead aided and abetted them through their passivity in dereliction of duty. The choice is between protecting behind a black robe screen unworthy members of the same class and keeping the oath "to administer justice without respect to person…under the Constitution and the laws", 28 U.S.C. §453. (E:253E) Where do your loyalties lie?

60. Sooner or later what drives Judge Ninfo, the other court officers, and the local parties to

disregard their duty and legality will be exposed, whether by the Court of Appeals, the Judicial Council, the FBI, the Congressional committees on the judiciary, or investigative journalists. Those who vote to reappoint Judge Ninfo (cf. E:202) despite all the evidence of the wrongdoing that he has engaged in or condoned collected during the past three years (E:115§II) and presented to each of the members of the Court and the Council (E:239C; 201) by Dr. Cordero will end up embarrassed and having to explain themselves.

61. Therefore, Dr. Cordero respectfully requests that the Court of Appeals and the Judicial Council:
    a. do not reappoint Judge Ninfo to a new term of office as bankruptcy judge;
    b. investigate whether Judge Ninfo influenced directly or indirectly Court Reporter Mary Dianetti with regard to:
        1) her recording of the evidentiary hearing in *DeLano* on March 1, 2005, or her transcription thereof and thereby gave the Reporter cause to refuse to certify that such transcript would be complete and accurate, not distributed to anybody other than the clerk and Dr. Cordero, and free of tampering influence; and
        2) her mishandling of the transcript in *Pfuntner*;
    c. investigate the broader context of the pattern of non-coincidental, intentional, and coordinated acts of bias and disregard for the law, the rules, and the facts engaged in by court officers and parties in the Bankruptcy Court, WBNY, and District Court, WDNY
    d. designate an experienced court reporter, unrelated to either Reporter Dianetti or any court officers, whether judicial or administrative, of either of those Courts, to prepare the transcript based on all the stenographic packs and folds used by her to record the March 1 evidentiary hearing, having due regard for the chain of custody and condition of such packs and folds; and review such transcript; and
    e. refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

Dated: August 3, 2005

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Table of Exhibits

in support of the supplement of August 3, 2005
to the March 17 comments against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY

submitted to
the Second Circuit Court of Appeals and the Judicial Council

by
Dr. Richard Cordero

Exhibit page num. =E:#

1. Letters exchanged between Dr. Richard Cordero and WBNY Court Reporter Mary Dianetti:

	Dr. Cordero	Reporter Dianetti		
a.	April 18, 2005		1	[Add*:681]
b.		May 3	2	[Add:834]
c.	May 10		3	[Add:835]
d.		May 19	4	[Add:840]
e.	May 26		6	[Add:842]
f.		June 13	7	[Add:843]
g.	June 25		9	[Add:867]
h.		July 1, 2005	11	[Add:869]

2. Dr. **Cordero**'s motion of **July 13**, 2005, for the District Court, WDNY, **to stay** the confirmation hearing in Bankruptcy Court of the debt repayment plan in *In re DeLano*, no. 04-20280, WBNY, and the confirmation order; withdraw the case to itself pending appeal; remove Trustee George Reiber; and take notice of his addition of issues to the appeal ..... 13 [Add:881]
   a. Dr. Cordero's **affidavit** of **July 11**, 2005, in support of his July 13 motion ..... 18 [Add:886]

[*D:=Designated items in the record for the appeal from Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to District Court in *Cordero v DeLano*; 05cv6190L, WDNY; **Add:**=Addendum to the D items; **Pst:**= PostAddendum; and **Tr:**= transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005. The exhibits whose page numbers are so identified are contained in the corresponding files in the A D Add Pst Tr folder on the accompanying CD.

Mr. DeLano is a 3rd-party defendant who was brought into *Pfuntner v. Trustee Gordon et al., no 02-2230, WBNY*, by Dr. Cordero. Later on, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against Mr. DeLano arising from *Pfuntner*.]

3. Dr. **Cordero**'s motion of **June 20**, 2005, for the District Court to **stay** in Bankruptcy Court ***Pfuntner*** *v. Trustee Gordon et al.*, no. 02-2230, WBNY, and **join** the parties in that case **to** the ***DeLano*** appeal ..... 43 [Add:851]

   a. Dr. **Cordero**'s statement of **June 18**, 2005, **to** the ***Pfuntner* parties** on Judge **Ninfo's linkage** of the *Pfuntner* and *DeLano* cases ..... 45 [Add:853]

4. Dr. **Cordero**'s motion of **February 17**, 2005, to **request** that Judge **Ninfo recuse himself** under 28 U.S.C. §455(a) due to lack of impartiality ..... 59 [D:355]

5. Dr. **Cordero**'s motion of **August 14**, 2004, in Bankruptcy Court for docketing and issue of proposed order, transfer, referral, examination, and other relief, noticed for August 23 and 25, 2004 ..... 89 [D:231

6. Dr. **Cordero**'s motion of **November 3**, 2003, in the **Court of Appeals** for the Second Circuit for leave to file **updating** supplement of **evidence of bias** in Judge **Ninfo's** denial of Dr. Cordero's request for a trial by jury ..... 107 [D:425

7. Dr. **Cordero**'s motion of **August 8**, 2003, for J. **Ninfo** to **transfer** ***Pfuntner*** to the District Court in Albany, NDNY, and **recuse** himself due to bias ..... 127 [D:385]

8. **Bankruptcy Court**'s notice of **April 11**, 2005, **to** Dr. **Cordero** to request that pursuant to FRBkrP 8006 he **perfect** the **record** on appeal in *DeLano* by submitting by April 21 his **designation of items** in the record ..... 165 [Add:679]

9. District Judge **Larimer**'s order of **April 22**, 2005, **scheduling** Dr. **Cordero**'s appellate **brief** in *DeLano* for submission by 20 days hence, issued with **disregard for FRBkrP 8007(b)** a day after Dr. Cordero's designation of items was filed in Bankruptcy Court **and before** the **transcript** had been **started** so that the record was incomplete and no brief could be scheduled ..... 167 [Add:692]

10. Dr. **Cordero's objection** of **May 2**, 2005, to Judge **Larimer's FRBkrP**-non-complying **scheduling** of his appellate brief; and request for its rescission ..... 169 [Add:695]

11. Judge **Larimer**'s order of **May 3**, 2005, **scheduling another date** for Dr. Cordero's appellate brief and issued with **disregard** for his objection that the scheduling was premature since the **record** it was still **incomplete** ..... 171 [Add:831]

12. Dr. **Cordero**'s motion of **May 16**, 2005, **for compliance with FRBkrP** 8007 **in** the **scheduling** of his appellate **brief** and the urgent rescission of the scheduling order because the transcript was not yet in, the record was still incomplete, and the Judge had no jurisdiction over the case ..... 172 [Add:836]

13. Judge **Larimer**'s order of **May 17**, 2005, **rescheduling** Dr. Cordero's **brief** for submission within 20 days **after** the **transcript** was filed, as if he had requested additional time rather than compliance with the FRBkrP ..... 175 [Add:839]

14. **Docket** of ***DeLano*** as of July 26, 2005 [updated to December 12, 2005] ..... 176 [D:496]

15. **Bankruptcy Court**'s letter of **January 14**, **2003**, **to** Dr. **Cordero** setting January 27 as the due date for his designation of items in his appeal in *Pfuntner* from Judge Ninfo's dismissal of his cross-claims against Trustee Gordon ..... 191 [C:1107]

16. Judge **Larimer**'s **scheduling** order of **January 16**, 2003, setting a deadline 20 days hence for Dr. Cordero's appellate brief, thereby issuing it **prematurely** while the **period** had barely **begun** to run for him **to designate items** for his appeal *Cordero v. Gordon,* no. 03cv6021, WDNY ..... 192 [C:1108]

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    b. Supporting Statement: Judge **Ninfo's bias** and **disregard** for **legality** can be heard from his own mouth through the **transcript** of the evidentiary **hearing** of the DeLano Debtors' **motion** to **disallow** Dr. **Cordero's claim against** Mr. **DeLano**, held on March 1, 2005; and can be read about in a caveat on ascertaining its authenticity that illustrates the Judge's tolerance of wrongdoing **[**See that transcript in the Tr file in the D Add Pst Tr folder on the accompanying CD.] ..... 204 [C:951]

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SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
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NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
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JOHN M. WALKER, JR.
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

Via First Class Mail
August 5, 2005

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

Re: Supplementation of Comments

Dear Dr. Cordero:

I am responding to your communication of August 4, 2005 regarding the reappointment of Bankruptcy Judge John Ninfo. Members of the bar and the public were invited to submit comments for consideration by the Court of Appeals concerning this reappointment. The Judges of the Court of Appeals considered all submissions which were filed timely within the public comment period. However, that period expired on March 30, 2005. I am therefore returning your supplemental materials.

I trust this information is of assistance to you.

Very truly yours,

Karen Greve Milton
Circuit Executive

KGM/jdk
Enclosure

C:1024 Cir Exec Milton's return of 8/5/5 to Dr. Cordero of his supplement due to expiration of comment period

Dr. Richard Cordero

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[Sample of letters to 2nd Cir. judges]

September 6, 2005

Circuit Judge Reena Raggi
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: 2nd supplement to comments against reappointing J. John C. Ninfo, II, WBNY

Dear Judge Raggi,

Last March I responded to the Appeals Court's request for comments on the reappointment of Judge Ninfo. I indicated that the Court and the Judicial Council could 'hear' him express his bias and disregard for the law, the rules, and the facts by obtaining the transcript of the evidentiary hearing held on March 1, 2005, of the motion raised by the debtors in *David and Mary Ann DeLano* (04-20280) to disallow my claim. Revealingly enough, that is the transcript that Bankruptcy Court Reporter Mary Dianetti has refused to certify as complete, accurate, and untampered-with. (E:9-11) The evidence thereof is what I submitted to the Court and the Council in the supplement of last August 3.

New evidence discussed in the supplement below shows that the Reporter's refusal is part of a bankruptcy fraud scheme: Judge Ninfo has confirmed the DeLanos' debt repayment plan upon the pretense that the trustee investigated and cleared them of fraud in his "Report" (E:271-273; §I) although the Judge knew that there was no investigation (§IIA) because he had refused to order them to produce even checking and savings account statements and because the trustee, who before asking for any documents from the DeLanos vouched for the good faith of their bankruptcy petition, had a conflict of interests in conducting an investigation that could prove him wrong (§IIB; E:309-323). Through his confirmation without investigation (§IIC), Judge Ninfo allowed the whereabouts of $291,470 earned by the DeLanos in just 2001-03 to remain unknown and the astonishing string of mortgages (¶53, E:284-298) to go unexplained through which the DeLanos took in $382,187 since 1975 only to end up 30 years later with equity in the very same home of a meager $21,415 and a mortgage debt of $77,084! Over $670,000 unaccounted for! Not enough, for Judge Ninfo spared them repayment of over $140,000. Thereby Judge Ninfo protected a scheme and Mr. DeLano, who has spent his 32-year career in banking, is currently in charge of bankruptcies of clients of his bank (¶36), and has learned so much about bankruptcy abuses that the Judge could not risk letting an investigation indict Mr. DeLano for playing the system, lest he disclose his incriminating knowledge in a plea bargain.

Hence, Judge Ninfo cannot let the transcript be produced and the Reporter be investigated or the Trustee be removed. I moved for that on July 18 and 13, respectively; but neither the Reporter nor the Trustee has bothered to file even a stick-it with the scribble "I oppose it". But wait! I raised those motions in my appeal before Judge David Larimer (05cv6190, WDNY). How did they know that he would not grant them by default and cause them to lose their jobs? Yet, they must know that Judge Larimer's protection of Judge Ninfo and the others by not ruling on my motions -four, the earliest filed in *June*- can lead me to petition for a writ of mandamus again (cf. 03-3088, CA2). Do they know that the Court will deny it and leave me with a frozen appeal or no option but to file my brief without the transcript? (E:333-343) The scheme! How high does it reach? (cf. 03-8547 and 04-8510, CA2)

Circumstantial and documentary evidence warrants that Judge Ninfo not be appointed. Instead, let your duty to safeguard the integrity of judicial officers and process cause him to be investigated for participating in a bankruptcy fraud scheme; and let your duty under 18 U.S.C. 3057(a) cause you to report this matter to A.G. Alberto Gonzales for investigation. Looking forward to hearing from you,

sincerely, Dr. Richard Cordero

List of Judges

of the Second Circuit Court of Appeals and Judicial Council
to whom the 2nd supplement of September 5, 2005
to comments against the reappointment
of Bankruptcy Judge John C. Ninfo, II, WBNY
to a new term of office was sent together with the letter of
September 6, 2005
by
Dr. Richard Cordero

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Circuit Justice for the Second Circuit
U.S. Supreme Court
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Circuit Judge Jose A. Cabranes
Circuit Judge Guido Calabresi
Circuit Judge Dennis Jacobs
Circuit Judge Rosemary S. Pooler
Circuit Judge Robert D. Sack
Circuit Judge Chester J. Straub
Circuit Judge Sonia Sotomayor
Circuit Judge Robert A. Katzmann
Circuit Judge Barrington D. Parker
Circuit Judge Reena Raggi
Circuit Judge Richard C. Wesley
Circuit Judge Peter W. Hall
Circuit Judge James L. Oakes
Circuit Judge Ralph K. Winter
U.S. Court of Appeals
Thurgood Marshall Courthouse
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Chief Judge Michael B. Mukasey
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Chief Judge Edward R. Korman
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2nd SUPPLEMENT TO COMMENTS

against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted on September 5, 2005
to the Second Circuit Court of Appeals and Judicial Council
by
Dr. Richard Cordero

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

1. On March 17, 2005, Dr. Richard Cordero timely submitted comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, based on evidence in two related cases, namely, *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, and *David and Mary Ann DeLano*, docket no. 04-20280, of his participation in a series of acts of bias and disregard for the law, the rules, and the facts that form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (Exhibits, page 12, below = E:12)
2. Last August 3, Dr. Cordero submitted a supplement that discussed the express refusal of Judge Ninfo's Court Reporter, Ms. Mary Dianetti, to agree to certify that her transcript of the stenographic record that she herself had taken of the evidentiary hearing before the Judge on March 1, 2005, would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence. (E:9-11) That transcript is indispensable to Dr. Cordero's appeal to District Court (docket no. 05-cv-6190, WDNY) because it will confirm and reveal to the appellate judges Judge Ninfo's contempt for due process and his role as on-the-bench advocate for Mr. DeLano before and during the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim as a creditor of them. A reliable transcript would also justify the Court of Appeals and the Judicial Council, as bodies with responsibility for ensuring the integrity of the courts in the Circuit, in investigating Judge Ninfo on the strength of the evidence of his participation in a bankruptcy fraud scheme.
3. That scheme and Judge Ninfo's participation in it are further revealed by the evidence presented in the instant supplement: The Judge confirmed the debt repayment plan of the DeLanos upon

the pretense that the trustee, Chapter 13 Trustee George Reiber, had investigated the DeLanos and found no bankruptcy fraud on their part, yet Judge Ninfo knew that no such investigation of the DeLanos had ever been conducted (§II¶33 below). Indeed, he knew it because of his own acts in *DeLano* and those of the Trustee as well as the latter's filed "Report" (§I¶5 below; E:271-273) and the type of documents that the Trustee and the DeLanos had refused and failed to produce (§A¶36 below) including those that Judge Ninfo ordered them to produce but allowed them not to produce with impunity. By predicating a confirmation of the plan upon the statement known to be false that an investigation had cleared the debtors of fraud, Judge Ninfo and others worked fraud on the court as an institution to the detriment of judicial process and of Dr. Cordero's rights (§C¶61 below).

4. To engage in such fraud, Judge Ninfo and other participants in the scheme have had two motives: One is to avoid a harm in that the confirmation of the plan despite the evidence of bankruptcy fraud insures that the DeLanos will not be charged with fraud and, therefore, will have no incentive to enter into a plea bargain in which Mr. DeLano, who has spent his 32-year career in banking and is currently in charge of bankruptcies of clients of his bank, Manufacturers and Traders Trust Bank (M&T Bank), would disclose what he has during those many years learned about bankruptcy fraud committed by debtors, trustees, and judicial officers, which would result in the likely indictment of those people. The other very powerful and corruptive motive is to gain a benefit: MONEY!, for the plan's confirmation allows the DeLanos to avoid 78¢ on the dollar owed for a saving of over $140,000 plus all compounding delinquent interest at the annual rate of over 25% and in addition spares them having to account for more than $670,000! (§B¶49 below)

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****

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

5. The investigation of the confirmation of plan can take as its starting point the following entries in the *DeLano* docket no. 04-20280, which is available through PACER at https://ecf.nywb.uscourts.gov/ (Exhibits to the August 3 Supplement, page 176=1stSupp.E:176)

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)

07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to $635.00 per month in July 2004 and will increase to $960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of $6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005)

6. When one clicks on hyperlink 134 what downloads is a three-page document titled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (E:271-273) Their acceptance by Judge Ninfo as the Trustee's "Report" (¶33 below) is so revealing that they warrant close analysis. [Add:937-943]

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

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

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

> **Local Bankruptcy Rule 9004. PAPERS**
>
> 9004-1. FORM OF PAPERS *[Former Rule 13 A]*
>
> All pleadings **and other papers *shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially *defacing* them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)
>
> 9004-2. CAPTION *[Former Rule 13 B]*
>
> All pleadings **and other papers *shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned,

and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

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

10. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there is "§341 Meetings of creditors and equity security holders". The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

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

11. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not listen passively at such a meeting either. This is how his role is described:

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

12. The trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works "for the benefit of general unsecured creditors whom the trustee represents". That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

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

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

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

14. Nor do those scrap papers comply with the requirement that they "***shall*** be **signed".** Merely initializing page 2 (E:272) is no doubt another manifestation of the perfunctory nature of Trustee Reiber's scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee's shame about putting his full name on such unprofessional filing with a U.S. court?

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

15. The third scrap paper (E:273) bears the typewritten statement "I/We filed Chapter 13 for one or more of the following reasons:" Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own "341 Hearing", did he simply hear the DeLanos' "reasons" for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those "reasons" raise a host of critical questions. Let's examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment *(Wife) Age 59*

16. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of $67,118 in 2003, according to the Statement of Financial Affairs in their petition.
17. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a "reason" for filing their petition on January 27, 2004, to a *"pre-1990"* event, it is fair to ask when she lost her employment and what impact it had on their filing now.

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

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

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

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

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

22. Yet, the DeLanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. No explanation is given for this …although these objections were raised by Dr. Cordero in his written objections of March 4,

2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

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

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

24. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check "Student loans". So, what "college expenses" are being considered here? Moreover, according to that jotting, whatever those "college expenses" are, they were incurred *"pre-1990"*. Given that such listed "reasons" as, "Medical problems", "To stop creditor harassment", "Overspending" and "Protect debtor's property" were not checked, how can those "college expenses" have caused the DeLanos to go bankrupt *15 years later?* This is one of the most untenable and ridiculous "reasons" for explaining a bankruptcy…

25. …until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of "reasons" was extracted; no reference to any document where the "reasons" checked were quantified in dollar terms and their impact on the DeLanos' income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos' plan "meets the best interest test"? (¶5 above)

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

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

27. The lack of grammatical parallelism among the entries on that list is most striking. So the first "reason" appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every "reason" and thereby give the list semantic as well as syntactic consistency: "I/We filed…" because: (I/We omitted but implicit) "Lost employment". However, the second "reason" does not fit this pattern: "I/We filed…" because: "Hours or pay reduced". The next reason is expressed by an adjective, "Matrimonial", while the following one is a noun "Garnishments". A "reason" is set forth with a gerund, "Overspending", but others are stated with the bare infinitive, "Protect debtor's property", whereas others use *to*-infinitive, "To receive a Chapter 13 discharge" (which by the way, is a particularly *enlightening* "reason", for is that not the result aimed at when invoking any other "reason"?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult. Who bungled that form? Was it approved by any of the U.S. trustees? How many plans has Judge Ninfo confirmed based on it? It was not made specifically for the DeLanos, was it? Is there a financial motive for confirming plans no matter what?
28. The grammar of the "reasons" is not the only bungled feature in this form. In addition, it lacks a caption. Then the sentence that introduces the "reasons" is written in broken English: "I/We filed Chapter 13 for one or more of the following reasons:" What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: 'You filed Chapter 13….'
29. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your peers and hierarchical superiors and even be made publicly available for close scrutiny, would you fill out an order form thus?: "The respondents filed Chapter 13 and win 'cause they *ain't have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with'em after cookin' a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*" (Completing the order form in handwriting would give it a touch of flair…in pencil, for that would show…no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of all the peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)
30. Still worse, the third scrap paper is neither initialized nor signed; of course, it bears no address

or telephone number. So who on earth is responsible for its contents? (cf. E:263) And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

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

31. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to Rule 9011, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All…lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that 'the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)"'.
32. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under Local Rule 10 of the District Court, WDNY, requiring that "All text…in…memoranda and other papers shall be plainly and legibly…typewritten…without erasures or interlineations materially defacing them,…signed…and the name, address and telephone number of each attorney or litigant …shall be…thereon. All papers shall be dated."

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

33. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:275). Therein he stated that he "has considered…the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

> The Court found that the…Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee

read a statement into the record regarding his investigation.

34. However, what page 2 of Trustee Reiber's scrap papers (E:272) states is this:

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

35. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough "~~1) Best Interest - $1255;~~" "Attorney fees". At the bottom of the page is written: "ATTORNEY'S FEES" $ 1350 and, below that, "Additional fees Yes" $16,655. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:279) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:282).

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

36. Although Trustee Reiber was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections of March 4, 2004 and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶12 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections.

37. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their petition's Schedule B, where they declared having only $535 in cash and account despite having earned $291,470 in just the immediately

preceding three years yet declaring nothing but $2,910 in household goods, while stating in Schedule F a whopping credit card debt of $98,092! Where did the money go or is?

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

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

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

40. So it turned out to be: a sham. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the

last 36 months of each of only 8 accounts, even though the DeLanos had listed in their petition's Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

41. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!…insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
42. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
43. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee…any recorded information…", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were part of the same sham!
44. But not just any sham, rather one carried out in all confidence, for by now Trustee Reiber has worked with Judge Ninfo on well over 3,907 cases (¶20 above). Presumably many are within the scope of the bankruptcy fraud scheme given that it is all but certain that *DeLano* is not the first case that they, had they always been conscientious officers, all of a sudden decided to deal with by coordinating their actions to intentionally disregard the law, the rules, and the facts for

the sake of the DeLanos, who in that case would have something so powerful on them as to cause them to violate the law. In any event, one violation is one too many. Actually, what they have on each other is knowledge of their long series of unlawful acts forming a pattern of wrongdoing. Now, nobody can turn against the other for fear that he or she will be treated in kind. Either they stick together or they fall one after the other.

45. Consequently, Trustee Reiber did not have to consider for a second that upon Dr. Cordero's motions of July 9 and August 14, 2004, Judge Ninfo would remove him from *DeLano* under §324(a). That would have entailed his automatic removal as trustee from all other cases under §324(b), and thereby his termination as trustee. Since that would and will not happen, the Trustee did not file even a scrap paper to state pro forma that he opposed the motions. Revealingly enough, he is not concerned either that District Judge David Larimer may remove him upon Dr. Cordero's motion of July 13, 2005. Hence he has not wasted time scribbling anything in opposition.
46. Not only he, but also Reporter Dianetti has not considered it necessary to waste any effort in the formality of opposing Dr. Cordero' motion of July 18 requesting that Judge Larimer designate another individual to prepare the transcript of her recording of the March 1 evidentiary hearing. Yet, all they needed to do was as cursory a gesture as Att. Werner's two conclusory sentences (E:332) to oppose Dr. Cordero's July 13 motion to stay the confirmation hearing…and a cover letter addressed directly to Judge Larimer to show him ingratiating deference (E:331).
47. Can you imagine either the Trustee or the Reporter reacting with such assured indifference to motions that can cost them their livelihood or Att. Werner skipping any legal argument and slipping in a mere courtesy note had this case been transferred to another court, such as that in Albany, NDNY, where they did not know the judge and could not tell on him? Of course not, they could lose the motions by default! But they have nothing to worry about, for Judge Larimer has not decided any of the four motions of Dr. Cordero pending before him, even one as far back as June 20 to link to this case *Pfuntner v. Gordon et at.*, docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano. (1st Supp.E:43; 1st Supp.¶33)
48. What a contrast with the celerity with which Judge Larimer reacted when the Bankruptcy Clerk, disregarding FRBkrP 8007, forwarded to him upon receipt on April 21 (E:333-34), Dr. Cordero's designation of items on appeal and a copy of his first letter of April 18 to Reporter Dianetti to make arrangements for the transcript. Though the record was legally incomplete, lacking the transcript and the appellee's designation of additional items and any issues on cross appeal, the following day, April 22, Judge Larimer issued a scheduling order requiring Dr. Cordero to file

his appellate brief 20 days hence (E:335), knowing full well that the date of the Reporter's completion of the transcript was nowhere in sight so that his order would effectively prevent Dr. Cordero from using it when writing his brief. (E:337-343; 1st Supp.§III). Could it not be in Judge Larimer's interest to decide any of those motions, thereby exposing not only this case and the sham investtigation, but also the bankruptcy fraud scheme itself to scrutiny by circuit judges and justices?

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

49. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at $98,500. However, they still owe on it $77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of $21,415 in the very same home that they bought 30 years ago! Yet, they earned $291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding debtors, trustees, and judicial officers?
50. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶39 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion

to proceed, but he also barred any other proceeding unrelated to its consideration.

51. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Dierdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:283), he backed down from that limit.
52. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.
53. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production…and still they failed to produce them by the end of that period.
54. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:285-297) once more (¶40 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:284). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for $26,000 in 1975;	E:285 [D:342]	$26,000
2) another for $7,467 in 1977;	E:286 [D:343]	7,467
3) still another for $59,000 in 1988; as well as	E:289 [D:346]	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	E:298 [D:176]	59,000
5) owed $59,000 to M&T in 1988;	E:298 [D:176]	59,000
6) another mortgage for $29,800 in 1990,	E:291 [D:348]	29,800
7) even another one for $46,920 in 1993, and	E:292 [D:349]	46,920
8) yet another for $95,000 in 1999.	E:293 [D:350]	95,000
	Total	$382,187.00

55. The whereabouts of that $382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:284), accompanying those incomplete documents adds more unknowns:

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

56. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed $77,084.49 on their home, $98,092.91 on credit cards, and $10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the $291,470 earned in 2001-03 that is nowhere to be seen…and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!
57. Although Dr. Cordero identified these incongruous elements (E:300-302) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:306)
58. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:307), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:308). When Att. Werner

belatedly served him (E:309), it became apparent why he had tried to withhold the documents (E:310-323) from him: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:324) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:327-330).

59. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the $291,470 earned in the 2001-03 period, over $670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16, 2005, Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! Yet she created nothing and simply produced work for hire.
60. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at that hearing nor made any reference to them in the scrap papers of his "Report". Do they fear that those documents will reveal conceal assets?

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

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

the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, the Judge was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thus requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Reporter Dianetti (E:9-11; 1st Supp.§II).

62. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Therefore, common sense and good judgment required that the Trustee's investigation be reviewed as to its contents, method, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".
63. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. They confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of the DeLanos having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would provide incriminating testimony of participation in a bankruptcy fraud scheme.
64. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none" in order to induce the Bankruptcy Court to confirm the DeLanos' plan and to escape his own conflict of interests (¶39 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Court as an institution even if Judge Ninfo knew that his statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos.
65. It also follows that insofar as Judge Ninfo knew or by carrying out his judicial functions with due diligence and impartiality would have known, that Trustee Reiber had conducted no

investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm their plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process. In so doing, the Judge and the Trustee have caused Dr. Cordero the loss of an enormous amount of effort, time, and money and inflicted on him tremendous emotional distress.

III. Request for Relief

66. Therefore, Dr. Cordero respectfully requests that the Court of Appeals and the Judicial Council:

a) do not reappoint Judge Ninfo to a new term of office as bankruptcy judge;

b) open an investigation into the participation of Judge Ninfo in a bankruptcy fraud scheme and determine how high the scheme reaches and whether it involves official corruption;

c) investigate why Trustee Reiber did not investigate the financial affairs of the DeLanos and whether his statement and Judge Ninfo's that he had conducted such investigation and it had cleared the DeLanos of fraud constituted perjury, subornation of perjury, and fraud on the court;

d) determine whether the DeLanos' petition was filed in bad faith and the plan was confirmed by means forbidden by law, in violation of 11 U.S.C. §1325(a)(3), and worked fraud on the court;

e) determine whether Judge Ninfo influenced Reporter Dianetti to refuse to certify the reliability of the transcript of the *DeLano* evidentiary hearing and designate another reporter to prepare it;

f) investigate whether the pattern of non-coincidental, intentional, and coordinated acts of bias and disregard for the law, the rules, and the facts engaged in by Judge Ninfo and others in *DeLano* and *Pfuntner* has become the modus operandi of the Bankruptcy and District Courts, WDNY; and

g) refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester (where the DoJ office is literally the next-door neighbor of the Office of the U.S. Trustee) or Buffalo participate in any way in such investigation.

Dated: September 5, 2005

Dr. Richard Cordero

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Table of Exhibits

in support of
the 2nd supplement to comments
against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted to
the Second Circuit Court of Appeals and Judicial Council
on September 5, 2005
by
Dr. Richard Cordero

I. Comments

E:#=exhibits page #

a. Dr. **Cordero**'s letter of **March 17**, 2005, **to Circuit Executive** Karen Greve Milton in response to the invitation of the Court of Appeals, 2nd Cir., to members of the bar and the public to **comment** on the **reappointment** of WBNY Bankruptcy Judge John C. **Ninfo**, II, to a new term of office ..... E:12 [C:982]

b. **First supplement of August 3, 2005, to** the **comments** against the reappointment of WBNY Bankruptcy Judge John C. Ninfo, II, submitted to the Court of Appeals for the Second Circuit and the Judicial Council of the Second Circuit..... previously submitted 1-20 [C:1001]
ToE 21-23

II. Exhibits[1]

1.h. Dr. **Cordero**'s letter of **June 25**, 2005, to Reporter **Dianetti** requesting that she state whether she merely copied the **numbers of paper packs and folds** that she gave him at the end of the March 1 evidentiary hearing or counted those that she will actually transcribe; **and** that she agree to **certify** that her **transcript** will be complete, accurate, and untampered with.....9 [Add[2]:867]

i. Rep. **Dianetti**'s letter of **July 1**, 2005, **to** Dr. **Cordero** requiring that he **prepay $650** for the transcript and rejecting the balance of his June 25 letter .....11 [Add:869]

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[1]Pages E:13-257 have been submitted to Cir. Executive K.G. Milton, but are available on demand.

[[2]Add=Addendum to D:=Designated items, i.e. documents, in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY; see those items in the PDF files in the D Add Pst folder on the accompanying CD.

Mr. DeLano is a third-party defendant who was brought into *Pfuntner* by Dr. Cordero. Subsequently, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against Mr. DeLano arising from *Pfuntner*.]

24. Dr. **Cordero**'s letter of **March 17**, 2005, **to Circuit Executive** Milton in response to the invitation of the Court of Appeals for the Second Circuit to members of the bar and the public to **comment** on the **reappointment** of Bankruptcy Judge John C. **Ninfo**, II, to a new term of office .....12 [C:982]

25. Useful **Addresses for** the **Investigation** of *In re DeLano*, no. 04-20280, WBNY, and *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY .....259 [C:1051]

26. Chapter 13 Trustee George **Reiber**'s undated "Findings of Fact and Summary of 341 Hearing" together with .....271 [Add:937]

    a) Undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons:" .....273 [Add:939]

27. O**rder** of Bankruptcy Judge **Ninfo** of **August 8**, 2005, instructing **M&T Bank** to **deduct** $293.08 biweekly **from** his employee, Debtor David **DeLano**, and **pay** it to Trustee **Reiber** .....274 [Add:940]

28. Judge **Ninfo**'s **order** of **August 9**, 2005, **confirming** the Chapter 13 debt repayment **plan** of David and Mary Ann DeLano after considering their testimony and Trustee Reiber's Report .....275 [Add:941]

29. Application of **July 7**, 2005, by Christopher K. Werner, Esq., **attorney for the DeLanos**, for **$16,654** in **legal fees** for services rendered in *In re DeLano* .....278 [Add:871]

    a) Att. **Werner**'s itemized **invoice** of **June 23**, 2005, for legal services rendered **to** the **DeLanos** and consisting almost exclusively of maneuvers to avoid production of the documents requested by Dr. Cordero, Creditor [D:63, 87§VI, 112, 124, 147, 159, 161, 199§VI, etc., 287, etc.] .....279 [Add:872]

30. Trustee **Reiber**'s letter of **December 30**, 2004, to Dr. **Cordero** confirming that he will conduct a Section 341 **Hearing of** the **DeLanos** on February 1, 2005, at his office on South Winton Court, Rochester .....283 [D:333]

31. Letter of Att. **Werner** of **February 16**, 2005, **to** Trustee **Reiber** accompanying the following incomplete documents described as "relevant **portion** of Mr. and Mrs. **DeLano's Abstract of Title**" in response to "your request at the adjourned 341 Hearing"; these documents begin thus: .....284 [D:341}

    a) "4. Church of the Holy Spirit of Penfield New York" .....285 [D:342]

    b) "Public Abstract Corporation", concerning an interest in premises from October 5, 1965, recorded in Liber 3679, of Deeds, at page 489, of the Records in the office of the Clerk of the County of Monroe, NY .....287 [D:344]

    c) "#12,802 Abstract of Title to Part Lot #45 Township 13, Range 4, East Side Shoecraft Road, Town of Penfield" .....288 [D:345]

    d) "33516 Abstract to Lot #9 Roman Crescent Subdivision" .....290 [D:347]

    e) $95,000 "Mortgage Closing Statement April 23, 1999, 1262 Shoecraft Road, Town of Penfield" .....294 [D:351]

f) "U.S. Department of Housing and Urban Development Optional for Transactions without Sellers" ..... 296 [D:353]

32. **Excerpt** from Mrs. **Mary** DeLano's **Equifax** credit bureau report of **May 8, 2004**, produced with missing pages ..... 298 [D:173]

33. Dr. **Cordero**'s letter of **February 22**, 2005, **to** Trustee **Reiber analyzing** the **documents** produced by Att. Werner as incomplete, incapable of explaining the flow of mortgages, silent on equity, and at odds with information previously provided; and requesting that the **Trustee recuse himself** or **hire professionals** to conduct a title search and appraisal, and follow the money earned by the DeLanos ..... 299 [D:461]

34. Trustee **Reiber**'s letter of **February 24**, 2005, **to** Att. **Werner requesting information** about the **mortgage to Columbia** Bank that later on ended with the government [HUD] but that is **not** recorded as having been **discharged** ..... 306 [D:469]

35. Att. **Werner**'s letter of **March 10**, 2005, **to** Trustee **Reiber** in response to the latter's February 24 letter concerning **records** of **discharge of** DeLanos' **mortgages** ..... 307 [D:472]

36. Dr. **Cordero**'s letter of **March 19**, 2005, **to** Att. **Werner** stating that **no enclosures** were sent to Dr. Cordero with the copy of Att. Werner's March 10 letter to Trustee Reiber and requesting that he send a list of everything that Att. Werner sent to the Trustee as well as a copy ..... 308 [D:473]

37. Att. **Werner**'s letter of **March 24**, 2005, **to** Dr. **Cordero** with 14 "copies of the enclosures to our letter to Trustee Reiber of March 10, 2005, which were apparently omitted from your copy of the correspondence" ..... 309 [D:477]

    a) Printouts of **pages** of February 25, 2005, of electronic records indexing from the website of the Monroe County Clerk's office ..... 310 [D:478]

38. Dr. **Cordero**'s letter of **March 29**, 2005, **to** Trustee Reiber commenting on the **uselessness** of Att. **Werner's** printed **screenshots**; asking **whether** the Trustee's lack of protest means that the **§341 examination** of the DeLanos on **February 1,** 2005, was **a charade** that he conducted with no intention to obtain any financial information from the DeLanos; and **requesting** that he either take certain steps to **obtain** that **information or recuse himself** and let another trustee be appointed who can conduct an efficient investigation of the DeLanos **[never replied to]** ..... 324 [D:492]

39. Dr. **Cordero**'s letter of **April 19**, 2005, **to** Trustee **Martini** requesting that she **remove** Trustee **Reiber** and let him know what she intends to do [**never replied to**] ..... 327 [Add:682]

40. Dr. **Cordero**'s letter of **April 21**, 2005, **to** Trustee **Schmitt requesting** a **4th time** a statement of **her position** on Trustee Reiber's failure to investigate the DeLanos [**never replied to**] ..... 328 [Add:685]

41. Dr. **Cordero**'s letter of **April 21**, 2005, **to** Trustee George **Reiber** requesting a response to his letter of March 29 concerning the **uselessness of** the printouts of **screenshots** from the Monroe County Clerk's Office that were to have provided information about the mortgages of the DeLanos; and sending him a **copy** of the **Designation** of Items in the Record and Statement of Issues on Appeal to the District Court from Judge Ninfo's disallowance at the evidentiary hearing on March 1, 2005, of Dr. Cordero's claim against Mr. DeLano [**never replied to**].....329 [Add:683]

42. Att. **Werner**'s letter of **July 19**, 2005, on behalf of the DeLanos **to** Judge **Larimer** accompanying his:.....331 [Add:935]

    a) "Statement in opposition to Cordero motion [sic] to stay confirmation and other relief".....332 [Add:936]

43. **Bankruptcy Court's notice** of **April 11**, 2005, **to** Dr. **Cordero** requesting that pursuant to FRBkrP 8006 he **perfect** the **record on appeal** by submitting by April 21 his designation of items in the *DeLano* record.....333 [Add:679}

44. Letter of Karen Tacy, *DeLano* Case Administrator at the **Bankruptcy Court**, of **April 22**, 2005, **informing** Dr. **Cordero** of the **transmittal,** upon the Court's receipt of his Designation of Items and Statement of Issues on Appeal, of the **record to** the **District Court, WDNY**.....334 [Add:686]

45. District Judge David G. **Larimer**'s **order** of **April 22**, 2005, **scheduling** Dr. **Cordero**'s appellate **brief** for submission by **20 days hence**.....335 [Add:692]

46. Dr. **Cordero**'s **Objection** of **May 2**, 2005, **to** Judge **Larimer**'s **scheduling order**, which was issued with disregard for FRBkrP 8007(b) a day after Dr. Cordero's Designation of Items was filed in Bankruptcy Court, so that the record could not be complete given that the period for the DeLanos to file their Designation of Additional Items had just begun to run and the transcript had not even been started [and was not finished and filed until November 4, 2005!].....337 [Add:695]

47. Judge **Larimer**'s **order** of **May 3**, 2005, **scheduling** Dr. Cordero to file his appellate brief by June 13, 2005.....339 [Add:831]

48. Dr. **Cordero**'s **motion** of **May 16**, 2005, **for compliance** with **FRBkrP 8007** in the **scheduling** of his **appellate brief** and the urgent rescission of the scheduling order because the transcript was not yet in, the record was still incomplete, so that its transmittal from the Bankruptcy Court to Judge Larimer was premature, whereby the Judge had no jurisdiction over the case and could not issue any scheduling order.....340 [Add:836]

49. Judge **Larimer**'s **order** of **May 17**, 2005, **rescheduling** Dr. Cordero to file his brief within **20 days after** the filing of the **transcript**, as if he had requested only additional time rather than compliance with the FRBkrP.....343 [Add:839]

USEFUL ADDRESSES FOR THE INVESTIGATION

of *In re David and Mary Ann DeLano*, no. 04-20280, WBNY

and *Pfuntner v. Trustee Gordon et al.,* no. 02-2230, WBNY

I. *In re DeLano*

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1262 Shoecraft Road
Webster, NY 14580

Trustee George M. Reiber
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

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

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U.S. Trustee for Region 2
Office of the United States Trustee
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II. *Pfuntner v. Gordon et al.*

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Manufacturers & Traders Trust Bank (cf. A:83§E)
(M&T Bank) [Add:940]
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tel. (585) 641-8000; fax (585) 641-8080

TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

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

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

2. Plan:

A. Summary: $ 1940 per month by wage order
$ 14145 * annually

Repayment to secured creditors $ 6900
Repayment to priority creditors $ 16,655
Repayment to unsecured creditors $ 4646 ~5 % ~~specific~~ estimated

Classification of unsecured creditors None
Class ____ ____% $ ____ ____
Class ____ ____% $ ____ ____

Rejection of executory contracts None

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

B. Feasibility:

Total Indebtedness	$ 185462	including mortgages
Monthly Income (net)	$ ~~4886.50 2946.50~~	(gross)$ 7501.
Less Estimated Expenses	$ ~~2946.50~~	
Excess for Wage Plan	$ 1940.	
Duration of Plan	3	years

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:
Interest rate unless otherwise stated: 8 1/4 %

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

3. Best interest of creditors test:

A. All assets were listed.

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

Less valid liens $ 83734
Less exempt property $ 171732
Available for judgment liens $ ④ 2666
Less priority claims $ ⑤ 16,655
(Support $_____)

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

D. Amount to be distributed to unsecured creditors $ 4646

E. Nature of major non-exempt assets: _____

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

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

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

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

8. Debtor requests no wage order because, _____ (+) 2 Concerns (1)

9. Other comments: ~~1) Best Interest - $1655.~~ (OK) AFIS Attorney fees But Court Allowed in Connection with Confirm order

10. Converted from Chapter 7 because _____ (2)

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

ATTORNEY'S FEES: $ 1350

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

GEORGE M. REIBER
TRUSTEE

IN RE: DeLong, David & Mary Ann

BK. # 04-20280

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

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

ORDER TO EMPLOYER TO PAY TRUSTEE

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

BK# 04-20280

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

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

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

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

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

M&T BANK

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

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

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

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

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

Dated: AUG - 8 2005

FILED
AUG - 8 2005
BANKRUPTCY COURT
ROCHESTER, NY

HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

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

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

ORDER CONFIRMING
CHAPTER 13

BK #04-20280

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

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

THE COURT THEREFORE FINDS:

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

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

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

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

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

It is accordingly, ORDERED that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Classified unsecured claims as hereinafter set forth:

CREDITOR	AMOUNT	CLASSIFICATION	DIVIDEND
NONE			

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

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

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

NONE

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

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

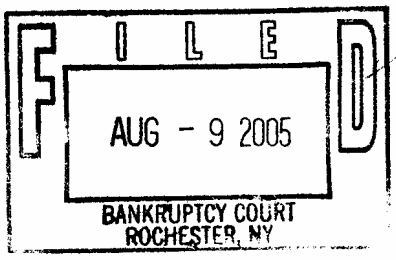
CREDITOR	SECURED CLAIM	SECURITY	BASIC TERMS
Genesee Regional	**$76,300.71**	**Mortgage**	**Original Contract**

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

Dated: 8/9/05

Rochester, New York

HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE



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

July 7, 2005

George M. Reiber, Esq.
3136 South Winton Road
Rochester, New York 14623

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

As per our prior correspondence, you have indicated that our application for payment of attorney's fees from the bankruptcy estate could be considered at the currently scheduled July 25, 2005 confirmation hearing at 3:30 p.m. at Bankruptcy Court. As you have suggested, we enclose herewith our statement for fees for the period of April 8, 2004 through the current date, with anticipated time for confirmation and continuation of the pending Cordero appeal. We have also forwarded a copy to Judge Ninfo so that the statement could be before him at the time of confirmation.

If you feel that a formal application for fees is in order, we would be happy to submit the same. However, you have indicated that it is common that such applications are considered by the Court simply as part of confirmation and have proceeded accordingly.

We look forward to the hearing on July 25th.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

cc: Hon. John C. Ninfo, II ✓
David G. and Mary Ann DeLano

RECEIVED
JUL - 8 2005
BANKRUPTCY COURT
ROCHESTER, NY

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June 23, 2005

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Invoice# 54731
Client# 030633
Billing through 06/23/2005

030633-00001 Chapter 13

PROFESSIONAL SERVICES

04/08/2004	CKW	Call with client; Correspondence re Cordero objection	0.50	hrs.
04/14/2004	CKW	Receive and review George Reiber's letter re adjourned examination date with Cordero; Call to client; Review Cordero motion (31 pages) and prepare notes for response	1.30	hrs.
04/15/2004	CKW	Response to Corder objection	1.00	hrs.
04/16/2004	CKW	Receive and review additional motion and memo from Cordero; Revise statement in opposition; Call from Bankruptcy Court re application on submission	0.80	hrs.
04/19/2004	CKW	Receive and review Cordero fax to Reiber of 4/15/04	0.30	hrs.
04/22/2004	CKW	Call to client re document demands in response to 4/20 letter from George Reiber; Correspondence	0.40	hrs.
04/26/2004	CKW	Receive and review Cordero's letter of 4/23; Appear in Bankruptcy Court on adjournment; Review claims register	1.60	hrs.
04/28/2004	CKW	Receive and review Cordero reply to statement in opposition; Receive and review Cordero letter to U.S. Trustee Martini	0.50	hrs.
05/05/2004	CKW	Receive and review credit report and letters to credit card companies	0.40	hrs.
05/10/2004	CKW	Receive and review Cordero letter to D. Martini re list of creditors	0.20	hrs.
05/19/2004	CKW	Receive and review Cordero claim; Call from client re claim objection and status of creditor inquiry	0.40	hrs.
06/14/2004	CKW	Document analysis; Call to claimants; Revise trustee correspondence; Call with Dave DeLano re HSBC authorization	2.30	hrs.
06/15/2004	CKW	Call to Discover and fax document request; Call with client; Receive and response to Trustee motion to dismiss	0.30	hrs.
06/16/2004	CKW	Call re Trustee's Motion to Dismiss/Convert; Review fax to HSBC authorizing release of records	0.40	hrs.
06/18/2004	CKW	Correspondence to credit card companies for statements; Call with Mike Beyma re status of adversary proceeding	0.50	hrs.
07/02/2004	CKW	Calls to HSBC and emails to client and Trustee re copy costs; Call from Kim at HSBC	0.50	hrs.

07/07/2004	CKW	Receive and review account statements from 2 MBNA accounts; Copy and forward to Trustee	0.50	hrs.
07/09/2004	CKW	Correspondence to Trustee and motion in opposition; Calls to creditors	1.70	hrs.
07/12/2004	CKW	Complete correspondence to Reiber; Opposition to Court; Receive and review Cordero opposition to Trustee's Motion	0.80	hrs.
07/19/2004	CKW	Prepare Subpoenas for Discover, HSBC, Chase and Bank One (3 accounts); Appear on Trustee's Motion; Prepare Objection to Claim; Email to client to produce credit reports and account statements; Correspondence to Cordero and to client	4.30	hrs.
07/20/2004	CKW	Receive and review Cordero Order; Revise and prepare correspondence to Cordero and Court; Assemble; Call to client; Complete Objection to Claim	1.80	hrs.
07/21/2004	CKW	Call with client re document demands; Call with Mike Beyma - leave message	0.30	hrs.
08/16/2004	CKW	Receive and review Cordero 8/15 fax - Motion for Removal and Referral	0.20	hrs.
08/19/2004	CKW	Receive and review Cordero Reply to claim objection; Review and organize file and account statements obtained; Dictate response to Reply	1.50	hrs.
08/20/2004	CKW	Emails with Trustee re need to appear for 1st Meeting; Review account records	0.20	hrs.
08/23/2004	CKW	Receive and review Cordero Motion for sanctions; Appear on Cordero Motion to remove George Reiber; Call to HSBC re status of Subpoena response	1.80	hrs.
08/24/2004	CKW	Call with client re results of 8/23 motion	0.20	hrs.
08/25/2004	CKW	Appear in Bankruptcy Court on Cordero Claim objection; Call to report to client	2.50	hrs.
09/02/2004	CKW	Receive and review Interlocutory Order	0.30	hrs.
09/09/2004	CKW	Receive and review Chase account statements and forward same to Trustee and Cordero	0.30	hrs.
09/16/2004	CKW	Receive and review Cordero Motion to Second Circuit	0.30	hrs.
09/23/2004	CKW	Receive and review Cordero correspondence to Trustee re examination dates	0.30	hrs.
09/27/2004	CKW	Correspondence to Trustee	0.30	hrs.
09/28/2004	CKW	Receive and review Cordero letter to Second Circuit re discovery; Letter re exam dates	0.20	hrs.
10/14/2004	CKW	Receive and review Cordero discovery demands and correspondence to Reiber	0.40	hrs.
10/20/2004	CKW	Receive and review Cordero letter to Reiber re letter to Second Circuit	0.30	hrs.
10/21/2004	CKW	Call with Dave DeLano re discovery demand and reponse to Premier Van Liens related questions	0.20	hrs.
10/22/2004	CKW	Call with Richard Cordero; Dictate response to discovery demand of 9/29; Review discovery demand re relevance with JEM	1.50	hrs.
10/25/2004	CKW	Receive and review Cordero letter to Trustee Schmitt re Trustee's refusal to hold meeting	0.20	hrs.

10/27/2004	CKW	Receive and review DeLano fax; Complete discovery response	0.30	hrs.
10/28/2004	CKW	Complete and send discovery response; Receive and review 10/27/04 letter from Cordero	0.30	hrs.
11/03/2004	CKW	Receive and review Cordero letter to Reiber re 341 meeting	0.30	hrs.
11/08/2004	CKW	Receive and review Cordero discovery motion; Dictate response	1.10	hrs.
11/09/2004	CKW	Review and revise response to Cordero motion	0.40	hrs.
11/10/2004	CKW	Receive and review Court's Interlocutory Order	0.30	hrs.
11/12/2004	CKW	Receive and review Cordero Motion to 2nd Circuit	0.30	hrs.
11/18/2004	CKW	Receive and review Reiber correspondence re retirement account; Correspondence to Trustee	0.40	hrs.
11/19/2004	CKW	Call re retirement supplement per Trustee's letter; Discuss withdrawal of Chapter 13; Status of Cordero objection	0.40	hrs.
12/15/2004	CKW	Appear in bankruptcy callendar call; Email to client; Call to client	0.90	hrs.
12/20/2004	CKW	Call with Dave DeLano re March 1 trial date; Review transactions with Cordero	0.30	hrs.
12/28/2004	CKW	Email from Trustee re 2/1 or 2/2 meeting; Email to client	0.30	hrs.
12/31/2004	CKW	Receive and review letter from Chapter 13 Trustee re adjourned 341 Hearing	0.20	hrs.
01/21/2005	CKW	Call to client re receipt of son's mobile home proceeds; Correspondence to Trustee; Discuss anticipated 341 Hearing on 2/1/05 and 3/1/05 trial	0.60	hrs.
01/24/2005	CKW	Correspondence to Trustee re sale proceeds and best interest test; Receive and review Cordero Petition for Cert.	1.10	hrs.
02/01/2005	CKW	Prepare for adjourned 341; Attend adjourned 341 with Trustee Reiber	7.20	hrs.
02/10/2005	CKW	Initial review of abstract and mortgage closing documents	0.40	hrs.
02/15/2005	CKW	Email to client re use of cash proceeds of mortgage; Correspondence to Trustee	0.40	hrs.
02/22/2005	CKW	Receive and review Cordero motion for Judge Ninfo recusal	0.40	hrs.
02/28/2005	CKW	Call to client preliminary to hearing on objection to Cordero claim	0.50	hrs.
03/01/2005	CKW	Hearing on Cordero claim objection and preparation	6.50	hrs.
03/02/2005	CKW	Repeat review of Cordero docs and claim	0.30	hrs.
03/09/2005	CKW	Receive and review March 3, 4 & 5 letters from Cordero; Correspondence to clients and Cordero; Call with client	1.30	hrs.
04/04/2005	CKW	Receive and review Cordero decision; Call to client	0.50	hrs.
04/14/2005	CKW	Email to George Reiber re confirmation hearing and fee application; Call with client	0.40	hrs.
04/22/2005	CKW	Receive and review record on appeal; Conference with DLP; Receive and review Court notices on appeal	1.00	hrs.
04/22/2005	DLP	Extended work conference and personal review of record regarding Appeal filed by Dr. Cordero.	1.30	hrs.
05/02/2005	CKW	Review statement re record on appeal of DLP	0.40	hrs.
05/02/2005	DLP	Review of file, review of Dr. Cordero's record on Appeal,	3.90	hrs.

		dictated, revised and finalized our Record. Filed with Court.		
05/03/2005	CKW	Receive and review Cordero motion to reconsider and review order of denial	0.40	hrs.
05/05/2005	DLP	Finalized Record on Appeal	0.80	hrs.
05/09/2005	CKW	Receive and review civil cover sheet on appeal from Cordero	0.30	hrs.
05/10/2005	CKW	Call with client re: status	0.20	hrs.
05/12/2005	CKW	Receive and review Cordero letter	0.20	hrs.
05/16/2005	DLP	Review of filings of Dr. Cordero on appeal.	0.50	hrs.
05/19/2005	CKW	Receive and review Motion to Strike Order for brief within 20 days and Diannetti letter	0.40	hrs.
05/20/2005	DLP	Review of further filings by Dr. Cordero	0.40	hrs.
05/31/2005	CKW	Receive and review Cordero letter to Mary Dianetti, court reporter, re: estimated cost of transcript	0.20	hrs.
06/08/2005	CKW	Email from trustee re: confirmation dates and telephone call to client	0.30	hrs.
06/09/2005	CKW	Email to trustee re: 7/25 confirmation hearing and issue of payment of loan proceeds	0.40	hrs.
06/23/2005	CKW	(7/25/05 - anticipated) Confirmation hearing	1.50	hrs.
06/23/2005	CKW	(Estimated) Cordero appeal	5.00	hrs.
				$16,294.50

EXPENSES

Federal Express	13.84
Copy Charges	346.32
	$360.16

BILLING SUMMARY

Total professional services		$16,294.50
Total expenses incurred		$360.16
TOTAL NEW CHARGES FOR THIS INVOICE		**$16,654.66**
TOTAL BALANCE NOW DUE		**$16,654.66**
Trust account beginning balance	$6,706.66	
Trust account remaining balance	$6,706.66	

United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

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

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

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

MOTION TO ALLOW CLAIMS

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

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

C:1064

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

United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

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

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

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

MOTION TO ALLOW CLAIMS

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

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

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

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

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

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

NOTICE

At Rochester, NY

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

CLERK /s/ Paul R. Warren

CERTIFICATE OF SERVICE

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

/s/ _____

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

SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE-ROOM 2904
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE

JOHN M. WALKER, JR.
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

September 16, 2005

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

Dear Dr. Cordero:

I am responding to your communication of September 6, 2005 regarding your second supplement to comments against the reappointment of Bankruptcy Judge John Ninfo. As you were advised in my previous letter of August 5, 2005, members of the bar and the public were invited to submit comments for consideration by the Court of Appeals concerning this reappointment. The Judges of the Court of Appeals considered all submissions which were filed timely within the public comment period. However, that period expired on March 30, 2005. Henceforth, we will no longer accept your comments regarding this matter; we will no longer keep them on file; we will simply discard them.

Very truly yours,

Karen Greve Milton
Circuit Executive

KGM/ek

C:1066 Cir Exec Milton's letter of 9/16/5 to Dr. Cordero refusing to accept more comments v. reappointment of J Ninfo

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Statement by Bankruptcy Court Reporter Mary Dianetti

of the number of folds and packs of stenographic paper
comprising her recording of the evidentiary hearing
held on March 1, 2005, before Judge John C. Ninfo, II
of the DeLano Debtors' motion to disallow Dr. Richard Cordero's claim
in *In re DeLano*, no. 04-20280, WBNY

3/1/05

1 pk – 6 – 158½ – Numbered.
2 pk – 3 – 181 – numbered.
3 pk – 188 folds.
4 pk – 99½ folds.

Mary Dianetti

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

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

[Sample of letters to Judicial Conference members]

August 1, 2005

Hon. Chief Judge Mary M. Schroeder
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Ninth** Circuit
Post Office Box 193939
San Francisco, CA 94119-3939

Dear Chief Judge Schroeder,

I would like to bring to your attention the petition that I just submitted to the Conference for an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript, which is yet another in a long series of acts of disregard for duty and legality stretching over more than three years and pointing to a bankruptcy fraud scheme and a cover up.

Indeed, last March 1 the evidentiary hearing took place of the motion to disallow my claim in the bankruptcy case of David and Mary Ann DeLano. Bankruptcy Judge John C. Ninfo, II, WBNY, disallowed my claim against Mr. DeLano. Oddly enough, he is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank, who declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 period $291,470, whose whereabouts neither the Judge nor the trustees want to request that he account for.

At the end of the hearing, I asked Reporter Mary 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 and as part of making arrangements for her transcript, 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 exhibits pgs. 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. However, she asked me to prepay and explicitly rejected my request! If a reporter in your court refused to vouch for the reliability of her transcript, would you vouch for it in her stead and use it without hesitation? Would you want your rights and obligations decided on such a transcript?

Moreover, there is evidence, contained in the other exhibits submitted to the Conference and available on demand (pg. 21), that Reporter Dianetti is not acting alone. Bankruptcy clerks and District Judge David G. Larimer, WDNY, also violated FRBkrP 8007 to deprive me of the transcript and, worse still, did the same in connection with the transcript in *Pfuntner v. Trustee Gordon et al.*, where Mr. DeLano, who handled its bankruptcy for M&T, and I are parties. Their motives are discussed in the accompanying copy of the petition and in my submissions to the Conference and its members of November 18 and December 18, 2004. The facts stated therein show a pattern of non-coincidental, intentional, and coordinated bias and wrongdoing in support of a bankruptcy fraud scheme. It suffices for those facts to have the appearance of truth for these officers' conduct to undermine the integrity of the judicial process and detract from public trust in the judiciary. Hence, I respectfully request that you cause this matter to be placed on the agenda of the September meeting of the Conference and that meantime, you make a report of it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

C:1082 Dr. Cordero's letter of 8/1/5 to members of Jud. Conf. to cause it to act on petition to investigate ct. reporter

Judicial Conference of the United States

PETITION for an Investigation under 28 U.S.C. §753(c) of a Court Reporter's Refusal to Certify the Reliability of her Transcript and

for Designation under 28 U.S.C. §753(b) of Another Individual to Produce the Transcript

---

Dr. Richard Cordero, Petitioner

Creditor in *David and Mary Ann DeLano*, no. 04-20280, WBNY

and Appellant in *Cordero v. DeLano*, no. 05-cv-6190L, WDNY

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

1. Dr. Richard Cordero petitions the Judicial Conference under 28 U.S.C. §753(c) (¶20 below) for an investigation of the reasons and circumstances why Court Reporter Mary Dianetti has refused to certify the reliability of her transcript of the evidentiary hearing that she recorded stenographically on March 1, 2005, called by Bankruptcy Judge John C. Ninfo, II, WBNY, to hear the motion raised by David and Mary Ann DeLano, debtors, to disallow Dr. Cordero's claim against Mr. DeLano. Judge Ninfo's Decision and Order of April 4, 2005, disallowing that claim is the subject of the above-captioned appeal before District Judge David G. Larimer, WDNY, for which the transcript is indispensable. Hence, .the Conference is petitioned under §753(b) to designate another individual to produce a reliable transcript.

Table of Contents

I. Reporter Dianetti avoided stating on three occasions the count of the stenographic packs and folds that she had counted to arrive at her transcript cost estimate; Dr. Cordero requested confirmation that her reluctance was not motivated by her concerns about the transcript's content; but the Reporter requested prepayment while refusing to certify that the transcript would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence..... 1084

A. The Judicial Conference's duty to supervise court reporters and their handling of transcripts and deal with parties requesting transcripts.....1088

II. Reporter Dianetti already tried on a previous occasion to avoid submitting a transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it 1089

A. Reporter Dianetti and other officers have disregarded the law and rules by their way of dealing with Dr. Cordero at hearings & his transcript request.....1092

III. The Clerk of the Bankruptcy Court disregarded the rules by transmitting the record to the District Court when it could not possibly be complete; yet District Judge Larimer disregarded the rules and repeatedly scheduled the appellate brief for a date before Dr. Cordero would receive and use the transcript to write it 1094

IV. Reporter Dianetti's refusal to certify the transcript's reliability is another manifestation of court officers who disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme 1097

V. Bankruptcy court reporters are subject to 28 U.S.C. §753 and the supervision of the Judicial Conference 1100

VI. Request for Relief..... 1101

Dates of Letters Exchanged Between			**Exhibit Page E:#**
	Dr. Cordero	**Court Reporter Dianetti**	
1.	April 18, 2005		1 [C:1155]
2.		May 3	2 [C:1156]
3.	May 10		3 [C:1157]
4.		May 19	4 [C:1158]
5.	May 26		6 [C:1160]
6.		June 13	7 [C:1161]
7.	June 25		9 [C:1163]
8.		July 1, 2005	11 [C:1165]

****

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

2. At the end of the evidentiary hearing on March 1, 2005, which lasted from 1:31 p.m. till 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Larraine Parkhurst was by her side. He asked the Reporter how many packs and folds of stenographic paper she had used. That question spun Reporter Dianetti into a profound state of confusion and nervousness, all the more astonishing since she was only gathering the materials that she had just finished using to record the single hearing that afternoon. (Exhibits page 207, section B, infra=E:207B) The Reporter and Attendant Parkhurst counted the packs and folds and both wrote down the numbers (E:203); but on that occasion, the Reporter did not provide an estimate of the cost of the transcript.
3. Over a month and a half later, contemporaneously with designating the items in the record for the appeal from the decision resulting from that evidentiary hearing, Dr. Cordero requested in his letter of April 18 to Reporter Dianetti (E:1) that she provide a cost estimate and indicate the number of stenographic packs and folds "that you will be using to prepare the transcript". In so doing, Dr. Cordero was simply exercising his right under 28 U.S.C. §753(b), providing that:

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

4. Since Dr. Cordero lives in New York City, hundreds of miles away from the bankruptcy clerk's office in Rochester, NY, and since he, by contrast, would be charged for ordering the transcript, it is only reasonable that he would want to have the closest equivalent to an inspection in person of the original records by asking the Court Reporter to describe what she would transcribe at his expense. This sort of "dealings with parties requesting transcripts" must fall precisely within the scope of §753(c). Hence, Dr. Cordero simply asked for information that he was legally entitled to obtain.
5. In her answer of May 3 (E:2), Reporter Dianetti failed to provide any count of packs and folds of stenographic paper because it "was given to you after the hearing was completed". Yet, she must have counted them since she provided "the estimated cost…of $600 to $650". But she added the caveat "Please understand this is an estimate only." Thereby she undermined the reliability of what in the normal course of business would have been deemed the lower and upper limits of the estimate.
6. Hence, in his letter to her of May 10 (E:3), he asked that she state by how much more her estimate could fluctuate and added "This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording."
7. In her letter of May 19 (E:4), Reporter Dianetti surprisingly stated that "I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your

ordering it." Her statement was self-contradictory because if her estimate may not fluctuate "at all", then how could she provide an initial estimate with lower and upper limits, which by definition mark the margins of fluctuation? What would determine whether the final "cost…of $600 to $650" was $600, $650, anywhere in between, or even outside that range? Since Reporter Dianetti is an official reporter, who earns her living as such, who would prepare the transcript based on her own recording of a proceeding, and who had provided an estimate that already fluctuated by almost 10%, how could she not have an idea of by "how much my estimate can fluctuate"? After all, how many variables can possibly affect the final number of transcript pages? Is one of them censure by somebody else with indisputable authority?

8. Making her estimate even more incomprehensible, Reporter Dianetti again failed to provide in that letter of May 19 the count of stenographic packs and folds that she would use to prepare the transcript because "you already have that information" (E:4). Did she have it too?; if so, why not just restate it in a straightforward business fashion? Moreover, there was something very odd to her failure to appreciate the difference between the count of packs and folds that she had written down for Dr. Cordero on March 1 and what she had recently counted and would actually "be using to prepare the transcript", as Dr. Cordero had asked in his first letter of April 18 (E:1).
9. Thus, in his letter to her of May 26 (E:6), Dr. Cordero pointed out that:

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

10. In her response of June 13 (E:7), Reporter Dianetti agreed to an upper limit of $650 and stated a cost per page of $3.30. This implied that for a meeting that lasted 5.5 hours, she had estimated a maximum of 197 pages. However, she added the astonishing statement that:

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

11. How astonishing indeed, for Reporter Dianetti was emphatically avoiding any statement of the numbers of packs and folds that she would actually use to prepare the transcript! Why and to what extent would those numbers differ from the numbers of packs and folds that she had used to

record the March 1 evidentiary hearing? Moreover, if she did not even have to count the packs and folds to arrive at her estimate of the transcript cost, why would she on her May 3 and 19 letters not simply restate "the same information…[with which] I had marked each pack", thus nipping in the bud any suspicion? Dr. Cordero pointed this out unambiguously in his letter to her of June 25 (E:9):

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

12. The fact is that Reporter Dianetti recorded the evidentiary hearing on a stenographic machine, presumably the same that she uses for recording every other bankruptcy proceeding, using the same type of stenographic paper, whose folds were pulled in and filled with recording content at the same rate, so that the same amount of content would fill transcription pages at the same rate.
13. Unquestionably, the very aim of a stenographic recording of a proceeding is to record it "verbatim" (§753(b), ¶59 below) so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications…determined by standards formulated by the Judicial Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content having the same length. That is a logical and practical imperative of the system of reporting court proceedings. As the Supreme Court put it, 'the §753(b) duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible, what transpires in court', *Antoine v Byers & Anderson,* 508 US 429, 124 L Ed 2d 391, 113 S Ct 2167 (1993).
14. Since her refusal made no sense from either a business or technical point of view, why was she so evasive about stating the number of packs and folds that "will be translated into the transcript"? Was she concerned about how much content of the evidentiary hearing recording would be allowed to make it into the transcript, which would determine its number of pages, which would in turn reveal the number of packs and folds from which the transcript was produced? If so, her concern cast in issue the transcript's reliability as well as the integrity of the court reporting process.
15. Hence, Dr. Cordero asked her in his letter of June 25 (E:10) to agree to:

> …provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other

third parties that spoke at the DeLano evidentiary hearing…

…simultaneously file one paper copy with the clerk of the bankruptcy court and mail to [Dr. Cordero] a paper copy together with an electronic copy…and not make available any copy in any format to any other party…[and]

…truthfully state in your certificate [that] you have not discussed with any other party (aside from me)…the content…of your stenographic recording of the DeLano evidentiary hearing or of the transcript…[otherwise] you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

16. In her July 1 letter (E:11) the Reporter required that Dr. Cordero prepay by "a money order or certified check in the amount of $650.00 payable to "Mary Dianetti"", made no provision for the final cost coming out, once she applied her own $3.30/page rate, at her own lower estimate of $600 or even lower because, as she had put it in her May 3 letter (E:2), "Please understand this is an estimate only", and then added without offering any explanation: "The balance of your letter of June 25, 2005 is rejected."

17. How come "rejected"?! It must be quite obvious that Reporter Dianetti has no justification to refuse to agree that her transcript will be accurate and complete, not distributed to others (aside from the clerk) yet paid for by Dr. Cordero, and not subject to anybody's tampering influence. Who in his right mind would pay $650 up front for a product that he has already been given evidence will be defective and unsuitable for the intended purpose? Would you want your rights and obligations determined on a transcript for whose reliability the reporter herself will not vouch?

A. The Judicial Conference's duty to supervise court reporters and their handling of transcripts and deal with parties requesting transcripts

18. This matter should be of importance to the Conference in light of its duty under 28 U.S.C. §331:

> …as to any matters in respect of which the administration of justice in the courts of the United States may be improved. [To that end, the] Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure…to promote…fairness in administration [and] the just determination of litigation…

19. It would be reasonable to expect the Conference to consider that there was substantial room for improvement if it were to find out that the Bankruptcy Court and the District Court, WDNY, deemed Reporter Dianetti's conduct to be customary and acceptable for their reporters in general. But if the Conference found out that the Reporter undermined her transcript's reliability on the advice or order of other officers as part of their handling of Dr. Cordero's cases in particular, would that make it fair and just or, on the contrary, suspicious and requiring closer examination?

20. To find out whether it is one or the other scenario, 28 U.S.C. §753(c) provides the Conference with more particular authority as well as the duty to investigate Reporter Dianetti's performance in general and her refusal to give assurance about the reliability of this transcript in particular:

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

21. The incentive for the Conference to conduct a "study of the operation" of those WDNY courts and of Reporter Dianetti's "performance of [her] duties" should be all the stronger because this is not the first time that she together with other officers in those courts have violated "the general rules of practice and procedure" in connection with a transcript requested by Dr. Cordero for appeal purposes.

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

22. In September 2002, *Pfuntner v. Trustee Gordon et al*, docket no. 02-2230, WBNY, was commenced and therein Dr. Cordero was named a defendant. He cross-claimed against Chapter 7 Trustee Kenneth Gordon for having negligently and recklessly performed his duties as trustee to the detriment of Dr. Cordero and for making defamatory statements against him to Judge Ninfo so as to induce the Judge not to cause an investigation of the Trustee, as Dr. Cordero had requested. (E:134¶¶6-11) Trustee Gordon moved to dismiss and his motion was heard on December 18, 2002, with Dr. Cordero appearing pro se by phone. Judge Ninfo dismissed the cross-claims summarily at the hearing despite the genuine issues of material fact raised by Dr. Cordero (E:135§§1-3) and even though discovery had not started on any aspect of the case, not even disclosure pursuant to FRBkrP 7026 and FRCivP 26(a)(1) had been provided by any party other than Dr. Cordero (E:150¶75) although the case had been commenced three months earlier (E:152¶80). At the end of the hearing, Dr. Cordero stated that he would appeal.

23. Interestingly enough, according to PACER, https://ecf.nywb.uscourts.gov/, between April 12, 2000, and June 26, 2004, Trustee Gordon appeared as trustee in 3,383 cases, in 3,382 out of which he did so before Judge Ninfo! By contrast, Dr. Cordero was a non-local litigant living hundreds of miles away in New York City and appearing in one case. Had Judge Ninfo developed a modus operandi with a trustee who had become a fixture litigant in his court so that to protect Trustee Gordon and their modus operandi the Judge got rid of what he could only deem to be one of the weakest of defendants, a one-time non-local pro se on the phone?

24. That question is warranted by the series of acts of disregard for the law, the rules, and the facts

engaged in by Judge Ninfo (E:140§§2-4; 62A), District Judge Larimer (E:142C; ¶36 below), clerks (E:92§II; 139B-§B1), trustees (E:134¶¶6-11; 36§V), and parties (E:145D; 68B-71§1) since even before *Pfuntner* was commenced in 2002. Their consistent conduct points to systemic disregard for duty and legality among a group of people in daily contact in a small federal building, growing closely-knit by their related functions and the use of their power to do, not the right thing, but rather the good thing for their common interest because each member can count on all the others for similar supportive disregard, to the detriment of non-members (E:151§§1-6; ¶42 below) and the integrity of the system (E:117C-E). What follows is an instance of such clique in action.

25. After Judge Ninfo's order of December 30, 2002, dismissing the cross-claims against Trustee Gordon was sent from Rochester and delivered in New York City, Dr. Cordero phoned Reporter Dianetti at (585)586-6392 on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript. Yet, weeks went by without his hearing from her. He had to call her and the Bankruptcy Court on several occasions to ask why he had not received the transcript, but he could only either record messages on her answering machine or leave them for her with a clerk.

26. It was not until March 10, 2003, after Dr. Cordero called Reporter Dianetti and was already recording another message, that she, screening the call, finally picked up the phone. After giving an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She gave another untenable excuse and promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! It implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and that she was not supposed to include it in the transcript, so she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he, Dr. Cordero, was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said 'Good morning, Dr. Cordero.' He said no, that he wanted everything from the moment the Judge must have said 'Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

27. As attested to by her certificate, Reporter Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after Dr. Cordero first contacted her on January 8 to have her produce the transcript. However, there is evidence that she did not deliver it directly to him. Indeed, although the date on her certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal (E:136§3) from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26. It is noteworthy that after Dr. Cordero made a statement at that hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. The transcript was then mailed and it reached Dr. Cordero on March 28. This reasonably suggests that it was unlawfully withheld from him until the Judge could learn what he had to say at the hearing. Was Reporter Dianetti told to submit her transcript to a higher-up court officer so that its contents could be vetted in light of that hearing before a final version would be sent to Dr. Cordero?
28. The transcript turned out to consist, not of 27 pages as Reporter Dianetti had estimated after consulting her notes on January 8, but only of 15 pages of transcription! She claimed that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. Her transcription of his statements has many "unintelligible" notes marking missing passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in their respective functions. These facts warrant asking whether she was told to disregard his request for the transcript; and when she could no longer do so, to garble his statements. Has she been told the same in other cases?
29. Was Reporter Dianetti also told and, if so, by whom, to leave out the exchanges between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after the Judge terminated the phone communication at the hearing on December 18, 2002? The foundation for this question is not only her comment so implying. In fact, on many occasions since then (E:225), Judge Ninfo has cut off abruptly the phone line to Dr. Cordero, in contravention of the norms of civility. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking his gavel, but simply by pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, Judge Ninfo brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left without uttering another word.

A. Reporter Dianetti and other officers have disregarded the law and rules by their way of dealing with Dr. Cordero at hearings & his transcript request

30. It is more likely that on the subject of the hearing or meeting Judge Ninfo spoke with the other parties in Dr. Cordero's absence, thereby engaging in ex parte communications with them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP 9003. (cf. E:119D) Likewise, by so abruptly cutting off a phone connection, the Judge gave any reasonable person at the opposite end of the phone line cause for offense and the appearance of animosity and unfairness. Moreover, by so doing, the Judge, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Of graver significance in legal terms is that by Judge Ninfo terminating a proceeding without giving notice thereof to a party he violated his duty to afford all parties to a hearing the same opportunity to be heard and hear the judge and the other parties. Thus, Judge Ninfo showed incivility and partiality, disregarded the rule prohibiting ex parte communications, and denied Dr. Cordero due process of law as required under the 5th Amendment.

31. As to Reporter Dianetti, by not delivering her transcript promptly and directly to Dr. Cordero upon completing it on March 12, 2003, she violated §753(b) which provides that:

> 28 U.S.C. §753(b)…Upon the request of any party to the proceeding which has been so recorded…the reporter…shall **promptly** transcribe the original records…and attach to the transcript his official certificate, and deliver the same to the party…making the request. (emphasis added)

32. The Reporter also violated FRBkrP 8007(a), providing thus:

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

33. If she could not have the transcript "completed within 30 days of receipt of the request", let alone the 10 days that she had said it would take her to transcribe the mere 27 pages that she herself had estimated, why did she not comply with her obligation that "the reporter shall seek an extension of time from the clerk"? If she did, why did the clerk in turn fail to comply with his obliga-tion that "the action of the clerk shall be entered in the docket and the parties notified"? In either event, Dr. Cordero was left without either the transcript or notice. Hence, either the Reporter or the clerk, or both violated the duty to proceed timely, promptly, and with notice. Discharging with promptness transcript-related duties is so important that the FRBkrP restate that obligation thus:

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

34. By so dealing with that transcript, Reporter Dianetti also violated §753(a), which provides that "…Each reporter shall take an oath faithfully to perform the duties of his office…." However, her conduct takes on sinister significance because her violations in 2003 occurred in the context of *Pfuntner*, the case that contains Dr. Cordero's claim against Mr. DeLano (E:23 fn.1) and that Judge Ninfo linked to *DeLano* in his decision on appeal of April 4, 2005 (E:46§I, 51§IV. Therefore, it is reasonable to ask whether her refusal to certify the reliability of the transcript in *DeLano* is also linked to her mishandling of the transcript in *Pfuntner*; if so, with whom is she coordinating her conduct?; and why is it important thereby to influence adversely Dr. Cordero's appeals? (E:157F) What is the benefit gained or harm avoided by those engaged in such unlawful conduct?

35. Indeed, there is no reason to think that Reporter Dianetti was 'faithfully performing her duties' until Dr. Cordero just happened to drop in. This warrants asking whether in other cases she has in coordination with other officers manipulated transcripts to alter their contents or even prevent their receipt. Hence, her conduct is evidence of that broader, systemic disregard for duty and legality where manipulation of transcripts is only part of a larger scheme. (E:92§II; 158§1) These queries need to be investigated because such disregard by her and others not only denies due process to individuals, but also undermines the integrity of the administration of justice. That has grave implications for the quality or seriousness of the §331 "continuous study" carried on by the Judicial Conference, for there is evidence that disregard for duty and legality reaches higher in the judicial hierarchy than the Bankruptcy Court. Did the Conference not know about it?

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

36. The evidence points to Reporter Dianetti not having acted alone. Just as Bankruptcy Court Clerk Paul Warren disregarded the rules on that occasion (¶33 above; cf. E:139B-§B1), he has in the instant case, likewise with detrimental effect on any use by Dr. Cordero of the transcript. So Dr. Cordero sent pursuant to FRBkrP 8006 his Designation of Items in the Record to the Bankruptcy Court. Clerk Karen Tacy filed it on April 21, 2005, and on that very same day –after strange hesitation, or was it consultation? (E:188 entries 108 and 109)- transmitted the record to the District Court.

37. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court." It is obvious that the record could not possibly have been complete on the very day in which it was filed since the 10 days provided under FRBkrP 8006 for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal" had not even started to run. (E:165) Moreover, contact with Reporter Dianetti for production of the transcript had only been initiated, as shown by the copy of Dr. Cordero's letter of April 18 to her (E:1) accompanying his designation. So when writing his appellant brief, he would hardly be able to take into consideration either the transcript or appellee's designation, submitted only on May 3 (E:229 entry 5) and delivered in NYC on May 10.

38. Nevertheless, District Judge Larimer issued a scheduling order on April 22, the day after receiving the record, providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". (E:167) Since the record contained a copy of Dr. Cordero's April 18 letter to Reporter Dianetti, the Judge too must have known that the Reporter had hardly received it and that no arrangement could have been agreed upon for the production of the transcript. In any event, FRBkrP 8007(a) (¶32 above) would allow the Reporter 30 days to complete the transcript and if she had not done so by that time, she could ask for an extension. Therefore, to require the filing of his appellate brief within 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in writing the brief or even making it part of the record and thereby available in any subsequent appeal to the Court of Appeals or the Supreme Court.

39. On a phone conversation that Dr. Cordero had with Bankruptcy Clerk of Court Warren on May 2 concerning the premature transmittal of the record in disregard of FRBkrP 8007(b), the Clerk

defended the transmittal and refused to withdraw the record. So on that date, Dr. Cordero faxed to the District Court his objection to its scheduling order and requested that Judge Larimer rescind it. (E:169) He pointed out that the "premature…acts [of both courts] have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record".

40. Disregarding the violation of the rules and that concrete detriment, Judge Larimer did not rescind his scheduling order. Instead, on May 3 he issued another order requiring Dr. Cordero to file his appellate brief by June 13. (E:171) In so doing, he did not even mention the legal and factual basis of Dr. Cordero's objection to premature transmittal of the incomplete record and the consequences in practical terms of the scheduling order.

41. As a result, Dr. Cordero was forced to write again to raise before Judge Larimer a "Motion for compliance with FRBkrP 8007 in the scheduling of appellant's brief". (E:172) It pointed out that the District Court did not receive a "record [that] is complete for purposes of appeal", as required under FRBkrP 8007(b), so that in contravention of the rules it received an incomplete one; therefore, it had not obtained and still did not currently have jurisdiction over the case to issue a scheduling order.

42. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only he had not received the transcript, but also nobody knew even when the Reporter would complete it, let alone deliver it to him. Hence, if the transcript were delivered before the brief-filing deadline, he would have to scramble to read its hundreds of pages and then rework his whole brief to take them into consideration and do in a hurry any necessary legal research. Worse yet, if the transcript were delivered after that filing deadline and before the District Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief. But if the transcript were not filed timely and the Bankruptcy Clerk notified Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not be known in advance, not to mention that the circumstances of the Reporter's failure to complete it could give rise to a host of new issues. And what would happen, Dr. Cordero asked, if the transcript was delivered *after* the Court had issued its decision?! He concluded that there was no legal basis for putting on him the onus of coping with all that burdensome extra work and uncertainty.

43. In its third scheduling order of May 17 (E:175), Judge Larimer did not show any awareness of these issues, let alone that they were his concern. On the contrary, he issued his order as if:

> Appellant requested additional time within which to file and serve his brief.
>
> That request is granted, in part. Appellant shall file and serve his brief

> within twenty (20) days of the date that the transcript of the bankruptcy proceedings is filed with the Clerk of the Bankruptcy Court.

44. No! Dr. Cordero had certainly **not** "requested additional time". What he had requested was for the Court to act in accordance with the law: (E:174)

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

45. Judge Larimer's last order means in practice that if Reporter Dianetti ever files her transcript and it is found objectionable, Dr. Cordero will once more have to move the District Court to rescind that order and undertake corrective measures. In terms of the law, it means that the Judge issued a third order with disregard for the legal issues depriving him of jurisdiction to do so. Did he intend for Dr. Cordero to file his brief without the benefit of the transcript? Did the Judge know that if Dr. Cordero insisted on obtaining the transcript, he would be given some sort of such thing whose reliability would be so compromised that Reporter Dianetti would not certify it?

46. These questions are justified because the instant events are an exact repetition of the way Judge Larimer proceeded when Dr. Cordero requested the first transcript: After his colleague Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002 (¶22 above), Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14 (E:191), where she informed him that the due date for his designation of items was January 27. Yet, already on January 16, 2003, Judge Larimer had an order filed scheduling Dr. Cordero's brief for 20 days hence (E:192) although the Bankruptcy Clerk had transmitted to the District Court a record so unquestionably incomplete that it consisted of merely the notice of appeal! Then Reporter Dianetti tried to avoid submitting that transcript to Dr. Cordero and mishandled its delivery after completing it so that it was sent to him only more than two and a half months later, after Judge Ninfo had found out what Dr. Cordero had to say at the hearing on March 26, 2003 (¶27 above).

47. These facts support the conclusion that just as in the instant case, on that occasion Judge Larimer tried to deprive Dr. Cordero of the transcript by scheduling his brief for a date before he would receive it and be able to take it into account. What a flagrant violation by administrative and judicial officers of FRBkrP 8006 and 8007 as well as coordinated manipulation of filing dates (cf. E:157F; 73§2) and abusive impairment of the right to appeal! (cf. E:123§III) Was Judge Larimer protecting Colleague Ninfo or Trustee Gordon or both? From what and what for?

48. In light of these precedents, what conceivable reason can Dr. Cordero have to believe that when a complete record is properly before Judge Larimer, the latter will decide the appeal in accordance with the law, the rules, and the facts? Once more, this question is particularly pertinent because in the past Judge Larimer disregarded the law, the rules, and the facts in deciding Dr. Cordero's two appeals from *Pfuntner*: Dr. Cordero's opposition to Trustee Gordon's motion to dismiss the appeal, docket no. 03cv6021 (E:237¶50b)); and his application for default judgment against David Palmer, docket no. 03mbk6001 (E:142§C; 235B-237¶50a)).

IV. Reporter Dianetti's refusal to certify the transcript's reliability is another manifestation of court officers who disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme

49. One must assume that all these officers know that 'the transcript is of critical importance to meaningful appellate review', *U.S. v Workcuff*, 137 App DC 263, 422 F2d 700 (1970), because, among other things, under FRCivP 80(c) 'the stenographically recorded testimony of a witness at a hearing can be used to prove that testimony at a later trial'; for its part, FRAP 10(a) provides that "…the transcript of proceedings, if any,…**shall** constitute the record on appeal in all cases" (emphasis added). Hence, 'foreclosing examination of a complete transcript renders illusory appellant's right to appeal', *U.S. v Selva*, 546 F2d 1173 (CA5 Fl, 1977).
50. Harmful assumptions are also made by court officers and parties upon seeing judges and supervisors exhibit lack of commitment to the rule of law and tendency to disregard the high ethical standards that should guide the administration of justice. (cf. E:239C) Their insidious example fosters a permissive environment that is self-reinforcing since 'we can do anything like the bosses do too…and they'd better cover our backs 'cause if we go down they come together with us'. Such everything goes, extortionist mentality ever more profoundly undermines the performance of administrative tasks, indispensable for the judicial process to follow its proper course. This breeds lack of candor, bias, and arbitrariness, which are attitudes inimical to due process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden*, 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997).
51. In such environment, one can imagine court officers engaging or allowing others to engage in conduct that can deprive or is intended to deprive Dr. Cordero of transcripts. But a cautious and objective reader would ask what motive they could have to do so. To find the answer, he or she should know who the DeLanos are and what they have done (E:19§I): Among other things, they filed a bankruptcy petition in January 2004, wherein they named Dr. Cordero among their creditors because of his claim against Mr. DeLano pending since November 2002 in *Pfuntner* (E:23 fn.1).

Their petition is facially implausible because Mr. DeLano is a 32-year veteran of the banking industry still employed by Manufacturers & Traders Trust Bank (M&T) as an executive handling, of all matters, bankruptcies, but he and his wife pretend to have gone bankrupt with merely $535 in cash and accounts while refusing to provide documents concerning the whereabouts of $291,470 that they earned in just the 2001-03 fiscal years! Yet, to keep those documents from Dr. Cordero they are willing to run up, and their attorney knows they can afford, a legal bill of $16,654. (E:219) A rational man, and a banker at that, would only incur such cost if he had more to lose by producing the requested financial documents. Do you too now want to see those documents?

52. Dr. Cordero did and requested Chapter 13 Trustee George Reiber under 11 U.S.C. §1302(b)(1) and §704(4) to "investigate the financial affairs of the debtor", and under §704(7) to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". The reaction of the Trustee's attorney, James Weidman, Esq., illegally conducting the meeting of creditors on March 8, 2004 (C.F.R. §58.6(a)(10)), was to ask Dr. Cordero what he knew about the DeLanos having committed fraud, and when he would not answer, the Attorney terminated the meeting to prevent Dr. Cordero from examining them. (E:62A) Such termination violated the meeting's purpose under §341, §343, and FRBkrP 2004(b); yet the Trustee ratified it. Judge Ninfo condoned it (E:21§II) as "local practice" (E:23§III; 66§2), thus disregarding his duty under §1325(a)(3) to ascertain whether the petition was "in good faith [or] forbidden by law" and protecting the local parties again (E:116B-C).
53. Indeed, Trustee Reiber had, according to PACER, 3,907 *open cases* before Judge Ninfo! (cf. ¶23 above) He would not request the DeLanos to produce checking and savings account statements. Only at Dr. Cordero's repeated request did he pro forma ask them for other documents…only to allow them to stall producing even the very few that he had asked for. (E:24¶¶14-19) Nevertheless, Trustee Reiber's supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre Martini, would not require him to investigate the DeLanos (E:20¶g; 36§V) or replace him with a trustee willing and able to do so (E:14§II).
54. On July 9, 2004, Dr. Cordero presented evidence that the DeLanos were engaged in bankruptcy fraud, particularly concealment of assets. He moved for an order to produce documents that could prove it, such as bank accounts. (E:90§I) To eliminate him before he could obtain them, the DeLanos filed on July 22 a motion to disallow his claim. Judge Ninfo supported it, although it was barred by laches and untimely (E:74¶¶46-54) and did not order any production (E:68B; 107). Only at Dr. Cordero's instigation did he issue a watered-down order that he allowed the DeLanos to violate (E:32§3) -just as he has allowed *Pfuntner* parties to do (E:145D)- Then he

stopped all other proceedings in *DeLano*, thus forestalling a renewed opposition under §§1325(b) and 102(4) by Dr. Cordero to their repayment plan, and forced him to take discovery of Mr. DeLano to prove his claim against him in *Pfuntner* (E:195§§I-II). The result of his discovery would be presented at an evidentiary hearing on March 1, 2005. But Mr. DeLano and the Judge denied him *every document* that he requested. (E:77§§1-2) Yet, in his decision on appeal of April 4, the Judge disallowed the claim because 'Dr. Cordero did not introduce any document to prove it!' What a set up! (E:33B)

55. However, Dr. Cordero could still introduce on appeal one threatening document: **the transcript.** Indeed, at the March 1 evidentiary hearing he elicited from Mr. DeLano admissions corroborating all the elements of his claim and even new information strengthening it. Judge Ninfo dealt with that testimony in his April 4 decision by dismissing it on the allegation that Mr. DeLano had been "confused" by Dr. Cordero. The ludicrousness of such pretense of a reason for dismissing damaging testimony is all the more obvious because Mr. DeLano was testifying about his own actions as an expert handling the bankruptcy in *Pfuntner*. (E:23 fn.1) Also, he was assisted by two seasoned attorneys, Christopher Werner, Esq., who according to his own statement 'has been in this business for 29 years' now and, as shown in PACER, had already at the time appeared before Judge Ninfo in 525 cases; and Michael Beyma, Esq., who is the attorney for Mr. DeLano and M&T in *Pfuntner* and a partner in the firm of Underberg & Kessler, of which the Judge was also a partner before being appointed to the bench in 1992[1]. The transcript will also allow Judge Ninfo's peers to hear from his own mouth his bias and contempt for due process. (E:209C-E)
56. Mr. DeLano's self-incriminating testimony and Judge Ninfo's performance as his on-the-bench advocate, if it were completely and accurately reflected in the transcript (E:216F), can have devastating consequences: It will show that the untimely motion to disallow and the abuse-of-process evidentiary hearing constituted a two-punch sham (E:33B) to justify stripping Dr. Cordero of standing as a creditor of the DeLanos so as to prevent him from obtaining the documents that can prove the bankruptcy fraud (cf. E:47§II) of well-connected Veteran Banker DeLano. In his 32-year banking career, he must have come to know too much to be left unprotected from his

[1]Judge Ninfo is up for reappointment and the investigation requested here should assist in deciding whether to reappoint him. Sooner or later what drives him, the other court officers, and the local parties to disregard their duty and legality will be exposed, whether by the Judicial Conference, the FBI, the Congressional committees on the judiciary, or investigative journalists. Those who vote to reappoint him (cf. E:202) despite all the evidence of wrongdoing collected during the past three years (E:115§II) and presented to each of the members of the CA2 and Judicial Council (E:239C; 201) by Dr. Cordero will end up embarrassed and having to explain themselves.

creditors or, worse, liable to criminal charges and, thus, tempted by a plea bargain to trade in his we-are-all-in-the-same-boat incrimination. (E:83§3) Precisely, his confession can open the way to proving that the long series of acts beginning in *Pfuntner* (E:134§I) of disregard for the law, the rules, and the facts by court officers, all consistently to the detriment of non-local pro se Dr. Cordero and the benefit of local parties (E:117C-E), form a pattern of non-coincidental, intentional, and coordinated wrongdoing in bankruptcy. Therein cases approved generate a commission of all payments by debtors to creditors as well as debt relief that spares concealed assets. That relief alone can save the DeLanos more than $144,000 in debt plus delinquent interest at over 25%. (E:248¶75) Money, lots of money, "the source of all evil", and a web of local relations giving rise to what is at stake here: a bankruptcy fraud scheme and its cover-up. (E:234D)

57. Indeed, when so many officers who meet daily in a small building to work as a formal unit of colleagues and appointers-appointees (28 U.S.C. §751(a), (b); §753(a)) disregard their duty and legality as they engage in 'diversity of city' discrimination against a far away litigant, one can infer that they are not simply performing their functions incompetently and with accidentally identical results. Instead, the law allows the application of common sense to circumstantial evidence to draw the inference of intentionality and coordination from the acts of reasonable persons operating as a team to attain the shared objective of a scheme. On such basis, juries of lay persons are asked to make inferences that can lead to a finding of guilt beyond reasonable doubt, which will deprive the accused of his property, his liberty, and even his life. That is what the schemers stand to lose, who can be exposed as such by the transcript of one of their reporters.

V. Bankruptcy court reporters are subject to 28 U.S.C. §753 and the supervision of the Judicial Conference

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

59. The same conclusion follows from the applicability of §753 to the district court clerks, who in districts where no bankruptcy clerk has been appointed, perform the same clerkship duties for the respective bankruptcy courts, which follows from FRBkrP 5001, Advisory Committee Notes, 1987 Amendments, "…Clerk means the bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court". Therefore, if district court clerks can perform the same duties as bankruptcy court clerks although such duties have

some elements specifically connected with bankruptcy, such as keeping claims registers under FRBkrP 5003(b), then district court reporters can also serve as bankruptcy court reporters and vice versa since the nature of the proceedings that they record does not affect their duty to:

> §753(b)…record verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations…[e]ach session of the court and every other proceeding designated by rule or order of the court or by one of the judges… (cf.¶13 above)

60. Applying by analogy the same rules to reporters in either court as is done to clerks performing bankruptcy clerkship duties is supported by §753(d), which provides that reporters' "records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts".

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

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

VI. Request for Relief

63. The court officers and local parties are determined not to allow Dr. Cordero to use the *Pfuntner-DeLano* cases as a wedge to crack the bankruptcy fraud scheme. (E:51§IV) But they cannot prevent the Conference from investigating Reporter Dianetti and thus reaching the source of wrongdoing infect-

ing the core of judicial integrity. It is for each Conference member to determine how he or she will handle that clique and their pattern of disregard for duty and legality. Will each discharge his or her own duty to apply the law even to colleagues and appointees who have broken it for their own advantage, even by denying due process to a non-local person on whom they have inflicted enormous material and emotional injury for years? Failure to do so will only condone and thereby encourage those officers and parties to commit ever bolder acts, which will accumulate until attaining a critical mass threatening to explode and expose them, which will induce them into a cover up requiring ever more egregious, even criminal acts. (E:243D) It is a vicious circle that can only end up in disaster and shame for its active participants as well as those who had the duty to stop them but who instead aided and abetted them through their passivity in dereliction of duty. The choice is between sticking with unworthy members of the same class and keeping the oath to uphold the law and to fairness and justice. (E:253E) Where do your loyalties lie?

64. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:
    a. Investigate under 28 U.S.C. §753(c) the refusal of Court Reporter Mary Dianetti to certify the reliability of the transcript in question in connection with the *DeLano* and *Pfuntner* cases as well as with the broader context of the pattern of non-coincidental, intentional, and coordinated acts of disregard for the law, the rules, and the facts engaged in by other court officers and parties in the Bankruptcy Court, WBNY, and District Court, WDNY
    b. Designate under §753(b) 3rd paragraph an experienced court reporter, unrelated to either Court Reporter Mary Dianetti or any court officers, whether judicial or administrative, of either of those Courts, to prepare the transcript based on all the stenographic packs and folds used by her to record the evidentiary hearing of March 1, 2005, having due regard for the chain of custody and condition of such packs and folds; and review such transcript; and
    c. Refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

Dated: July 28, 2005

Dr. Richard Cordero

59 Crescent St.,
Brooklyn, NY 11208,

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

Table of Exhibits

in support of the petition under 28 U.S.C. §753 to
the Judicial Conference of the United States
to investigate a court reporter's refusal to certify
the reliability of her transcript, and
to designate another individual to produce it

submitted on July 28, 2005

by

Dr. Richard Cordero

1. Letters between Dr. Richard Cordero and WBNY Court Reporter Mary Dianetti:

	Dr. Cordero	**Reporter Dianetti**		
a.	April 18, 2005		1	[C:1155]
b.		May 3	2	[C:1156]
c.	May 10		3	[C:1157]
d.		May 19	4	[C:1158]
e.	May 26		6	[C:1160]
f.		June 13	7	[C:1161]
g.	June 25		9	[C:1163]
h.		July 1, 2005	11	[C:1165]

2. Dr. **Cordero**'s motion of **July 13**, 2005, for the District Court, WDNY, **to stay** the confirmation hearing in Bankruptcy Court of the debt repayment plan in *In re DeLano*, no. 04-20280, WBNY, and the confirmation order; withdraw the case to itself pending appeal; remove Trustee George Reiber; and take notice of his addition of issues to the appeal ..... 13 [Add*:881]

   a. Dr. Cordero's **affidavit** of **July 11**, 2005, in support of his July 13 motion ..... 18 [Add:886]

[*__D:__=Designated items in the record for the appeal from Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to District Court in *Cordero v DeLano*; 05cv6190L, WDNY; **Add:**=Addendum to the D items; **Pst:**= PostAddendum; and **Tr:**= transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005. The exhibits whose page numbers are so identified are contained in the corresponding files in the A D Add Pst Tr folder on the accompanying CD.

Mr. DeLano is a 3rd-party defendant who was brought into *Pfuntner v. Trustee Gordon et al., no 02-2230, WBNY*, by Dr. Cordero. Later on, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against Mr. DeLano arising from *Pfuntner*.]

3. Dr. **Cordero**'s motion of **June 20**, 2005, for the District Court to **stay** in Bankruptcy Court ***Pfuntner*** *v. Trustee Gordon et al.*, no. 02-2230, WBNY, and **join** the parties in that case **to** the ***DeLano*** appeal ..... 43 [Add:851]

   b. Dr. **Cordero**'s statement of **June 18**, 2005, **to** the ***Pfuntner*** **parties** on Judge **Ninfo's linkage** of the *Pfuntner* and *DeLano* cases ..... 45 [Add:853]

4. Dr. **Cordero**'s motion of **February 17**, 2005, to **request** that Judge **Ninfo recuse himself** under 28 U.S.C. §455(a) due to lack of impartiality ..... 59 [D:355]

5. Dr. **Cordero**'s motion of **August 14**, 2004, in Bankruptcy Court for docketing and issue of proposed order, transfer, referral, examination, and other relief, noticed for August 23 and 25, 2004 ..... 89 [D:231

6. Dr. **Cordero**'s motion of **November 3**, 2003, in the **Court of Appeals** for the Second Circuit for leave to file **updating** supplement of **evidence of bias** in Judge **Ninfo's** denial of Dr. Cordero's request for a trial by jury ..... 107 [D:425

7. Dr. **Cordero**'s motion of **August 8**, 2003, for J. **Ninfo** to **transfer** ***Pfuntner*** to the District Court in Albany, NDNY, and **recuse** himself due to bias ..... 127 [D:385]

8. **Bankruptcy Court**'s notice of **April 11**, 2005, **to** Dr. **Cordero** to request that pursuant to FRBkrP 8006 he **perfect** the **record** on appeal in *DeLano* by submitting by April 21 his **designation of items** in the record ..... 165 [Add:679]

9. District Judge **Larimer**'s order of **April 22**, 2005, **scheduling** Dr. **Cordero**'s appellate **brief** in *DeLano* for submission by 20 days hence, issued with **disregard for FRBkrP 8007(b)** a day after Dr. Cordero's designation of items was filed in Bankruptcy Court **and before** the **transcript** had been **started** so that the record was incomplete and no brief could be scheduled ..... 167 [Add:692]

10. Dr. **Cordero's objection** of **May 2**, 2005, to Judge **Larimer's FRBkrP**-non-complying **scheduling** of his appellate brief; and request for its rescission ..... 169 [Add:695]

11. Judge **Larimer**'s order of **May 3**, 2005, **scheduling another date** for Dr. Cordero's appellate brief and issued with **disregard** for his objection that the scheduling was premature since the **record** it was still **incomplete** ..... 171 [Add:831]

12. Dr. **Cordero**'s motion of **May 16**, 2005, **for compliance with FRBkrP** 8007 **in** the **scheduling** of his appellate **brief** and the urgent rescission of the scheduling order because the transcript was not yet in, the record was still incomplete, and the Judge had no jurisdiction over the case ..... 172 [Add:836]

13. Judge **Larimer**'s order of **May 17**, 2005, **rescheduling** Dr. Cordero's **brief** for submission within 20 days **after** the **transcript** was filed, as if he had requested additional time rather than compliance with the FRBkrP ..... 175 [Add:839]

14. **Docket** of ***DeLano*** as of July 26, 2005 [updated to December 12, 2005] ..... 176 [D:496]

15. **Bankruptcy Court**'s letter of **January 14**, **2003**, **to** Dr. **Cordero** setting January 27 as the due date for his designation of items in his appeal in *Pfuntner* from Judge Ninfo's dismissal of his cross-claims against Trustee Gordon ..... 191 [C:1107]

16. Judge **Larimer**'s **scheduling** order of **January 16**, 2003, setting a deadline 20 days hence for Dr. Cordero's appellate brief, thereby issuing it **prematurely** while the **period** had barely **begun** to run for him **to designate items** for his appeal *Cordero v. Gordon,* no. 03cv6021, WDNY ..... 192 [C:1108]

17. [excerpts from] Dr. **Cordero**'s motion of **September 9**, 2004, in CA2 to **quash** Judge **Ninfo**'s order of August 30, 2004, which **severs a claim from** his **appeal** *In re Premier Van et al.,* no. 03-5023, so that the Judge can **decide** it i**n *DeLano***, thus making a mockery of the appeal process ..... 194 [C:719]

18. Sample letter of Dr. **Cordero**'s letters of **March 18**, 2005, **to** Circuit Judge Dennis Jacobs and other members of the 2nd Cir. **Court** of Appeals **and Judicial Council** in **response to** the Court's **invitation** for members of the bar and the public to **comment** on the **reappointment** of Judge **Ninfo** to a new term of office as bankruptcy judge..... 201 [C:995]

19. Dr. **Cordero**'s letter of **March 17**, 2005, **to Circuit Executive** Karen Greve Milton in response to the invitation by the Court of Appeals for the Second Circuit for public **comments** on the **reappointment** of Judge **Ninfo** to a new term of office as bankruptcy judge..... 202 [C:982]

    a. **Statement by** Bankruptcy Court Reporter Mary **Dianetti** of the **number** of stenographic **paper packs** and folds comprising her **recording** of the evidentiary **hearing** in *DeLano* held on March 1, 2005, at the Bankruptcy Court, WBNY, before Judge Ninfo .....203 [C:1081]

    b. Dr. Cordero's Statement: Judge **Ninfo's bias** and **disregard** for **legality** can be heard from his own mouth through the **transcript** of the evidentiary **hearing** of the DeLano Debtors' **motion** to **disallow** Dr. **Cordero's claim against** Mr. **DeLano**, held on March 1, 2005; and can be read about in a caveat on ascertaining its authenticity that illustrates the Judge's tolerance of wrongdoing **[**See that transcript in the Tr file in the D Add Pst Tr folder on the accompanying CD.] ..... 204 [C:951]

20. Application of **July 7**, 2005, by Christopher **Werner**, Esq., attorney for the DeLanos, for **$16,654** in legal **fees** incurred almost exclusively in connection with Dr. **Cordero's request for documents** and the **DeLanos'** efforts to **avoid** producing them ..... 219 [C:1059]

21. List of **Hearings and Decisions** presided over or written by Judge **Ninfo** in *Pfuntner* and *DeLano* involving Dr. Cordero, as of July 26, 2005..... 225 [C:993]

22. Docket for ***Cordero v. DeLano*, no.** 05-cv-6190 DGL, WDNY ..... 228 [Pst:1181]

23. [excerpts from] Dr. **Cordero**'s petition of **January 20**, 2005, **to** the **Supreme Court** of the United States in *Cordero v. Premier Van Lines, Inc., et al.*, docket no. 04-8371, for a writ of **certiorari** to the Court of Appeals for the Second Circuit in *Premier Van et al.*, docket no. 03-5023, CA2..... 231 [Add:557,588]

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:
David G. DeLano
Mary Ann DeLano
Debtor(s)

SSN/Tax ID: xxx–xx–3894
xxx–xx–0517

Case No.: 2–04–20280–JCN
Chapter: 13

NOTICE REGARDING PERFECTING THE RECORD ON APPEAL [Bankruptcy Rule 8006]

PLEASE TAKE NOTICE that, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule(s)"), on or before April 21, 2005 , the Appellant, Richard Cordero ("Appellant"), must serve on the Appellee, David G. and Mary Ann Delano ("Appellee"), and file with the Clerk of Court for the Bankruptcy Court a"Designation of Record on Appeal and Statement of Issues" ("Designation"), together with proof of service in the form of an Affidavit of Service. Appellant must serve on Appellee and file with the Clerk of Court a copy of any document listed in the Designation that is not available electronically through the Court's Docket, together with proof of service in the form of an Affidavit of Service.

PLEASE TAKE FURTHER NOTICE that, pursuant to Bankruptcy Rule 8006, within ten (10) days after service of Appellant's Designation, the Appellee may serve on Appellant and file with the Clerk of Court a "Designation of Additional Items," together with proof of service in the form of an Affidavit of Service. If the Appellee has filed a cross–appeal, the Appellee must serve and file those items specified in Bankruptcy Rule 8006 within the time specified.

PLEASE TAKE FURTHER NOTICE that, any party designating a transcript as part of the Record on Appeal must deliver to the Court Reporter, and file with the Clerk of Court, a written request for the transcript(s) and make satisfactory arrangements for payment of the cost of the transcript(s) with the Court Reporter, except where the transcript has previously been filed with the Court.

PLEASE TAKE FURTHER NOTICE that, in the event that the Appellant fails to serve and file the Designation of Record within the ten (10) day time period specified in Bankruptcy Rule 8006, the Clerk of the Bankruptcy Court will transmit to the Clerk of the District Court an "Incomplete Record" consisting of a copy of the Notice of Appeal, the Order or Judgment that is the subject of the appeal, and an index of the relevant Docket entries. **Appellant is advised that the appeal may be subject to dismissal by District Court, in the event of Appellant's failure to serve and file the Designation within the time required by Bankruptcy Rule 8006, upon a motion by the Appellee or on the Court's own motion.**

Dated: April 11, 2005

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: K. Tacy
Deputy Clerk

[1] This date has been determined by the Clerk's Office to be ten (10) days after the date on which Appellant filed of the "Notice of Appeal," as specified by Bankruptcy Rule 8006.

Form apintc
Doc 104

110362

CLERK'S OFFICE
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

Clerk of Court
Paul R. Warren

Deputy Clerk in Charge
Todd M. Stickle

January 14, 2002

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

RE: Notice of Appeal
BK#01-20692
Premier Van Lines, Inc.
AP#02-2230

Dear Mr. Cordero:

Enclosed is a copy of the Notice of Appeal to the U.S. District Court in the above matter, that you filed on January 13, 2003. The Court is also in receipt of your Civil Cover sheet.

Please be advised that your Designation of Items on Appeal are due on or before **January 27, 2003. The items designated must be provided by you**. Further you will be notified from this office when the case is forwarded to the U.S. District Court.

If you should need further information, please feel free to contact me at the Bankruptcy Court Clerk's office at (585) 263-3148.

Cordially,

Karen S. Tacy
Case Administrator

enc
xc: Kenneth Gordon, Esq.
Raymond Stilwell, Esq.
Karl Essler, Esq.
Michael Beyma, Esq.
David Palmer
Rochester Americans Hockey Club
David MacKnight, Esq.
Kathleeen Schmitt, Esq., UST

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED
03 JAN 16 PM 4:59
U.S. DISTRICT COURT
W.D.N.Y. - ROCHESTER

DR. RICHARD CORDERO,

Appellant(s),

vs.

KENNETH GORDON, TRUSTEE,

Appellee(s).

APPEAL FROM BANKRUPTCY COURT

03CV6021L

An appeal from the Bankruptcy Court has been docketed in the district court pursuant to Bankruptcy Rule 8007 on . The case is assigned to District Judge David G. Larimer.

Until further order of the district court, the following schedule shall control the filing of briefs and argument of the appeal:

1. Appellant(s) shall file and serve its brief within twenty (20) days after entry of this order on the docket;

2. Appellee(s) shall serve and file its brief within twenty (20) days after service of appellant's brief;

3. Bankruptcy Rule 8009 and 8010 shall control concerning cross-appeals and reply briefs as well as the form of all briefs;

4. It shall be the responsibility of appellant to notify Judge Siragusa, in writing, when the record is complete and all briefs have been filed, that the case is ready for oral

#3

argument, or if no argument is requested, that the case is ready for submission;

5. The Court will schedule argument in accordance with Bankruptcy Rule 8012.

IT SO ORDERED.

David G. Larimer
United States District Judge

Dated: January 16, 2003
Rochester, New York

List of Hearings and Decisions

presided over or written by Judge John C. Ninfo, II, WBNY

in *Pfuntner v. Trustee Gordon* et al., docket no. 02-2230, and

In re David and Mary Ann DeLano, docket no. 04-20280

as of July 27, 2005, [updated to May 10, 2006]

by

Dr. Richard Cordero

I. Hearings

A. In *Pfuntner* [docket at Add:531]

[written decision, if any]

1. **December 18, 2002**, Hearing of Trustee Kenneth Gordon's motion of December 5, 2002, [A:135] to dismiss Dr. Cordero's cross-claims against him [A:83, 88] ..... [A:151]

   [The transcript of this hearing was belatedly prepared by Bankruptcy Court Reporter Mary Dianetti and mailed on March 26, 2003, to Dr. Cordero (A:262-289)]

2. **January 10, 2003**, Pre-trial conference [A:99, 358, 299, 365] ..... [none]

3. **February 12, 2003**, Hearing of Dr. Cordero's motion of January 27, 2003, in Bankruptcy Court to extend time [A:212] to file notice of appeal [A:153] to WDNY from Judge Ninfo's dismissal [A:151] of Dr. Cordero's cross-claims against Trustee Gordon [A:83, 88] ..... [A:240]

4. **March 26, 2003**, Hearing of Dr. Cordero's motion of February 26, 2003, in Bankruptcy Court for relief [A:242] from Judge Ninfo's order denying [A:240] the motion to extend time [A:212] to file notice of appeal from his dismissal ..... [A:259]

5. **April 23, 2003**, Hearing of Plaintiff Pfuntner's motion of April 10, 2003, [A:389] in Bankruptcy Court to discharge Plaintiff Pfuntner from liability and for other relief; and of Dr. Cordero's measures relating to the trip from New York City to Rochester and the inspection of property [A:396] ..... [A:558:81]

6. **May 21, 2003**, Hearing for Dr. Cordero to report to Judge Ninfo on the inspection of property at Plaintiff Pfuntner's warehouse on May 19, 2003 [cf. A:510¶¶1-7] ..... [A:559:88]

7. **June 25, 2003**, Hearing of Dr. Cordero's motion of June 6, 2003, in Bankruptcy Court for sanctions and compensation predicated on Mr. Pfuntner's and Mr. MacKnight's failure to comply with Judge Ninfo's discovery orders [A:510]; and of Dr. Cordero's application,

resubmitted on June 16, 2003, for default judgment against David Palmer, owner of the bankrupt moving and storage company Premier Van Lines, Inc. [A:472].....[see next]

8. **July 2, 2003**, Adjourned hearing for Judge Ninfo to set a series of hearings in *Pfuntner*, beginning with hearings on October 16 &17, and November 14, followed by monthly hearings for 7 to 8 months, during which Dr. Cordero would be required to travel from New York City to Rochester to participate in them in person [clearly intended to wear Dr. Cordero down by making the financial and emotional cost of defending his rights unbearable].....[A:666]

9. **October 16, 2003**, First hearing of the series of Judge Ninfo's "discrete" "discreet" hearings.....[A:734, 736, 754, 768, 774]

B. In *DeLano* [docket at D:496]

10. **March 8, 2004**, Hearing for confirmation of debtors' debt repayment plans [D:59; 63], where Dr. Cordero protested that the attorney for Trustee George Reiber, James Weidman, Esq., prevented him from examining the DeLanos at the meeting of creditors earlier that afternoon; which action was then ratified by Trustee Reiber and excused by Judge Ninfo [D:77] ..... [cf. D:68, 69]]

11. **July 19, 2004**, Hearing of Trustee Reiber's motion of June 15, 2004, to dismiss the *DeLano* petition {D:164; cf. D:193] due to the DeLanos' unreasonable delay in producing documents [D:207, 217]..... [D:220

12. **August 23, 2004**, Adjourned hearing of Trustee George Reiber's motion of June 15 to dismiss the *DeLano* petition [D:164; cf. D:193]; and hearing of Dr. Cordero's motion of August 14, 2004, [D:231] for docketing and issue of the proposed order of document production, transfer, referral, examination, and other relief .....[see next]

13. **August 25, 2004**, Hearing of the DeLanos' motion of July 19, 2004, to disallow [D:218] Dr. Cordero's claim as their creditor [D:142], where Judge Ninfo required Dr. Cordero to take discovery of Mr. DeLano regarding his claim arising from *Pfuntner*, on appeal by Dr. Cordero in CA2, and present the evidence in Bankruptcy Court at an evidentiary hearing.....[D:272]

14. **December 15, 2004**, Hearing where Judge Ninfo set the date for the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim.....[D:332}

15. **March 1, 2005**, Evidentiary hearing of the DeLanos' motion to disallow [D:218], where Dr. Cordero examined Mr. DeLano on whether Mr. DeLano's handling of the Premier's storage boxes containing Dr.

Cordero's property rendered him liable to Dr. Cordero [cf. 25§d]; Judge Ninfo disallowed the claim and stripped Dr. Cordero of standing to participate in any proceedings in *DeLano*, whereupon the appeal *Cordero v. DeLano*, 05-cv-6190, WDNY, ensued [docket at Pst:1181] .....[D:3]

[The transcript of this hearing was prepared and filed in Bankruptcy Court on November 4, 2005by Bankruptcy Court Reporter Mary Dianetti who refused to certify that it would be complete, accurate, and free from tampering influence (C:1083), She provided to Dr. Cordero a copy on paper and in a PDF file; a copy of the latter is included in the D Add Pst Tr folder on the accompanying CD.]

16. **July 25, 2005,** Confirmation hearing of the DeLanos' debt repayment plan [cf. Add:1038]..... [Add:941

17. **November 16, 2005,** Hearing of Dr. **Cordero**'s **motion** of **November 5**, 2005 (Add:1038), under 11 U.S.C. §330(a) for Judge Ninfo to **revoke** his August 9 **order** (Add:941) confirming the DeLanos' debt repayment plan (D:59) because it was procured by fraud.....[Add:1094]

[Judge Ninfo maneuvered the absence at the hearing in Rochester of Dr. Cordero, who lives in New York City, by denying without stating any reason (Add:1065) his request, included in the motion (Add:1062¶66e), to appear, as he had on 12 previous occasions, by phone (Add:1066); thereby the Judge made it possible that "Appearing in opposition: [was] George Reiber, Trustee…Order to be submitted by the Trustee" (D:508f, entry between 150 and 151; cf. Add:1097, 1125)]

II. Decisions and Orders

A. In *Pfuntner*

1. Judge **Ninfo**'s Order of **December 30, 2002**, **dismissing** Dr. **Cordero's cross-claims** against Trustee **Gordon** [A:83, 88] for defamation as well as negligent and reckless performance as trustee..... [A[1]:151]

2. Judge **Ninfo**'s Order of **February 4**, **2003**, to **transmit the record** in a non-core proceeding to the District Court, WDNY, combined with findings of fact, conclusions of law and **Recommendation** not to grant Dr. Cordero's application [A:290-295] for entry of **default judgment** against David Palmer, Owner of Premier Van Lines, Inc. [A:78, 88] **.....**[A:304]

3. Judge **Ninfo**'s **Attachment** of **February 4**, **2003**, **to** his **Recommendation** that default judgment against David Palmer not be entered by the District Court and that Dr. **Cordero be required** to **demonstrate** that he

[1 A=Appendix to Dr. Cordero's opening brief in *In re Premier Van et al.*, no. 03-5023, CA2, (C:171) which arose from *Pfuntner* A: files are in the A 1-2229 folder on the accompanying CD.]

has incurred the **loss** for which he requires a default judgment .....[A:306]

4. [But see: Bankruptcy Court **Clerk** Paul A. Warren's certificate of **February 4**, 2003, of **default** entered against David **Palmer** ..... A:303]
5. Judge **Ninfo**'s order of **February 18, 2003**, **denying** Dr. Cordero's motion to **extend time** [A:212] to file notice of appeal [A:151] from the dismissal [A:151] of his cross-claims against Trustee Gordon [A:83, 88] .....[A:240]
6. Judge **Ninf**o's Order of **July 15**, **2003**, requiring, among other things, that Dr. **Cordero**, who lives in New York City, **participate** in a **series of "discrete" "discreet" hearings** starting on **October 16** in Rochester, NY **.....**[A:746]
7. Judge **Ninfo**'s "Order of October 16, 2003, **Disposing of Causes of Action"** at the October 16 hearing in *Pfuntner* in Rochester, NY.....[A:754]
8. Judge Ninfo's "Order of October 16, 2003, **Denying Recusal and Removal** Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial on October 16, 2003"; and **making reference to** his **oral decision** read into the record at the October 16 hearing in Rochester, NY .....[A:734]
9. Judge Ninfo's "Decision and Order of October 23, 2003, Finding a **Waiver** [by Dr. Cordero] of a **Trial by Jury**" by Dr. Cordero in *Pfuntner* **.....**[A:774]
10. Judge **Ninfo**'s "**Scheduling** Order of **October 23**, 2003, in Connection with the **Remaining Claims** of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero" .....[A:768]
11. Judge **Ninfo**'s Order of **October 28, 2003**, **denying** Dr. Cordero's October 23 motion [A:785] for Judge Ninfo to provide a definite statement of which of his oral version of October 16, 2003, [A:736] or his written version entered in the record on October 17 is the official version of his "Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003" .....[A:787]

B. In *DeLano*

12. Judge Ninfo's Order of **July 26**, 2004, providing for production by the DeLanos of only some documents but not issuing Dr. Cordero's proposed order (D:208) because "to [it], Attorney Werner expressed concerns in a July 20, 2004 letter" (D:211) .....[D:220]:
13. Judge Ninfo's Interlocutory Order of **August 30**, 2004, requiring Dr. Cordero to take **discovery** of his claim against Mr. **DeLano [**though arising from *Pfuntner* and thus, on appeal in the Court of Appeals for the Second Circuit in *In re Premier Van et al.*, no. 03-5023]; **suspending** all other proceedings **until** the DeLanos' motion to **disallow** [D:218] **Dr.**

Cordero's claim [D:142] is finally determined; and stating that on December 15 the date will be set for that evidence supporting that claim to be presented at an evidentiary hearing .....[D:272]

14. Judge Ninfo's Interlocutory Order of **November 10**, 2004, **denying** all of Dr. Cordero's requests for **discovery** from Mr. DeLano [D:287, 317] and holding the hearing of Dr. **Cordero's** November 4 **motion**, noticed for November 17, to be moot.....[D:327]

15. Judge Ninfo's order of December 21, 2004, scheduling for March 1, 2005, the evidentiary hearing of the DeLanos' motion [D:218] to disallow Dr. Cordero's claim [D:142] against Mr. DeLano.....[D:332]

16. Judge Ninfo's Decision and Order of **April 4**, 2005, granting the DeLanos' motion to disallow the claim against Mr. DeLano by Dr. **Cordero** and holding that the latter no longer has **standing** to participate in any future proceedings in the DeLanos' case.....[D:3]

17. Judge **Ninfo's** o**rder** of **August 8**, 2005, instructing **M&T Bank** to **deduct** $293.08 biweekly **from** his employee, Debtor David **DeLano**, and **pay** it to Trustee **Reiber**.....[Add:940]

18. Judge **Ninfo**'s Decision and **Order** of **August 9**, 2005, confirming upon "the Trustee's Report [Add:937] and the testimony of Debtor" the DeLanos' debt repayment plan [D:59]; finding that "Any objections to the plan have been disposed of"; and **allowing** payment of legal fees in the amount of **$18,005 to** Att. **Werner** by the DeLanos [who stated in Schedule B of their January 2004 bankruptcy petition (D:27) that they had only $535 in cash and on account].....[Add:941]

19. Judge **Ninfo**'s **letter** of **November 10**, 2005, **to** Dr. **Cordero denying**, without stating any reason whatsoever, his request to **appear by phone** at the **hearing** [Add:1062¶66.e; cf. Add:1066] of his motion returnable on November 16 {Add:1038] **to revoke** the confirmation of the DeLanos' debt repayment plan due to its procurement by fraud.....[Add:1065]

20. Judge **Ninfo's order** of **November 22**, 2005 **denying** Dr. **Cordero's** November 5 **motion** to **revoke** [Add:1038] the order of confirmation [Add:941] of **DeLanos' plan** [D:59] because Dr. Cordero has **not standing** in the case, is not a party in interest, and thereby cannot file the adversary proceeding necessary to seek revocation [cf. Add:1095].....[Add:1094]

21. Judge **Ninfo's order** of December 9, 2005, **denying** Dr. Cordero's December 6 notice of motion and motion [Add:1095] to **quash** the order denying the motion [Add:1038] to revoke due to fraud the order of **confirmation** [Add:941] of the Delano's plan [D:59], revoke the confirmation, and **remand** the **case**.....[Add:1125]

List of Members of the Judicial Conference

to whom was sent the letter of August 1, 2005
requesting that they forward to the Conference the July 28 petition
to investigate under 28 U.S.C. §753(c) a court reporter's refusal
to certify the reliability of her transcript and
to designate under §753(b) another individual to produce it[♣]

by

Dr. Richard Cordero

Mr. Chief Justice William **Rehnquist**
As Member of the Judicial Conference of the U.S.
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Hon. Chief Judge Michael **Boudin**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **First** Circuit
1 Courthouse Way
Boston, MA 02210

Hon. Chief Judge Hector M. Laffitte
As Member of the Judicial Conference of the U.S.
U.S. District Court for the District of Puerto Rico
150 Carlos Chardon Street
Hato Rey, P.R. 00918

Hon. Circuit Judge Dennis Jacobs[♦]
U.S. Court of Appeals for the **Second** Circuit
40 Foley Square
New York, NY 10007

Hon. Chief Judge Michael B. Mukasey
As Member of the Judicial Conference of the U.S.
U.S. District Court, SDNY
500 Pearl Street
New York, NY 10007-1312

Hon. Chief Judge Anthony J. **Scirica**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Third** Circuit
601 Market Street
Philadelphia, PA 19106

Hon. Chief Judge Thomas I. Vanaskie
As Member of the Judicial Conference of the U.S.
U.S. District Court for the Middle Dis. of Pennsylvania
235 N. Washington Ave., P.O. Box 1148
Scranton, PA 18501

Hon. Chief Judge William W. **Wilkins**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Fourth** Circuit
1100 East Main Street, Annex, Suite 501
Richmond, Virginia 23219-3517

Hon. Judge David C. Norton
As Member of the Judicial Conference of the U.S.
U.S. District Court, District of South Carolina
Post Office Box 835
Charleston, SC 29402

Hon. Chief Judge Carolyn Dineen **King**
Chair of the Executive Committee of
the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Fifth Circuit**
515 Husk Street, Route 11020
Houston, TX 77002

Hon. Chief Judge Glen H. Davison
As Member of the Judicial Conference of the U.S.
U.S. District Court, Northern District of Mississippi
301 West Commerce Street, P.O. Drawer 767
Aberdeen, MS 39730-0767

Hon. Chief Judge Danny J. **Boggs**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Sixth** Circuit
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

[♣] See also the Alphabetical Table of Members of the Judicial Conference at C:1151.

Hon. Judge William O. Bertelsman
As Member of the Judicial Conference of the U.S.
U.S. District Court, Eastern Dis. of Kentucky
35 W 5th Street, Room 505
P.O. Box 1012
Covington, KY 41012

Hon. Chief Judge Joel M. **Flaum**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Seventh** Circuit
219 S. Dearborn Street, Room 2702
Chicago, IL 60604

Hon. Judge J. P. Stadtmueller
As Member of the Judicial Conference of the U.S.
U.S. District Court, Eastern Dis. of Wisconsin
517 East Wisconsin Avenue
Milwaukee, WI 53202

Hon. Chief Judge James B. **Loken**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Eighth Circuit**
316 N. Robert Street
St. Paul, MN 55101

Hon. Chief Judge James M. Rosenbaum
As Member of the Judicial Conference of the U.S.
U.S. District Court for the Dis. of Minnesota
300 S. 4th Street
Minneapolis, MN 55415

Hon. Chief Judge Mary M. **Schroeder**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Ninth Circuit**
Post Office Box 193939
San Francisco, CA 94119-3939

Hon. Chief Judge David Alan Ezra
As Member of the Judicial Conference of the U.S.
U.S. District Court for the District of Hawaii
300 Ala Moana Boulevard, Room C338
Honolulu, HI 96850

Hon. Chief Judge Deanell R. **Tacha**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Tenth** Circuit
1823 Stout Street
Denver, CO 80257

Hon. Judge David L. Russell
As Member of the Judicial Conference of the U.S.
U.S. District Court, Western District of Oklahoma
200 NW 4th Street
Oklahoma City, OK 73102

Hon. Chief Judge J. L. **Edmondson**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the **Eleventh Circuit**
56 Forsyth Street, N.W.
Atlanta, GA 30303

Hon. Senior Judge J. Owen Forrester
As Member of the Judicial Conference of the U.S.
U.S. District Court, Northern District of Georgia
75 Spring Street, S.W.
Atlanta, GA 30303-3309

Hon. Chief Judge Douglas H. **Ginsburg**
As Member of the Judicial Conference of the U.S.
U.S. Court of Appeals, District of **Columbia Circuit**
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Hon. Chief Judge Thomas F. Hogan
As Member of the Judicial Conference of the U.S.
U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Hon. Chief Judge Paul R. **Michael**
As Member of the Judicial Conference of the U.S.
U.S. Court Appeals for the **Federal Circuit**
717 Madison Place, N.W
Washington, D.C. 20439

Hon. Chief Judge Jane A. **Restani**
As Member of the Judicial Conference of the U.S.
U.S. Court of **International Trade**
One Federal Plaza
New York, NY 10278-0001

Madam Justice **Ginsburg**
As Circuit Justice for the Second Circuit
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

♦The CA2 Chief Judge John M. Walker, Jr., is the member of the Conference, but see C:271 et seq.

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

August 6, 2005

Chief Judge Carolyn Dineen King
Chair of the Executive Committee of the Judicial Conference
U.S. Court of Appeals for the Fifth Circuit
600 Camp Street
New Orleans, LA 70130

Dear Chief Judge King,

On 1 instant, I sent you, as member of the Judicial Conference, a cover letter together with a copy of my petition of July 28 to the Judicial Conference for an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript and for designation under 28 U.S.C. §753(b) of another individual to produce the transcript. I had submitted the petition to the Conference by mailing 5 copies, each with all the exhibits, to the Administrative Office of the United States Courts.

On August 3, I called the Administrative Office to confirm its receipt of the petition. Mr. Robert P. Deyling, Esq., Assistant General Counsel, acknowledged it, but again stated that he will not forward it to the Conference because the latter cannot intervene and I do not have a right to petition it. He disregarded my argument that the Conference is a governmental administrative body that under §753(c) has a duty to act on this matter and that I have a First Amendment right "to petition the Government for a redress of grievances". That constitutional right is devoid of any meaning if the government systematically disregards every petition submitted to it. The correlative of that right is the obligation on the part of the government to respond to a petition; however, Mr. Deyling said that I would not receive even a reply letter. Likewise, the statutory obligation would be rendered meaningless if the Conference could at will disregard its mandate:

> §753 (c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

This is not the first time that Mr. Deyling prevents a petition of mine from reaching the Conference. Indeed, on November 18, 2004, I petitioned the Conference to review the denials by the Judicial Council of the Second Circuit of my petitions for review of my two judicial misconduct complaints. However, after failing even to acknowledge receipt of that petition and only at my instigation, Mr. Deyling sent me a letter on December 9, whereby he blocked it from reaching the Conference by alleging that the latter had no jurisdiction to entertain it. The Conference, of course, was never given the opportunity to pass on that jurisdictional issue that I had explicitly discussed, a novel one that it had never decided in any of its 15 decision since the enactment of the Judicial Conduct Act of 1980. It is troubling that the Conference allows a person acting in the capacity of a clerk of court, such as Mr. Deyling, to insulate it from even having to take a look at a citizen's petition. It is all the more troubling when by such expedient the Conference does not even bother to determine the scope of its own obligations under law.

Therefore, I also respectfully request that you, as chair of the Executive Committee, retrieve the five copies of my petition now in possession of Mr. Deyling, and submit the petition to the Conference. I would be indebted to you if you would let me know your course of action.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

August 1, 2005

Chief Judge Carolyn Dineen King
Member of the Judicial Conference of the U.S.
U.S. Court of Appeals for the Fifth Circuit
600 Camp Street
New Orleans, LA 70130

Dear Chief Judge King,

I would like to bring to your attention the petition that I just submitted to the Conference for an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript, which is yet another in a long series of acts of disregard for duty and legality stretching over more than three years and pointing to a bankruptcy fraud scheme and a cover up.

Indeed, last March 1 the evidentiary hearing took place of the motion to disallow my claim in the bankruptcy case of David and Mary Ann DeLano. Bankruptcy Judge John C. Ninfo, II, WBNY, disallowed my claim against Mr. DeLano. Oddly enough, he is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank, who declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 period $291,470, whose whereabouts neither the Judge nor the trustees want to request that he account for.

At the end of the hearing, I asked Reporter Mary 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 and as part of making arrangements for her transcript, 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 exhibits pgs. 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. However, she asked me to prepay and explicitly rejected my request! If a reporter in your court refused to vouch for the reliability of her transcript, would you vouch for it in her stead and use it without hesitation? Would you want your rights and obligations decided on such a transcript?

Moreover, there is evidence, contained in the other exhibits submitted to the Conference and available on demand (pg. 21), that Reporter Dianetti is not acting alone. Bankruptcy clerks and District Judge David G. Larimer, WDNY, also violated FRBkrP 8007 to deprive me of the transcript and, worse still, did the same in connection with the transcript in *Pfuntner v. Trustee Gordon et al.*, where Mr. DeLano, who handled its bankruptcy for M&T, and I are parties. Their motives are discussed in the accompanying copy of the petition and in my submissions to the Conference and its members of November 18 and December 18, 2004. The facts stated therein show a pattern of non-coincidental, intentional, and coordinated bias and wrongdoing in support of a bankruptcy fraud scheme. It suffices for those facts to have the appearance of truth for these officers' conduct to undermine the integrity of the judicial process and detract from public trust in the judiciary. Hence, I respectfully request that you cause this matter to be placed on the agenda of the September meeting of the Conference and that meantime, you make a report of it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely

Dr. Richard Cordero

C:1118 Dr. Cordero's request of 8/1/5 to Chair King to cause Jud. Conf. to act on petition to investigate ct. reporter

United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Mark J. Langer
Clerk

August 8, 2005

General Information
(202) 216-7000

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

Dear Dr. Cordero:

Chief Judge Ginsburg referred your letter of August 1, 2005 to me for a response. The agenda of the Judicial Conference of the United States is developed through the actions of the Executive Committee of the Conference upon recommendations submitted by other Judicial Conference Committees, not through the action of individual Chief Judges.

Therefore, Chief Judge Ginsburg cannot assist you further in this matter.

Sincerely,

Mark J. Langer
Clerk

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

ROBERT K. LOESCHE
Deputy General Counsel

WASHINGTON, D.C. 20544

August 8, 2005

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

Re: Cordero v. DeLano, et al.,
Case No. 6:05-CV-06190-DGL (W.D. N.Y.)

Dear Dr. Cordero:

This is in response to the document you recently sent to the Secretary of the Judicial Conference of the United States, which you addressed to the attention of the Office of General Counsel. That document, dated July 28, 2005, is titled: "Petition for an Investigation Under 28 U.S.C. § 753(c) of a Court Reporter's Refusal to Certify the Reliability of her Transcript and for Designation under 28 U.S.C. § 753(b) of Another Individual to Produce the Transcript." Please be advised that the Administrative Office cannot be of assistance to you other than to provide the general advice offered below.

Your petition reveals at page E:230 that you have filed, in Cordero v. DeLano, et al., Civil Action No. 6:05-CV-06190-DGL (W.D. N.Y.), a "Motion to Have the Bankruptcy Court Reporter Referred to the Judicial Conference for Investigation of Her Refusal to Verify the Reliability of the Transcript." The Administrative Office cannot intervene in, or comment upon, a court's disposition of any proceeding and cannot address the court on behalf of a private party. *See* 28 U.S.C. § 607. Any action that you want a court to take on your behalf must be requested in a timely and proper manner by you or an attorney who is representing you. If you need further assistance with this or any other legal matter, our office recommends that you consult an attorney.

Therefore, in light of the above information, we would ask you to please cease sending further correspondence to this agency about this matter. Since our agency can take no action in this matter, we are returning your documents in case you have further need of them. Thank you in advance for your cooperation.

OFFICE OF THE GENERAL COUNSEL

Enclosures

C:1120 Unsigned letter of Adm Off's Gen Counsel Off of 8/8/5 to Dr. Cordero refusing to forward petition to J Conf

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 11, 2005

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

RE: Letter dated August 1, 2005

Dear Mr. Cordero:

In reply to your letter or submission referred to this office by the Chief Justice on August 11, 2005, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. The Court does not give advice or assistance or answer legal questions on the basis of correspondence.

Your papers are herewith returned.

Sincerely,
William K. Suter, Clerk
By:

M. Blalock
(202) 479-3023

Enclosures

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

August 30, 2005

Mr. Chief Justice William Rehnquist
As Presiding Member of the Judicial Conference of the U.S.
In care of: Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

On 1 instant, I sent you, as presiding member of the Judicial Conference, a letter (E:261 infra) explaining why on the basis of 28 U.S.C. §753(c) I had submitted a petition to the Conference for an investigation of a court reporter's refusal to certify the reliability of her transcript in the context of a bankruptcy fraud scheme pointing to official corruption. On August 11, I received a cover letter (E:262) returning the petition. Anybody who had read my letter, as short as this one, let alone the caption of the petition, would have realized that neither had anything to do at all with an Article III case sent to the Court. Rather they concerned a request for the presiding member of the Conference to have it carry out its reporter-related duties under §753.

The five copies of the petition that I filed with the Administrative Office have also been returned. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); copies wrongly *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned!

Another letter (E:264) tries to make one believe that a circuit chief judge cannot forward to a colleague who is the chairperson of a Conference committee a petition within its jurisdiction with a note "for any appropriate action". Actually, I wrote to the chair of the Executive Committee (E:265), but have received no answer. There is a pattern: Judges avoid investigating one another and to that end will resort to sloppy reading, disingenuous answering, and indifference to official corruption. And no doubt there is a fraud scheme: I served that motion on the Reporter last July 18, but to date she has not filed even a stick-it with the scribble "I oppose it", though she could lose her job by default, as could the Trustee, who has also disregarded my motion of July 13 for his removal. How did they know that Judge D. Larimer would not take any action on those motions?

I am respectfully submitting to you for the Conference the Petition as well as a Supplement to it (51 infra) showing how the reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, yet the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you handle the Supplement and the Petition so that the Conference acts upon them to ensure judicial integrity and that you refer them too under 18 U.S.C. §3057(a) to Attorney General Alberto Gonzales.

Sincerely, Dr. Richard Cordero

C:1122 Dr. Cordero's letter of 8/30/5 to CJ Rehnquist, supplement to petition, & request to forward both to J Conf

Dr. Richard Cordero

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

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

August 30, 2005

Hon. Chief Judge Carolyn Dineen King
As Chairperson of the Executive Committee of the Judicial Conference of the U.S.
In care of: U.S. Court of Appeals for the Fifth Circuit
515 Husk Street, Route 11020
Houston, TX 77002

Dear Judge King,

On 1 and 6 instant, I wrote you (E:265 infra) concerning my petition under 28 U.S.C. §753 for the Conference to investigate a court reporter's refusal to certify the reliability of her transcript and for it to designate another individual to prepare that transcript. I have not yet received any reply from you although the evidence submitted shows that the reporter's refusal is part of a bankruptcy fraud scheme pointing to official corruption.

However, the copies of that petition that I filed with the Administrative Office have been returned to me. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); copies wrongly *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned!

I also sent the petition to Chief Justice Rehnquist, as presiding member of the Conference (E:261). It too was returned to me with a cover letter (E:262). Anybody who had read my letter, as short as this one, let alone the caption of the petition, would have realized that neither had anything to do at all with an Article III case sent to the Court. Rather they concerned a request for the presiding member of the Conference to have it carry out its reporter-related duties under §753. Another letter (E:264) tries to make one believe that a circuit chief judge cannot forward to a colleague who is the chairperson of a Conference committee a petition within its jurisdiction with a note "for any appropriate action". There is a pattern: Judges avoid investigating one another and to that end will resort to indifference to official corruption, cursory reading, and disingenuous answering. Yet, the evidence of a fraud scheme is only mounting: I served that motion on the Reporter last July 18, but to date she has not filed even a stick-it with the scribble "I oppose it", though she could lose her job by default, as could the Trustee, who has also disregarded my motion of July 13 for his removal. How did they know that Judge D. Larimer would not act on those motions?

I am respectfully submitting to you for the Conference the Petition as well as a Supplement to it (51 infra) showing how the Reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, yet the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you handle the Supplement and the Petition so that the Conference acts upon them to ensure judicial integrity and that you refer them too under 18 U.S.C. §3057(a) to Attorney General Alberto Gonzales.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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

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

August 31, 2005

Hon. Chief Judge Douglas H. Ginsburg
As Member of the Judicial Conference of the U.S.
In care of: U.S. Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C., 20001-2866

Dear Chief Judge Ginsburg,

On 1 instant, I wrote you concerning my petition under 28 U.S.C. §753(b-c) for the Conference to investigate the refusal of a court reporter at WBNY to certify the reliability of her transcript. I received a letter (E:264, infra) that tries to make one believe that a circuit chief judge cannot forward to a colleague who is the chairperson of a Conference committee a petition within its jurisdiction with a note "for any appropriate action" even though the evidence shows that the reporter's refusal is part of a bankruptcy fraud scheme pointing to official corruption.

I also sent the petition to Chief Justice Rehnquist, as presiding member of the Conference (E:261). It was returned to me with a letter (E:262). Anybody who had bothered to read my letter, as short as this one, let alone the caption of the petition, would have realized that neither had anything to do at all with an Article III case sent to the Court. Rather they concerned a request for the presiding member of the Conference to have it carry out its reporter-related duties under §753.

Likewise, the copies of that petition that I filed with the Administrative Office have been returned to me. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); wrongly copies *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned!

There is a pattern: Judges avoid investigating one another and to that end will resort to indifference to official corruption, cursory reading, and disingenuous answering. Yet, the evidence of a fraud scheme is only mounting: I served that motion on the Reporter last July 18, but to date she has not filed even a stick-it with the scribble "I oppose it", though by default she could lose her job, as could the Trustee, who has also disregarded my motion of July 13 for his removal. How did they know that Judge D. Larimer would not act on those motions, which implicate Judge J. Ninfo?

I am respectfully submitting to you for the Conference a Supplement to the Petition (51, infra) showing how the Reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, yet the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you handle the Supplement and the Petition so that the Conference acts upon them to ensure judicial integrity and that you refer them too under 18 U.S.C. §3057(a) to Attorney General Alberto Gonzales.

Sincerely, Dr. Richard Cordero

C:1124 Dr. Cordero's letter of 8/31/5 to CJud. Ginsburg: his petition cd be forwarded to Conf colleague for any action

Dr. Richard Cordero

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

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

[Sample of letters to Judicial Conference members] August 30, 2005

Chief Judge Paul R. Michael
As Member of the Judicial Conference of the U.S.
In care of: U.S. Court Appeals for the Federal Circuit
717 Madison Place, N.W
Washington, D.C. 20439

Dear Chief Judge,

On 1 instant, I sent you and the Chief Justice, as members of the Judicial Conference, a letter (E:261 infra) explaining why on the basis of 28 U.S.C. §753(b-c) I had submitted a petition to the Conference for an investigation of a court reporter's refusal to certify the reliability of her transcript in the context of a bankruptcy fraud scheme pointing to official corruption. On August 11, I received a cover letter (E:262) returning the petition. Anybody who had read my letter, as short as this one, let alone the caption of the petition, would have realized that neither had anything to do at all with an Article III case sent to the Court. Rather they concerned a request for Conference members to have the Conference carry out its reporter-related duties under §753.

The copies of the petition that I filed with the Administrative Office have also been returned. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); copies wrongly *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned!

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I am respectfully submitting to you for the Conference a Supplement to the Petition (51) showing how the Reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, but the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you handle this Supplement and the Petition that I already sent you so that the Conference acts upon them to ensure judicial integrity and that you also refer them under 18 U.S.C. §3057(a) to Attorney General Alberto Gonzales.

Sincerely, Dr. Richard Cordero

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Judicial Conference of the United States

SUPPLEMENT TO THE PETITION for an Investigation under 28 U.S.C. §753(c) of a Court Reporter's Refusal to Certify the Reliability of her Transcript and for Designation under §753(b) of Another Individual to Produce the Transcript

PROVIDING ADDITIONAL EVIDENCE of how the reporter's refusal forms part of a bankruptcy fraud scheme in which the debt repayment plan of a debtor, who has spent his 32-year career in banking and is currently in charge of bankruptcies of his bank's clients, was confirmed upon the trustee's allegation of having investigated and found no bankruptcy fraud on the debtor's part and the bankruptcy judge's acceptance of such allegation despite the evidence in the trustee's own documents and conduct of never having carried out any such fraud investigation

and how the trustee knows that he is so secure in his position that he never bothered to oppose any of the motions for his removal that were raised before both the bankruptcy and the district judges, WDNY

Dr. Richard Cordero, Petitioner

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

1. Dr. Richard Cordero filed on July 28, 2005, with the Judicial Conference, and copied to its members, a petition for the Conference to conduct the above captioned investigation and designate a substitute for Court Reporter Mary Dianetti, Bankruptcy Court, WBNY. The transcript whose reliability Reporter Dianetti has refused to certify would show to the Conference –and eventually to the Court of Appeals for the Second Circuit and the Supreme Court- how both the above-mentioned debtor, who together with his wife filed *David and Mary Ann DeLano*, docket no. 04-20280, WBNY, and the bankruptcy judge, John C. Ninfo, II, abused process at the evidentiary hearing on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim, a motion that was filed as an artifice to eliminate Dr. Cordero from the case

after he introduced evidence found in the DeLanos' bankruptcy petition and some documents that they had produced showing that they had committed bankruptcy fraud, particularly concealment of assets. Had Dr. Cordero not been eliminated, he would have standing to keep asking for an investigation of the DeLanos and requesting documents from them under 11 U.S.C. §704(4) and (7) and would have been able to prevent the undue confirmation of the plan on July 25, 2005, by objecting to it under §1325(b)(1) (all §# references are to 11 U.S.C. unless the context indicates otherwise).

2. Hence, the elimination of Dr. Cordero through the artifice of the motion to disallow opened the way for Chapter 13 Trustee George Reiber to submit the DeLanos' debt repayment plan for confirmation and for Judge Ninfo to confirm it. There are two motives to proceed thus: One is to avoid a harm in that the confirmation of the plan despite the evidence of bankruptcy fraud insures that the DeLanos will not be charged with fraud and, therefore, will have no incentive to enter into a plea bargain in which Mr. DeLano would disclose what he has during his 32-year banking career learned about bankruptcy fraud committed by debtors, trustees, and judicial officers, whereby those people would end up being incriminated. The other very powerful and corruptive motive is to obtain a benefit: MONEY!, for the plan's confirmation allows the DeLanos to avoid 78¢ on the dollar owed for a saving of over $140,000 plus all compounding delinquent interest at over 25% per year and in addition spares them having to account for more than $670,000! (¶48 below)
3. The confirmation of the plan on the pretext that an investigation of the DeLanos had been conducted and cleared them is only the latest in a pattern of non-coincidental, intentional, and coordinated acts in disregard of the law, the rules, and the facts that shows the existence of a bankruptcy fraud scheme. Such scheme provides the context for the other act, that is, the Reporter's refusal to certify the reliability of the transcript of her own recording of the evidentiary hearing. When the Judicial Conference discharges its statutory duty under 28 U.S.C. §753 by investigating such refusal upon Dr. Cordero's original petition (on the scope of that duty, see P.§V¶58 et seq. (P.=original petition)), the Conference should also exercise its duty under 28 U.S.C. §331 "to improve[] any matters in respect of [] the administration of justice in the courts of the United States", foremost among which are the integrity of court officers and judicial process, by investigating the operation of that scheme in confirming the plan as described in this supplement to the petition.

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A. The third scrap of paper "I/We filed Chapter 13 for one or more of the following reasons:" with its substandard English and lack of any authoritative source for the "reasons" cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted 1132

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

4. The investigation of the confirmation of the plan can take as its starting point the following

entries in the *DeLano* docket no. 04-20280 [Petition Exhibits, page 176=P.E:176]

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

5. When one clicks on hyperlink 134 what downloads is a three-page document titled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (Exhibits, pages 271-273, infra=E:271-273) Their acceptance by Judge Ninfo as the Trustee's "Report" (¶32 below) is so revealing that they warrant close analysis.
6. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

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

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

Local Bankruptcy Rule 9004. PAPERS

9004-1. FORM OF PAPERS *[Former Rule 13 A]*

All pleadings **and other papers** ***shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially** ***defacing*** **them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)

9004-2. CAPTION *[Former Rule 13 B]*

All pleadings **and other papers** ***shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

8. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.
9. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there is "§341 Meetings of creditors and equity security holders". The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

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

10. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not listen passively at such a meeting either. This is how his role is described:

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

11. The trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13

case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works "for the benefit of general unsecured creditors whom the trustee represents". That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

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

12. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible "341 Hearing" before Judge Ninfo? And in *DeLano*, when did that "341 Hearing" take place?, for not only is such "Hearing" not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (¶7 above) that they "***shall*** be **dated".** However, if the Trustee's scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?
13. Nor do those scrap papers comply with the requirement that they "***shall*** be **signed".** Merely initializing page 2 (E:272) is no doubt another manifestation of the perfunctory nature of Trustee Reiber's scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee's shame about putting his full name on such unprofessional filing with a U.S. court?

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

14. The third scrap paper (E:273) bears the typewritten statement "I/We filed Chapter 13 for one or more of the following reasons:" Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own "341 Hearing", did he simply hear the DeLanos' "reasons" for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those "reasons" raise a host of critical questions. Let's examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment *(Wife) Age 59*

15. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of $67,118 in 2003, according to the Statement of Financial Affairs in their petition.
16. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a "reason" for filing their petition on January 27, 2004, to a *"pre-1990"* event, it is fair to ask when she lost her employment and what impact it had on their filing now.

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

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

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

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

planned to pay more than just $635.

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

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

√ To cram down secured liens

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

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

23. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check "Student loans". So, what "college expenses" are being considered here? Moreover, according to that jotting, whatever those "college expenses" are, they were incurred *"pre-1990"*. Given that such listed "reasons" as, "Medical problems", "To stop creditor harassment", "Overspending" and "Protect debtor's property" were not checked, how can those "college expenses" have caused the DeLanos to go bankrupt *15 years later?* This is one of the most untenable and ridiculous "reasons" for explaining a bankruptcy…
24. …until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of "reasons" was extracted; no reference to any document where the "reasons" checked were quantified in dollar terms and their impact on the DeLanos' income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25%

per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos' plan "meets the best interest test"? (¶4 above)

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

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

26. The lack of grammatical parallelism among the entries on that list is most striking. So the first "reason" appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every "reason" and thereby give the list semantic as well as syntactic consistency: "I/We filed…" because: (I/We omitted but implicit) "Lost employment". However, the second "reason" does not fit this pattern: "I/We filed…" because: "Hours or pay reduced". The next reason is expressed by an adjective, "Matrimonial", while the following one is a noun "Garnishments". A "reason" is set forth with a gerund, "Overspending", but others are stated with the bare infinitive, "Protect debtor's property", whereas others use *to*-infinitive, "To receive a Chapter 13 discharge" (which by the way, is a particularly *enlightening* "reason", for is that not the result aimed at when invoking any other "reason"?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult. Who bungled that form? Was it approved by any of the U.S. trustees? How many plans has Judge Ninfo confirmed based on it? It was not made specifically for the DeLanos, was it? Is there a financial motive for confirming plans no matter what?
27. The grammar of the "reasons" is not the only bungled feature in this form. In addition, it lacks a caption. Then the sentence that introduces the "reasons" is written in broken English: "I/We filed Chapter 13 for one or more of the following reasons:" What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: 'You filed Chapter 13….'
28. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your peers and hierarchical superiors and even be made publicly available for close scrutiny, would you fill out an order form thus?: "The respondents filed Chapter 13 and win 'cause

they *ain't have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with'em after cookin' a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*" (Completing the order form in handwriting would give it a touch of flair…in pencil, for that would show…no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of all the peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

29. Still worse, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? (cf. E:263) And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

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

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

31. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under Local Rule 10 of the District Court, WDNY, requiring that "All text…in…memoranda and other papers shall be plainly and legibly…typewritten…without erasures or interlineations materially defacing them,…signed…and the name, address and telephone number of each attorney or litigant …shall be…thereon. All papers shall be dated."

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

32. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:275). Therein he stated that he "has considered…the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

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

33. However, what page 2 of Trustee Reiber's scrap papers (E:272) states is this:

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

34. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough "~~1) Best Interest - $1255;~~" "Attorney fees". At the bottom of the page is written: "ATTORNEY'S FEES" $ 1350 and, below that, "Additional fees Yes" $16,655. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:279) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:282).

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

35. Although Trustee Reiber was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections of March 4, 2004 and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor. Since then and only at Dr. Cordero's instigation, the Trustee,

who is supposed to represent unsecured creditors (¶11 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections.

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

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

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

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

> that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

39. So it turned out to be: a sham. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!
40. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!…insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
41. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
42. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee…any recorded information…", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in

obtaining those that could lead to his being investigated. They were part of the same sham!

43. But not just any sham, rather one carried out in all confidence, for by now Trustee Reiber has worked with Judge Ninfo on well over 3,907 cases (¶19 above). Presumably many are within the scope of the bankruptcy fraud scheme given that it is all but certain that *DeLano* is not the first case that they, had they always been conscientious officers, all of a sudden decided to deal with by coordinating their actions to intentionally disregard the law, the rules, and the facts for the sake of the DeLanos, who in that case would have something so powerful on them as to cause them to violate the law. In any event, one violation is one too many. Actually, what they have on each other is knowledge of their long series of unlawful acts forming a pattern of wrongdoing. Now, nobody can turn against the other for fear that he or she will be treated in kind. Either they stick together or they fall one after the other.

44. Consequently, Trustee Reiber did not have to consider for a second that upon Dr. Cordero's motions of July 9 and August 14, 2004, Judge Ninfo would remove him from *DeLano* under §324(a). That would have entailed his automatic removal as trustee from all other cases under §324(b), and thereby his termination as trustee. Since that would and will not happen, the Trustee did not file even a scrap paper to state pro forma that he opposed the motions. Revealingly enough, he is not concerned either that District Judge David Larimer may remove him upon Dr. Cordero's motion of July 13, 2005. Hence he has not wasted time scribbling anything in opposition.

45. Not only he, but also Reporter Dianetti has not considered it necessary to waste any effort in the formality of opposing Dr. Cordero' motion of July 18 requesting that Judge Larimer designate another individual to prepare the transcript of her recording of the March 1 evidentiary hearing. Yet, all they needed to do was as cursory a gesture as Att. Werner's two conclusory sentences (E:332) to oppose Dr. Cordero's July 13 motion to stay the confirmation hearing…and a cover letter addressed directly to Judge Larimer to show him ingratiating deference (E:331).

46. Can you imagine either the Trustee or the Reporter reacting with such indifference to motions that can cost them their livelihood or Att. Werner skipping any legal argument and slipping in a mere courtesy note had this case been transferred to another court, such as that in Albany, NDNY, where they did not know the judge and could not tell on him? Of course not, they could lose the motions by default! But they have nothing to worry about, for Judge Larimer has not decided any of the four motions of Dr. Cordero pending before him, even one as far back as June 20 to link to this case *Pfuntner v. Trustee Kenneth Gordon et at.*, docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano. (P.E:43; P.¶34))

47. What a contrast with the celerity with which Judge Larimer reacted when the Bankruptcy Clerk, disregarding FRBkrP 8007, forwarded to him upon receipt on April 21, Dr. Cordero's designation of items on appeal and a copy of his first letter of April 18 to Reporter Dianetti to make arrangements for the transcript. Though the record was legally incomplete, lacking the transcript and the appellee's designation of additional items and any issues on cross appeal, immediately the following day, April 22, Judge Larimer issued a scheduling order requiring Dr. Cordero to file his appellate brief 20 days hence, knowing full well that the date of the Reporter's completion of the transcript was nowhere in sight so that his order would effectively prevent Dr. Cordero from using it when writing his brief. (P.§III¶36 et seq.). Could it not be in Judge Larimer's interest to decide any of those motions, thereby exposing not only this case and the sham investigation, but the bankruptcy fraud scheme itself to scrutiny by circuit judges and justices?

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

48. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at $98,500. However, they still owe on it $77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of $21,415 in the very same home that they bought 30 years ago! Yet, they earned $291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding debtors, trustees, and judicial officers?
49. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero

moved for his removal on July 9, 2004 (¶38 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

50. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Dierdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:283), he backed down from that limit.

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

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

53. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:285-297) once more (¶39 above) because

Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:284). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for $26,000 in 1975;	E:285 [D:342]	$26,000
2) another for $7,467 in 1977;	E:286 [D:343]	7,467
3) still another for $59,000 in 1988; as well as	E:289 [D:346]	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	E:298 [D:176]	59,000
5) owed $59,000 to M&T in 1988;	E:298 [D:176]	59,000
6) another mortgage for $29,800 in 1990,	E:291 [D:348]	29,800
7) even another one for $46,920 in 1993, and	E:292 [D:349]	46,920
8) yet another for $95,000 in 1999.	E:293 [D:350]	95,000
	Total	$382,187.00

54. The whereabouts of that $382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:284), accompanying those incomplete documents adds more unknowns:

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

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

56. Although Dr. Cordero identified these incongruous elements (E:300-302) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or men-

tioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:306)

57. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:307), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:308). When Att. Werner belatedly served him (E:309), it became apparent why he had tried to withhold the documents (E:310-323) from him: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:324) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:327-330).
58. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the $291,470 earned in the 2001-03 period, over $670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16, 2005, Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! Yet she created nothing and simply produced work for hire.
59. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at that hearing nor made any reference to them in the scrap papers of his "Report". Do they fear that those documents will reveal conceal assets?

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

60. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, if any was produced. The Judge disregarded the incriminating evidence in those docu-

ments and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, the Judge was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thus requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Reporter Dianetti (E:9-11; P.§II).

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

62. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. They confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of the DeLanos having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would provide incriminating testimony of participation in a bankruptcy fraud scheme.

63. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none" in order to induce the Bankruptcy Court to confirm the DeLanos' plan and to escape his own conflict of interests (¶38 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the

Court as an institution even if Judge Ninfo knew that his statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos.

64. It also follows that insofar as Judge Ninfo knew or by carrying out his judicial functions with due diligence and impartiality would have known, that Trustee Reiber had conducted no investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm their plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process. In so doing, the Judge and the Trustee have caused Dr. Cordero the loss of an enormous amount of effort, time, and money and inflicted on him tremendous emotional distress.

III. Request for Relief

65. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:
    a) Under 28 U.S.C. §753 investigate Reporter Dianetti's refusal to certify the reliability of the transcript of her own recording of the evidentiary hearing at the Bankruptcy Court, WBNY, in *DeLano* on March 1, 2005, and designate another individual to prepare such transcript;
    b) Under §331 investigate how the integrity of judicial and other court officers and of judicial process has been compromised in WDNY by participation in a bankruptcy fraud scheme;
    c) As part of that investigation, review, among other things, **1)** the tape recording of the meeting of creditors in *DeLano* held on March 8, 2004, in the Office of the U.S. Trustee in Rochester and conducted by Trustee Reiber's attorney, James Weidman, Esq.; **2)** the tape recording and the transcript of the meeting of creditors in *DeLano* held on February 1, 2005, in Trustee Reiber's office; **3)** the documents reviewed by Trustee Reiber in his *DeLano* investigation; **4)** the statement read into the record by Trustee Reiber at the confirmation hearing of the DeLanos' plan held in the Bankruptcy Court on July 25, 2005, and the transcript of that hearing; and
    d) Under 18 U.S.C. §3057(a) refer *DeLano* and *Pfuntner* to Attorney General Alberto Gonzales for investigation by U.S. attorneys and FBI agents other than those from Rochester (where the DoJ office is the next-door neighbor of the Office of the U.S. Trustee) or Buffalo, NY.

Dated: August 30, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Table of Exhibits

of the supplement of August 30, 2005
to the July 28 petition under 28 U.S.C. §753
to the Judicial Conference of the United States,
showing how a court reporter's refusal to certify the reliability
of her transcript forms part of a bankruptcy fraud scheme
by
Dr. Richard Cordero

I. Main Documents

previously submitted: Dr. Richard **Cordero**'s **PETITION** of **July 28**, 2005, **to** the **Judicial Conference** for an investigation **under 28 U.S.C. §753**(c) of a court **reporter's refusal** to **certify** the reliability of her **transcript** and for designation under 28 U.S.C. §753(b) of another individual to produce the transcript .....1-23 + E:1-E:257 [C:1083]

SUPPLEMENT TO THE PETITION to the Judicial Conference, providing **additional evidence** of how the **reporter's refusal** forms **part** of a **bankruptcy fraud scheme** that **operated** the **confirmation** of the debt repayment **plan** of the DeLanos through the Trustee's allegation that his **investigation** had **cleared** them **of bankruptcy fraud** and Judge Ninfo's acceptance of such allegation **despite** the evidence that such **investigation** was **never conducted**.....51 [C:1127]

II. Exhibits

E:#=exhibits page #

1.g. Dr. Richard **Cordero**'s letter of **June 25**, 2005, to Bankruptcy Court Reporter Mary **Dianetti,** WBNY, requesting that she state whether she merely copied the **numbers of packs and folds** that she gave him at the end of the March 1 evidentiary hearing or counted those that she will actually transcribe; **and** that she agree to **certify** that her **transcript** will be complete, accurate, and untampered with.....9 [C:1163]

h. Rep. **Dianetti**'s letter of **July 1**, 2005, **to** Dr. **Cordero** requiring that he **pre-pay $650** for the transcript and rejecting the balance of his letter of June 25, 2005.....11 [C:1165]

24. List of useful **addresses** for the investigation of *In re David and Mary Ann DeLano*, no. 04-20280, and *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY.....259 [C:1051]

25. Dr. **Cordero**'s letter of **August 1**, 2005, **to** Chief Justice William Rehnquist as **presiding** member of the **Judicial Conference** to inform him of his petition of July 28, 2005, to the Judicial Conference and request that he **cause** it to be placed on the **agenda** of the **September meeting** of the Conference **and** make a **report** of it under 28 U.S.C. §3057(a) **to** the U.S. **Attorney General** Alberto Gonzales .....261 [C:1082]

26. **Letter for Chief Justice** Rehnquist by M. Blalock for William K. Suter, Clerk of the Supreme Court, **of August 11**, 2005, stating in response **to** Dr. **Cordero**'s August 1 letter to the Chief Justice that under **Article III** of the Constitution the **jurisdiction** of the Supreme Court **only** extends to **cases** and controversies so it cannot give **advice** or assistance **on** the basis of **correspondence** .....262 [C:1121]

27. **Unsigned letter** other than a typed "Office of the General Counsel" at the bottom of it, of the Administrative Office of the United States Court of **August 8**, 2005, **to** Dr. **Cordero** stating that the Administrative Office cannot be of assistance and pointing out that since Dr. Cordero had filed a motion in District Court asking for a reporter to be referred to the Judicial Conference, the Office cannot intervene in, or comment upon, a court's disposition of any proceeding .....263 [C:1120]

28. **Letter for Chief Judge Ginsburg**, U.S. Court of **Appeals** for the District of **Columbia Circuit**, by Mark J. Langer, Clerk of Court, of **August 8**, 2005, stating that the **agenda** of the Judicial Conference is **developed through** the actions of the Executive Committee upon **recommendations** of other **Committees**, not by action of individual chief judges .....264 [C:1119]

29. Dr. **Cordero**'s letter of **August 6**, 2005, **to Chief Judge** Carolyn Dineen **King**, CA5, requesting that she, as **Chair** of the **Executive Committee** of the Judicial Conference, **retrieve** the five copies of his **petition from** the Admin**istrative Office** of the U.S. Courts, to which they were sent and whose Assistant General Counsel, Robert P. Deyling, Esq., stated on the phone to Dr. Cordero that he will not forward them to the Conference, **and submit** the petition **to** the **Conference** .....265 [C:1117]

30. Chapter 13 Trustee George **Reiber**'s undated "Findings of Fact and Summary of 341 Hearing" together with .....271 [C:1052]

    a) Undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons:" .....273 [C:1054]

31. O**rder** of Bankruptcy Judge John C. **Ninfo, II** of **August 8**, 2005, instructing **M&T Bank** to **deduct** $293.08 biweekly **from** his employee, Debtor David **DeLano**, and **pay** it to Trustee **Reiber**.....274 [C:1055]

32. Judge **Ninfo**'s **order** of **August 9**, 2005, **confirming** the DeLanos' Chapter 13 debt repayment **plan** after considering their testimony and Trustee Reiber's Report .....275 [C:1056]

33. Application of **July 7**, 2005, by Christopher K. Werner, Esq., **attorney for the DeLanos**, for **$16,654** in **legal fees** for services rendered to the DeLanos .....278 [C:1059]

a) Att. **Werner**'s itemized **invoice** of **June 23**, 2005, for legal services rendered **to** the **DeLanos** .....279 [C:1060]

34. Trustee **Reiber**'s letter of **December 30**, 2004, to Dr. **Cordero** confirming that he will conduct a Section 341 **Hearing of** the **DeLanos** on February 1, 2005, at his office on South Winton Court, Rochester .....283 [D•:333]

35. Letter of Christopher K. **Werner,** Esq., attorney for the DeLanos, of **February 16**, 2005, **to** Trustee **Reiber** accompanying the following incomplete documents described as "relevant **portion** of Mr. and Mrs. **DeLano's Abstract of Title**" in response to "your request at the adjourned 341 Hearing"; these documents begin thus: .....284 [D:341]

a) "4. Church of the Holy Spirit of Penfield New York" .....285 [D:342]

b) "Public Abstract Corporation", concerning an interest in premises from October 5, 1965, recorded in Liber 3679, of Deeds, at page 489, of the Records in the office of the Clerk of the County of Monroe, New York .....287 [D:344]

c) "#12,802 Abstract of Title to Part Lot #45 Township 13, Range 4, East Side Shoecraft Road, Town of Penfield" .....288 [D:345]

d) "33516 Abstract to Lot #9 Roman Crescent Subdivision" .....290 [D:347]

e) $95,000 "Mortgage Closing Statement April 23, 1999, 1262 Shoecraft Road, Town of Penfield" .....294 [D:351]

f) "U.S. Department of Housing and Urban Development Optional for Transactions without Sellers" .....296 [D:353]

36. **Excerpt** from Mrs. **Mary** DeLano's **Equifax** credit bureau report of **May 8, 2004**, produced with missing pages .....298 [D:173]

37. Dr. **Cordero**'s letter of **February 22**, 2005, **to** Trustee **Reiber analyzing** the **documents** produced by Att. Werner as incomplete, incapable of explaining the flow of mortgages, silent on equity, and at odds with information previous provided; and requesting that the **Trustee recuse himself** or **hire professionals** to conduct a title search and appraisal, and follow the money earned by the DeLanos .....299 [D:461]

• D:=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY; see the D files in the D Add Pst folder on the accompanying CD.

Mr. DeLano is a third-party defendant who was brought into *Pfuntner* by Dr. Cordero. Subsequently, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against Mr. DeLano arising from *Pfuntner*.

38. Trustee **Reiber**'s letter of **February 24**, 2005, **to** Att. **Werner requesting information** about the **mortgage to Columbia** Bank that later on ended with the government [HUD] but that is **not** recorded as having been **discharged** ..... 306 [D:469]

39. Att. **Werner**'s letter of **March 10**, 2005, **to** Trustee **Reiber** in response to the latter's letter of February 24 concerning **records** of **discharge of** DeLanos' **mortgages** ..... 307 [D:472]

40. Dr. **Cordero**'s letter of **March 19**, 2005, **to** Att. **Werner** stating that **no enclosures** were sent to Dr. Cordero with the copy of Att. Werner's letter to Trustee Reiber of March 10 and requesting that he send a list of everything that Att. Werner sent to the Trustee as well as a copy ..... 308 [D:473]

41. Att. **Werner**'s letter of **March 24**, 2005, **to** Dr. **Cordero** with 14 "copies of the enclosures to our letter to Trustee Reiber of March 10, 2005, which were apparently omitted from your copy of the correspondence" ..... 309 [D:477]

    a) Printouts of **pages** of February 25, 2005, of electronic records indexing from the website of the Monroe County Clerk's office ..... 310 [D:478]

42. Dr. **Cordero**'s letter of **March 29**, 2005, **to** Trustee Reiber commenting on the **uselessness** of Att. **Werner's** printed **screenshots**; asking **whether** the Trustee's lack of protest means that the **§341 examination** of the DeLanos on **February 1,** 2005, was **a charade** that he conducted with no intention to obtain any financial information from the DeLanos; and **requesting** that he either take certain steps to **obtain** that **information or recuse himself** and let another trustee be appointed who can conduct an efficient investigation of the DeLanos ..... 324 [D:492]

43. Dr. **Cordero**'s letter of **April 19**, 2005, **to** Trustee **Martini** requesting that she **remove** Trustee **Reiber** and let him know what she intends to do ..... 327 [Add:682]

44. Dr. **Cordero**'s letter of **April 21**, 2005, **to** Trustee **Schmitt requesting** a **4th time** a statement of **her position** on Trustee Reiber's failure to investigate the DeLanos ..... 328 [Add:685]

45. Dr. **Cordero**'s letter of **April 21**, 2005, **to** Trustee George **Reiber** requesting a response to his letter of March 29 concerning the **uselessness of** the printouts of **screenshots** from the Monroe County Clerk's Office that were to have provided information about the mortgages of the DeLanos and sending him a **copy** of the **Designation** and Statement ..... 329 [Add:683]

46. Att. **Werner**'s letter of **July 19**, 2005, on behalf of the DeLanos **to** Judge **Larimer** accompanying his: ..... 331 [Add:935]

    a) "Statement in opposition Cordero motion [sic] to stay confirmation and other relief" ..... 332 [Add:936]

Alphabetical Table of Members of the Judicial Conference

to whom were sent the letters of August 30 and 31, 2005
requesting that they forward to the Judicial Conference
the accompanying supplement and the July 28 petition under 28 U.S.C. §753(c)
for investigation of a court reporter's refusal to certify the reliability of her transcript and its link to a bankruptcy fraud scheme♦

by

Dr. Richard Cordero

1.	Boudin	C.J. Michael Boudin, **In care of:** U.S. Court of Appeals for the First Circuit
2.	Bertelsman	J. William O. Bertelsman, **In care of:** U.S. District Court, Eastern D. of Kentucky
3.	Boggs	C.J. Danny J. Boggs, **In care of:** U.S. Court of Appeals for the Sixth Circuit
4.	Davison	C.J. Glen H. Davison, **In care of:** U.S. District Court, Northern D. of Mississippi
5.	Edmondson	C.J. J. L. Edmondson, **In care of:** U.S. Court of Appeals for the Eleventh Circuit
6.	Ezra	C.J. David Alan Ezra, **In care of:** U.S. District Court for the District of Hawaii
7.	Flaum	C.J. Joel M. Flaum, **In care of:** U.S. Court of Appeals for the Seventh Cir., Rm. 2702
8.	Forrester	Senior J. J. Owen Forrester, **In care of:** U.S. District Court, Northern D. of Georgia
9.	Hogan	C.J. Thomas F. Hogan,**In care of:** U.S. District Court for the District of Columbia
10.	King	C.J. Carolyn Dineen King, **In care of**: U.S. Court of Appeals for the Fifth Circuit
11.	Laffitte	C.J. Hector M. Laffitte, **In care of:** U.S. District Court for the District of Puerto Rico
12.	Michael	C.J. Paul R. Michael, **In care of:** U.S. Court Appeals for the Federal Circuit
13.	Mukasey	C.J. Michael B. Mukasey, **In care of:** U.S. District Court, SDNY
14.	Norton	J. David C. Norton, **In care of:** U.S. District Court for the District of South Carolina
15.	Rehnquist	Mr. Chief Justice William Rehnquist, **In care of:** Supreme Court of the United States
16.	Restani	C.J. Jane A. Restani, **In care of:** U.S. Court of International Trade
17.	Rosenbaum	C.J. James M. Rosenbaum, **In care of:** U.S. District Court for the D. of Minnesota
18.	Russell	Judge David L. Russell, **In care of:** U.S. District Court, Western D. of Oklahoma
19.	Schroeder	C.J. Mary M. Schroeder, **In care of:** U.S. Court of Appeals for the Ninth Circuit
20.	Scirica	C.J. Anthony J. Scirica, **In care of:** U.S. Court of Appeals for the Third Circuit
21.	Stadtmueller	Judge J. P. Stadtmueller, **In care of**: U.S. District Court for the Eastern District of
22.	Tacha	C.J. Deanell R. Tacha, **In care of:** U.S. Court of Appeals for the Tenth Circuit
23.	Vanaskie	C.J. Thomas I. Vanaskie**, In care of:** U.S. District Court, Middle D. of Pennsylvania
24.	Wilkins	C.J. William W. Wilkins, **In care of:** U.S. Court of Appeals for the Fourth Circuit

♦ See full addresses on the List of Conference members to whom was sent the July 28 petition, at C:1115.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 713-250-5440
515 RUSK STREET, ROOM 1217
HOUSTON, TX 77002

October 6, 2005

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

Re: Letter of August 6, 2005 and associated materials.
Supplementary materials dated August 30, 2005.

Dear Dr. Cordero:

Chief Judge King has reviewed the above-referenced documents and has instructed us to return them to you because the Judicial Conference of the United States does not have jurisdiction to review a complaint against a court reporter. While 28 U.S.C. § 753(c) charges the appointing court and the Judicial Conference of the United States with the supervision of court reporters, Vol. 6, Ch. 2, Part 2.1 of The Guide to Judiciary Policies and Procedures - entitled "Court Reporting Services Management Plan and Court Reporting Supervisor" - provides that "each court shall designate a supervisor who will carry out the requirements of the Judicial Conference." You should, therefore, direct your complaint to the following court officer designated to supervise court reporters at the United States Bankruptcy Court for the Western District of New York:

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

Very truly yours,
CHARLES R. FULBRUGE III, Clerk

By Nancy H. Gray
Nancy H. Gray
Deputy Clerk

Enclosures

Dr. Richard Cordero

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

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

October 18, 2005

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

faxed to (716)551-5103

;

Dear Ms. Frieday,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

sincerely yours,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

April 18, 2005

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

[(585)586-6392]

Dear Ms. Dianetti,

I would like to know the cost of the transcript of your stenographic recording of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280.

Kindly let me know also the number of stenographic packs and the number of folds in each pack that you used to record that hearing and that you will be using to prepare the transcript.

Please indicate whether the transcript can be made available in electronic form, such as a floppy disk or a compact disk and, if so, how much it would cost to have the transcript made:

1. only in electronic form
2. only printed on paper
3. both in electronic form and on paper.

State also the arrangements that can be made so that after the transcript has been completed, I can make a copy of the stenographic packs and folds that you used for your transcription and for a government agency to inspect the original packs and folds that you used.

yours sincerely,

Dr. Richard Cordero

612 S. Lincoln Road
East Rochester, N.Y. 14445

May 3, 2005

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

Dear Dr. Cordero:

In response to your letter dated April 18, 2005, please be informed that the estimated cost of the transcript of the proceedings held on March 1, 2005, in the matter of David and Mary Ann DeLano, docket No. 04-20280 is $600.00 to $650.00. Please understand this is an estimate only.

The information you requested regarding how many packs of paper and the number of folds was given to you after the hearing was completed. Also, the transcript can be provided on a disk and printed paper.

Very truly yours,

Mary Dianetti

Mary Dianetti
Bankruptcy Court Reporter

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

May 10, 2005

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

[(585)586-6392]

Dear Ms. Dianetti,

Thank you for your letter of May 3, indicating that you estimate at between $600 and $650 the cost of the transcript of your stenographic recording of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280.

You added the caveat "Please understand this is an estimate only". Since you already stated that it can fluctuate between $600 and $650, I would appreciate your letting me know by how much more your estimate can fluctuate.

This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording. I trust you will have no problem in providing me with this information this time.

Please let me know also on what type of disk, i.e. floppy disk or CD, the transcript can be provided (in addition to the paper copy) and whether it can be provided in Microsoft Word, Adobe PDF Acrobat, or both.

yours sincerely,

Dr. Richard Cordero

612 South Lincoln Road

East Rochester, N. Y. 14445

May 19, 2005

Dr. Richard Cordero

59 Crescent Street

Brooklyn, N.Y. 11208-1515

Dear Dr. Cordero:

In response to your letter dated May 10, 2005, this is to inform you I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it.

Also, as I mentioned in my previous letter, the transcript can be provided to you in paper form and/or floppy disk in PDF form.

As I previously stated, you were provided with the number of packs of stenographic paper and number of folds used for the hearing following the conclusion of that hearing on March 1, 2005, therefore, I trust you already have that information.

continued

I have not as yet received a formal request from you indicating that you would like me to prepare the transcript and the terms of payment for such. Should you make a formal request for a transcript, I will transmit the endorsed request to the clerk of the court with a copy to you in accordance with the federal Rules of Bankruptcy Procedure.

By copy of this letter I am notifying the Court of my correspondence to you regarding this matter.

Please advise me if you would like me to prepare the transcript. Awaiting your response, I remain

Very truly yours,

Mary Dianetti

Mary Dianetti
Bankruptcy Court Reporter

CC: Clerk, U.S. Bankruptcy Court
Western District of New York

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

May 26, 2005

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

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

Dear Ms. Dianetti,

I am in receipt of your letter of 19 instant. Therein you indicate that:

> I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it.

A single digit estimate is a price quotation that alerts the client to the risk that the final price may go up from the quoted dollar amount and to the enticing possibility that it may go down, but it does not indicate how much that amount can move in either direction. The purpose of a fork estimate is to eliminate this uncertainty by setting upper and lower limits on the amount to be billed for. The spread between the forks limits "how much [your] estimate can fluctuate".

Your letter of May 3 provided such fork by stating that the price for the above-captioned transcript would be between $600 and $650. However, it reintroduced that uncertainty by stating "Please understand that this is an estimate only", meaning that your estimate could fluctuate beyond the limits of the fork. My letter of May 10 only tried to ascertain by how much those limits can be exceeded. Given your professional experience as a court reporter and the fact that you are in possession of the stenographic packs and had to count their folds to arrive at the estimate, you are in a better position than I am to state by how much your estimate can go lower than $600 or higher than $650. If you cannot state those limits, the final amount can be anywhere above or below that fork. In practical terms this means that there is no estimate at all. Consequently, I am left to assume all the risk and be liable for whatever final price you bill me for. I hope you will agree that does not sound either fair to me or an acceptable business arrangement.

My concern is only heightened by the fact that although you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript, you have not seen fit to provide me with that count in response to the request in both my letters of April 18 and May 10 that you state such count. The fact that you provided a pack and fold count on March 1 is not a convincing, let alone reassuring, reason for your not providing it now in the context of my ordering the transcript and making a commitment to paying hundreds and hundreds of dollars for it.

Therefore, I respectfully request that you:

1. provide a reliable upper limit for the estimated cost or agree that it will not exceed $650; and
2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

Sincerely,

Dr. Richard Cordero

612 South Lincoln Road
East Rochester, New York 14445

June 13, 2005

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

Dear Dr. Cordero:

In response to your letter dated May 26, 2005, in which you request that I provide a reliable upper limit for the estimated cost or agree the transcript will not exceed $650.00, please be advised that I agree it will not exceed that amount.

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

continued

1st pack - folds numbered 6 - 158 1/2

2nd pack - folds numbered 3 - 181

3rd pack - folds 188 1/2 - folds not numbered

4th pack - folds 99 1/2 - folds not numbered

I trust this is the information you were desirous of having. I might add that the cost of the transcript per page is $3.30 which may be helpful to you.

Please advise me if you want me to begin the transcript.

Very truly yours,

Mary Dianetti

Mary Dianetti

Bankruptcy Court Reporter

CC: Clerk, U.S. Bankruptcy Court

Western District of New York

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

June 25, 2005

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

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

Dear Ms. Dianetti,

Thank you for your letter of June 13, whose envelope was postmarked June 15 by the Federal Station in Rochester, the one situated in the Federal Building where the Bankruptcy Court is.

I appreciate your stating the number of stenographic packs and folds in the recording of the above-captioned DeLano evidentiary hearing. I note that you stated that:

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

I assume that this does not mean that you are merely copying the information that you gave me on March 1 at the end of the hearing. Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:

> [since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript…provide me with that count…Therefore…
>
> 2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

I hope that you will realize that the way you have formulated your answer raises concerns, coming as it does after your refusal to provide the requested information in your letters to me of May 3 and 19 despite my express requests in my letters to you of April 18 and May 10 and 26. Yet, your answer makes providing that information appear as easy to do as simply copying it from your records, which conversely makes your refusal to provide it so difficult to understand.

Consequently, to eliminate any margin whatsoever for divergence between my request for information and your answer, I take the latter to mean the following:

1. Upon my initial and subsequent requests for you to state the cost of the transcript based on a count of the stenographic packs and folds of the whole recording of the DeLano evidentiary hearing,
2. you actually counted them a second time; found the number of such packs and folds to coincide exactly with the number of packs and folds that you stated in writing for me at the end of such hearing; and
3. based on that second count you calculated the cost of the transcript at the official and customarily charged rate of $3.30 per page; arrived at an estimate of between $600 and $650; have agreed with me that the final cost will not exceed $650; and will include in

the transcript everything and only that which is contained in those packs and folds.

If my understanding of your answer diverges from either your intended answer or all the facts in any way that you consider to be significant or even insignificant, I formally request that you state such divergence. If you do not do so, I will assume your silence to confirm that my understanding as above stated coincides totally with both your intended answer and with all the facts. This statement of my understanding is as simple as the formulation that you have heard perhaps hundreds of times and that courts all over the nation assume every lay person understands and is in a position to affirm: your confirmation, whether in writing or by silence, is the truth, the whole truth, and nothing but the truth.

Hence, I hereby make your confirmation of my understanding part of the essence of this contract for service between you and me. Similarly, the following conditions are of the essence of this contract and constitute conditions precedent to my obligation to pay you:

1. You will provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing. At my discretion and for the purpose, inter alia, of ascertaining such accuracy and completeness, you will make available, upon my designation, to a government agency or a private entity, all the packs and folds that you used to record the hearing and, if different, also those that you used to prepare the transcript.
2. Upon completion of the transcript, you will simultaneously file one paper copy with the clerk of the bankruptcy court and mail to me by priority mail a paper copy together with an electronic copy on a floppy disk in PDF format and in Microsoft Word, or otherwise in Word Perfect; and you will not make available any copy in any format to any other party, whether a court officer –whether a judicial or clerical officer-, litigant, or any other person, but if you do make a copy available to any of them either before or after filing or mailing it to me, you will let me know immediately and will exempt me from payment and reimburse me any payment already made.
3. You will truthfully state in your certificate accompanying the transcript that up to the time of your receipt of this letter and from then until the moment that the copies of the transcript are filed and mailed to me, you have not discussed with any other party (aside from me), whether a court officer, litigant, or any other person, and none of them has attempted to discuss with you, the content that should form part or that did form part of your stenographic recording of the DeLano evidentiary hearing or of the transcript; but if you have discussed such content or any of them has attempted to discuss it with you, then you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

In consideration for your promise to perform, and your actual performance of, your transcription service as described above and in accordance with applicable law and rules, I promise to pay you upon confirmation thereof up to $650, by credit card if acceptable to you, and in any event by check.

I trust you realize that what we are trying to do here is exceedingly easy to understand and basic to any contractual agreement: **You give me a good transcript and I pay you good money**.

Sincerely,

Dr. Richard Cordero

612 South Lincoln Road
East Rochester, New York 14445
July 1, 2005

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

Dear Dr. Cordero:

I am in receipt of your letter of June 25, 2005. Please be advised that I will provide you with (1) a paper copy of the transcript of the hearing held on March 1, 2005, and (2) a PDF copy of that transcript on a CD-ROM, to be sent to you by first-class mail, upon receipt of a money order or certified check in the amount of $650.00 payable to "Mary Dianetti." The balance of your letter of June 25, 2005 is rejected.

I am providing a copy of this letter, together with yours of June 25, to the U.S. Bankruptcy Court and U.S. District Court so that their file may be complete.

Very truly yours,

Mary Dianetti

Mary Dianetti
Bankruptcy Court Reporter

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

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
www.nywb.uscourts.gov

Paul R. Warren
Clerk of Court

Michelle A. Pierce
Chief Deputy

Todd M. Stickle
Deputy Clerk in Charge

October 20, 2005

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

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

Dear Judge Larimer:

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

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

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

Very truly yours,

/s/

Paul R. Warren
Clerk of Court

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

Dr. Richard Cordero

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

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

October 24, 2005

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

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

Dear Ms. Dianetti,

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

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

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

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

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

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

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

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

sincerely yours,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
100 STATE STREET
ROCHESTER, NY 14614-1387

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no: 04-20280

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

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

October 25, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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

Dr. RICHARD CORDERO
Appellant and creditor

case no. 05-cv-6190L

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

.
v

DAVID and MARY ANN DELANO
Respondents and debtors in bankruptcy

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

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1. By order of 14 instant, District Judge David Larimer directed Dr. Richard Cordero to request from Court Reporter Mary Dianetti, and pay her for, the transcript within 14 days lest his appeal be dismissed. The transcript in question is that of the evidentiary hearing held on March 1, 2005, before Bankruptcy Judge John C. Ninfo, II, in the case of David and Mary Ann DeLano, docket no. 04-20280, WBNY, which hearing Reporter Dianetti recorded stenographically.
2. To avoid the additional impairment of his right of appeal that would result from the dismissal of

his appeal, and since Reporter Dianetti is the only court reporter to whom he can make such request, Dr. Cordero hereby gives notice to the Court that he has complied with that order by requesting Reporter Dianetti to prepare that transcript and produce to him a copy on paper and on digital format simultaneously with her filing it with the Clerk. To that end, he has tendered to her a certified check for $650, which is the maximum that she indicated she would charge. He asked that if at her stated official per page rate the cost of the transcript turned out to be less, she should return the balance to him.

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

3. To preserve his rights, Dr. Cordero also gives notice that he made that request under compulsion of Judge Larimer's order and, thus, that he was paying under protest and with reservation of all his rights. He will challenge that order on appeal to the Court of Appeals for the Second Circuit upon a final order in this case has been entered. Indeed, Judge Larimer showed that his October 14 order is interlocutory and non-appealable by failing to address, let alone certify under 28 U.S.C. §1291(b) for appeal, the questions that Dr. Cordero asked for that purpose in ¶63.d. of his motion of September 20, 2005, for reconsideration of the Judge's denial of his motion of July 18, 2005, for the replacement of Reporter Dianetti and her referral to the Judicial Conference for investigation of her refusal to certify the reliability of that transcript.
4. By refusing to certify in her letter of July 1 that the transcript will be complete, accurate, and free from tampering influence, as Dr. Cordero requested, among other things, in his June 25 letter to Reporter Dianetti, the latter has rendered the transcript and her conduct suspect. Faced with that objective basis of suspicion, a judge committed to preserving the substance as well as the appearance of the integrity of judicial process would have taken the initiative to replace Reporter Dianetti and investigate the circumstances of her refusal.

5. Far from it, Judge Larimer has forced Dr. Cordero to request that transcript from Reporter Dianetti, pay for it, and use it in his appeal, under the threat of dismissing his appeal. Thereby the Judge has revealed his intention to determine an appeal on the basis of a transcript that is suspect from before its production. At the same time, he has refused to request the other parties and the trustees to produce documents that they have unjustifiably withheld and that could contribute to establishing the facts and thus, to furnishing a just basis for judicial resolution of a controversy.
6. Actually, Judge Larimer even tried to prevent the production and use of the transcript altogether. Thus, Bankruptcy Clerk Paul Warren received Dr. Cordero's Designation of Items in the Record on April 21, 2005, and on that very same day transmitted an indisputably incomplete record to the District Court in violation of FRBkrP 8007. In turn, Judge Larimer issued the next day, April 22, an order providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". Yet, the copy of Dr. Cordero's letter of April 18 to Reporter Dianetti accompanying the Designation gave notice to the Judge that the Reporter had barely received the original and that no "satisfactory arrangements" with her for the transcript's production and payment, as required under FRBkrP 8006, could possibly have been made. As a result, there was not even a date in sight for the completion of the transcript, let alone of the record. Consequently, Judge Larimer's April 22 order as well as his other scheduling orders of May 3 and 17, 2005, were in violation of FRBkrP 8007 and an attempt to deprive Dr. Cordero of the transcript.
7. Worse still, Judge Larimer compelled Dr. Cordero to request, pay for, and use that transcript by disregarding the detailed discussion of the facts and applicable law contained in his motions of July 18, August 23, and September 20, 2005, requesting the replacement and investigation of Reporter Dianetti. The Judge did so in his lazy orders of September 13 and October 14 and 17, 2005, where he resorted to the catch-all phrase "denied in all respects" to dispatch them on the conclusory allegation, unsupported by even the semblance of legal argument, that they "are

without any merit". These are not orders worthy of a lawyer, let alone a federal judge, but rather fiats that come under the condemnation by the Supreme Court in *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex,* 442 U.S. 1, 40 (1979), that "an inability to provide any reasons suggests that the decision is, in fact, arbitrary".

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

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

9. To begin with, the September 20 motion on its very first page "requests that the parties file and serve any answer by October 17 so that [Dr. Cordero] may have time to file and serve a reply as appropriate". Dr. Cordero was not only entitled but also required to make such statement under District Local Rule 7.1 Service and Filing of Papers. Hence, Judge Larimer deprived with his order of October 14 all the other parties of the opportunity to file an answer to the motion. By the same token, he deprived Dr. Cordero of the opportunity to know the position that the parties might have taken on his motion and reply thereto. More significantly, the Judge deprived himself of the opportunity to receive answers from the other parties and replies thereto from Dr. Cordero.

In so doing, Judge Larimer revealed that instead of approaching the motion for reconsideration with an open mind as judges are required to do, he had set his mind on a prejudged course of action and was not interested in informing himself or his decision with the parties' statements of facts, arguments, and supporting authority. Thereby he showed prejudice and bias.

10. In addition, Reporter Dianetti had that motion of September 20 for over three weeks before Judge Larimer issued his order on October 14. Nonetheless, she felt no need to file even a pink stick-it note to object to it, although the motion put at risk her professional career as a reporter and thus, her means of livelihood. This indicates that she was so sure that no harm would come to her from the motion that she did not have to bother making a gesture of objection. That is precisely the attitude that she revealed when she never objected to Dr. Cordero's earlier motion of July 18, which also put in jeopardy her career, for if Judge Larimer had granted it, she would have been replaced in the task of preparing the transcript and would have been referred to the Judicial Conference for investigation. Did she know that Judge Larimer would not grant those motions and, if so, how did she come to know it?
11. Exactly these facts and arguments apply, mutatis mutando, to Trustee George Reiber, the trustee in *DeLano*, 04-20280, WBNY. He too felt no need whatsoever to object to Dr. Cordero's motions of July 13, August 23, and September 20 requesting his removal as trustee from *DeLano*, and his investigation for failing to perform his duties, among others, under 11 U.S.C. §704(4) and (7). Did he know that Judge Larimer would not grant those motions and, if so, how did he come to know it?
12. Moreover, none of the other parties filed any answer to the September 20 motion although they had had it for over three weeks before the October 14 order was issued. Did they too know that Judge Larimer would not grant it and, if so, does their conduct in this matter constitute further evidence of non-coincidental, intentional, and coordinated acts in support of wrongful activity?

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

13. Therefore, Dr. Cordero protests the arbitrariness manifested in Judge Larimer's orders and the objectionable legal and suspicious factual circumstances surrounding them. He will challenge them in future on appeal. In the meantime, he will exercise his right under the First Amendment of the Constitution "to petition the Government for a redress of grievances" as well as his right of "freedom of speech" and "of the press" so as to have the injurious and unjust effect of the orders and of the compelled request to the Reporter lessened, counteracted, or eliminated. He will also defend his right to "due process of law" under the Fifth Amendment by exposing and challenging the abundant evidence of conduct that has not only the unambiguous appearance, but also the objective substance, of a mockery of judicial process that through contemptuous disregard of the law, the rules, and the facts is aimed at achieving a foregone result.

Dated: October 25, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

CERTIFICATE OF SERVICE

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

I. DeLano Parties

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

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

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

II. Pfuntner Parties (02-2230,WBNY)

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

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

Michael J. Beyma, Esq., for M&T Bank and David DeLano
Underberg & Kessler, LLP
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Karl S. Essler, Esq., for David Dworkin and Jefferson Henrietta Associates
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tel. (585) 641-8000
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Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
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Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
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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
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October 26, 2005

Chief Judge Thomas F. Hogan
Chair of the Executive Committee of the Judicial Conference of the U.S.
U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Dear Chief Judge Hogan,

Further to my letters to you of August 1 and 31 (1b, 1c, infra), I am addressing you as the Chair of the Executive Committee of the Judicial Conference. Through you I appeal to the Conference under 28 U.S.C. §753 from the decision for Ms. Melissa Frieday, Contracting Officer for Reporter Mary Dianetti (E:429, 431); and present additional evidence of a bankruptcy fraud scheme and a cover up (E:397) supported by judicial and clerical officers at the WDNY and WBNY courts, including orders contemptuous of the integrity of judicial process (E:395,423,425) that direct me to obtain a transcript from the Reporter who has refused to certify its reliability (2§I)(E:333) rather than direct her replacement by a reporter above suspicion.

Indeed, documents in the *DeLano* bankruptcy, 04-20280, indicate that Mr. DeLano is a 32-year veteran banker specializing in bankruptcies at M&T Bank. He declared having together with his wife only $535 in cash and account when filing in January 2004, but earned in the 2001-03 period $291,470. Likewise, since 1975 the DeLanos have taken out a string of mortgages worth $382,187 for the purchase of the 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! (E:285-298) Similarly, he and his wife claim that after 30 years of work they have accumulated household goods worth the pittance of $2,910. Even so, Bankruptcy Judge John C. Ninfo, II, refused to require them to produce bank statements to account for the whereabouts of over $670,000. (E:404§II) Instead, he eliminated me from the case by disallowing my claim at a hearing recorded by Reported Dianetti.

For his part, District Court David Larimer disregarded FRBkrP 8006 and 8007 in his attempt to force me in *Cordero v. DeLano*, 05cv6190 (E:165-175), as he did in *Cordero v. Gordon*, 03cv 6021 (E:415§V.A), to file my brief before Reporter Dianetti had even replied to my transcript request. When this failed, the Reporter refused to certify that her transcript of that hearing would be complete, accurate, and free from tampering influence. Her suspect refusal puts in doubt that the transcript will contain the passages revealing Judge Ninfo's flagrant bias and Mr. DeLano's damaging testimony at the hearing. (E:204) My request to Officer Frieday for her replacement was merely forwarded to the Clerk and Judge Larimer has ordered me to obtain it from the Reporter. In fiats lacking legal arguments, he has "denied in all respects" my motions (E:13,43, 333, 397) on the conclusory allegation that they "are without merit". This goes to showing, as the Supreme Court stated 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".

During the confirmation hearings of now Chief Justice John Roberts much was said of a judge's commitment to judicial integrity. I respectfully appeal to yours so that you and the Conference prevent a travesty of justice by investigating the Reporter's involvement in a fraud scheme pointing to judicial corruption (15§IV). I also request that you abide by your duty under 18 U.S.C. 3057(a) by reporting this matter for investigation to U.S. Attorney General Alberto Gonzales.

sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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

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August 1, 2005

Chief Judge Thomas F. Hogan
Member of the Judicial Conference of the U.S.
U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Dear Chief Judge Hogan,

I would like to bring to your attention the petition that I just submitted to the Conference for an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript, which is yet another in a long series of acts of disregard for duty and legality stretching over more than three years and pointing to a bankruptcy fraud scheme and a cover up.

Indeed, last March 1 the evidentiary hearing took place of the motion to disallow my claim in the bankruptcy case of David and Mary Ann DeLano. Bankruptcy Judge John C. Ninfo, II, WBNY, disallowed my claim against Mr. DeLano. Oddly enough, he is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank, who declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 period $291,470, whose whereabouts neither the Judge nor the trustees want to request that he account for.

At the end of the hearing, I asked Reporter Mary 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 and as part of making arrangements for her transcript, 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 exhibits pgs. 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. However, she asked me to prepay and explicitly rejected my request! If a reporter in your court refused to vouch for the reliability of her transcript, would you vouch for it in her stead and use it without hesitation? Would you want your rights and obligations decided on such a transcript?

Moreover, there is evidence, contained in the other exhibits submitted to the Conference and available on demand (pg. 21), that Reporter Dianetti is not acting alone. Bankruptcy clerks and District Judge David G. Larimer, WDNY, also violated FRBkrP 8007 to deprive me of the transcript and, worse still, did the same in connection with the transcript in *Pfuntner v. Trustee Gordon et al.*, where Mr. DeLano, who handled its bankruptcy for M&T, and I are parties. Their motives are discussed in the accompanying copy of the petition and in my submissions to the Conference and its members of November 18 and December 18, 2004. The facts stated therein show a pattern of non-coincidental, intentional, and coordinated bias and wrongdoing in support of a bankruptcy fraud scheme. It suffices for those facts to have the appearance of truth for these officers' conduct to undermine the integrity of the judicial process and detract from public trust in the judiciary. Hence, I respectfully request that you cause this matter to be placed on the agenda of the September meeting of the Conference and that meantime, you make a report of it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely, Dr. Richard Cordero

C:1178 Dr. Cordero's request of 8/1/5 to C J Hogan to put petition to investigate ct reporter on J Conf's 9/5 agenda

Dr. Richard Cordero

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August 31, 2005

Chief Judge Thomas F. Hogan
As Member of the Judicial Conference of the U.S.
In care of: U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Dear Chief Judge,

On 1 instant, I sent you and the Chief Justice, as members of the Judicial Conference, a letter (E:261 infra) explaining why on the basis of 28 U.S.C. §753(b-c) I had submitted a petition to the Conference for an investigation, in the context of a bankruptcy fraud scheme pointing to official corruption, of a court reporter's refusal to certify the reliability of her transcript. On August 11, I received a cover letter (E:262) returning the petition. Anybody who had read my letter, as short as this one, let alone the caption of the petition, would have realized that neither had anything to do at all with an Article III case sent to the Court. Rather they concerned a request for Conference members to have the Conference carry out its reporter-related duties under §753.

The copies of the petition that I filed with the Administrative Office have also been returned. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); wrongly copies *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned!

Another letter (E:264) pretends that a circuit chief judge cannot forward to a colleague who is the chairperson of a Conference committee a petition within its jurisdiction with a note "for any appropriate action". Actually, I wrote to the chair of the Executive Committee (E:265), but have received no answer. There is a pattern: Judges avoid investigating one another and to that end will resort to cursory reading, disingenuous answering, and indifference to official corruption. Yet, there is evidence of a scheme: I served that motion on the Reporter on July 18, but to date she has not filed even a stick-it with the scribble "I oppose it", though by default she could lose her job, as could the Trustee, who has also disregarded my motion of July 13 for his removal. How did they know that Judge D. Larimer would not act on those motions, which implicate Judge J. Ninfo?

I am respectfully submitting to you for the Conference a Supplement to the Petition (51) showing how the Reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, but the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you handle this Supplement and the Petition that I already sent you so that the Conference acts upon them to ensure judicial integrity and that you also refer them under 18 U.S.C. §3057(a) to Attorney General Alberto Gonzales.

Sincerely, Dr. Richard Cordero

Summary of Contents

1. **Appeal** of October 26, 2005, to the Judicial Conference, as the entity with the statutory duty under 28 U.S.C. §753 for the qualifications, supervision, and dispute-resolution concerning court reporters, from the response of Contracting Officer Melissa Frieday in connection with Dr. Richard Cordero's complaint about Reporter Mary Dianetti (E:429, 431); which adds to the non-coincidental, intentional, and coordinated acts in disregard of the law, rules, and facts supporting a bankruptcy fraud scheme and a cover up engaged in by WDNY and WBNY judicial and clerical officers (E:357), including district court orders (E:395,423,425) that without providing any legal argument require Dr. Cordero to request from the Reporter and rely for his appellate brief on, a transcript (E:433) whose completeness, accuracy, and tamper-free condition the Reporter herself refused to certify (2§I)(E:333), whereby the court has shown its contempt for the integrity of judicial process (E:397,435), which the Conference has the duty under §331 to safeguard ..... 1a [C:1177]
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2. **Summarizing letters** of August 1 and 31, 2005, to Chief Judge Thomas Hogan, District Court for D.C., and Chair of the Judicial Conference Executive Committee ..... 1b-c [C:1178-9]
3. **PETITION** of July 28, 2005, for an Investigation under 28 U.S.C. §753(c) of a Court Reporter's Refusal to Certify the Reliability of her Transcript and for Designation under 28 U.S.C. §753(b) of Another Individual to Produce the Transcript ..... 1 [C:1083]
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4. **Supplement** of August 30, 2005, providing additional evidence of i) how the Reporter's refusal forms part of a bankruptcy fraud scheme in which the repayment plan of a debtor, who has spent his 32-year career in banking and is still in charge of bankruptcies of his Bank's clients, was confirmed upon the trustee's allegation of having investigated and found no bankruptcy fraud on the debtor's part (E:271) (53§I) and the judge's acceptance of such allegation (E:275) despite the evidence in the trustee's own documents and conduct of never having carried out any such fraud investigation (61§II) and ii) how the trustee knows that he is so secure in his position that he never bothered to oppose any of the motions for his removal (E:13,357,397) raised before both the bankruptcy and the district judges, WDNY ..... 51 [C:1127]
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whose refusal to certify the reliability of her own transcript
forms part of the additional evidence hereby introduced of
a bankruptcy fraud scheme and a cover up supported by
judicial and clerical officers at the WDNY and WBNY courts,
already described in
the petition of 28 July and its supplement of 30 August

submitted on October 26, 2005, to
The Judicial Conference of the United States

by
Dr. Richard Cordero

exhibit no. page no.

1-23. accompanying the Petition of July 28, 2005 [C:1083], and listed in its Table of Exhibits ..... [C:1103]

24-46. accompanying the Supplement of August 30, 2005 [C:1127], and listed in its Table of Exhibits ..... [C:1147]

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55. **Letter** of Bankruptcy **Clerk** Paul R. **Warren** of **October 20**, 2005, **to** Judge **Larimer informing** him of Dr. **Cordero's letter** to Contracting Officer Frieday and qualifying it as "an effort to both avoid your Order and to intimidate the Bankruptcy Court's clerical staff" **but omitting** any reference to the first sentence of Dr. **Cordero**'s letter where he stated that he had **been referred** to Officer Frieday **by** the then **Chair** of the **Executive Committee** of the Judicial Conference, Chief Judge Carolyn Dineen **King**, CA5 [C:1152] .....431 [C:1166]

56. Dr. **Cordero**'s letter of **October 24**, 2005, **to** Reporter **Dianetti requesting** that she prepare the **transcript** of the March 1 evidentiary hearing in Bankruptcy Court accompanied by a certified **check** for **$650**, and stating that the request is made **under compulsion** of Judge Larimer's order and with reservation of all his rights.....433 [C:1167]

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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

case no. 05-cv-6190L

v.

NOTICE OF MOTION AND MOTION
To have the Bankruptcy Court Reporter
referred to the Judicial Conference
for investigation of her refusal
to certify the reliability of the transcript

DAVID and MARY ANN DELANO
Respondents and debtors in bankruptcy

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

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

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

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I. Reporter Dianetti avoided stating on three occasions the count of the stenographic packs and folds that she had counted to arrive at her transcript cost estimate; Dr. Cordero requested confirmation that her reluctance was not motivated by her concerns about the transcript content; but the Reporter requested prepayment while refusing to certify that the transcript would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence 1185

II. Reporter Dianetti already tried on a previous occasion to avoid submitting the transcript and submitted it only over two and half months later and only after dr. Cordero repeatedly requested it 1189

III. The clerk of the bankruptcy court disregarded the rules by transmitting the record to the district court when it could not possibly be complete; yet the court repeatedly scheduled the appeal brief for a date before Dr. Cordero would receive and use the transcript in his appeal 1194

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1.	April 18, 2005		[C:1155]
2.		May 3	[C:1156]
3.	May 10		[C:1157]
4.		May 19	[C:1158]
5.	May 26		[C:1160]
6.		June 13	[C:1161]
7.	June 25		[C:1163]
8.		July 1	[C:1165]

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

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

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

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

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

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

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

6. Hence, in his letter to her of May 10, he asked that she state by how much more her estimate could fluctuate and added "This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording."

7. In her letter of May 19, she surprisingly stated that "I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it." Her statement was self-contradictory because if her estimate may not fluctuate "at all", then how could she provide an initial estimate with lower and upper limits, which by definition mark the margins of fluctuation? How would she pick the final "cost…[inside or outside the range] of $600 to $650"? Since Reporter Dianetti is an official reporter, who earns her living as such, who would prepare the transcript based on her own recording of a proceeding, and who had provided an estimate that already fluctuated by almost 10%, how could she not have an idea of by "how much my estimate can fluctuate"? After all, how many variables can possibly affect the final number of transcript pages? Is censure one of them?

8. Making her estimate even more incomprehensible, Reporter Dianetti again failed to provide in that letter of May 19 the count of stenographic packs and folds that she would use to prepare the transcript because "you already have that information". Did she have it too?; if so, why not just restate it in a straightforward business fashion? Moreover, there was something very odd to her failure to appreciate the difference between the count of packs and folds that she gave Dr. Cordero on March 1 and what she had recently counted and would actually "be using to prepare the transcript", as Dr. Cordero had asked in his first letter of April 18.

9. Thus, in his letter to her of May 26, Dr. Cordero pointed out that:

> If you cannot state those limits, the final amount can be anywhere above or below that fork [of $600 to $650]. In practical terms this means that there is

> no estimate at all. Consequently, I am left to assume all the risk and be liable for whatever final price you bill me for. I hope you will agree that does not sound either fair to me or an acceptable business arrangement.

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

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

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

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

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

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

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

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

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

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

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

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

> 28 USC §753 (c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

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

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

19. This is by no means the first time that Reporter Dianetti engages in conduct contrary to her

statutory duties despite §753(a) providing that "…Each reporter shall take an oath faithfully to perform the duties of his office…." In 2003 she violated her regulatory duties under FRBkrP 8007, which provides thus:

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

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

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

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

22. Indeed, to appeal from Judge Ninfo's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript A-261).

23. It was not until March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283,286).

24. There is further evidence supporting the implication of Reporter Dianetti's comment and giving

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

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

26. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, 2003, the date on her certificate (A-282). Rather, it was filed two weeks later on March 26, a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28.

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

> Upon the request of any party to the proceeding which has been so

> recorded…the reporter…shall **promptly** transcribe the original records…and attach to the transcript his official certificate, and deliver the same to the party…making the request. (emphasis added)

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

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

29. Reporter Dianetti also claimed that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, her transcription of his statements has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in their respective functions. But no imagination is needed, only an objective assessment of the facts and the applicable legal provisions, to ask whether Reporter Dianetti was told to disregard Dr. Cordero's request for the transcript; and when she

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

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

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

31. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appel-late panel." It is quite obvious that the record could not possibly have been complete on the very day that it was filed since the 10 days for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal", as provided under FRBkrP 8006, had not even started to run. Likewise, contact with the court reporter for preparation of the transcript had only been initiated, as shown by the copy of Dr. Cordero's letter of April 18 to Reporter Dianetti accom-panying the Designation, so that the transcript had not been even started, let alone

delivered for Dr. Cordero so that he could take it into consideration when writing his brief on appeal. On a phone conversation that Dr. Cordero had with Clerk of Court Warren on May 2 concerning the premature transmittal of the record in disregard of the Rules, the Clerk defended the transmittal.

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

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

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

35. As a result, Dr. Cordero was forced to write again to the Court to raise a "Motion for compliance

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

36. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only he had not received the transcript, but also nobody knew when the Reporter would complete and file her transcript and deliver a copy to him. Hence, if the transcript were delivered before the June 13 date for him to file his brief, he would have to scramble to read the transcript's hundreds of pages and then rework his whole brief to take them into consideration. Worse yet, if the transcript were delivered after that filing date and before the District Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief, not to mention the legal research that he might have to undertake in either case. But if the transcript were not filed and the Bankruptcy Clerk had to notify Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not possibly be known in advance, not to mention that the circumstances surrounding the failure to file the transcript could give rise to a host of new issues. Dr. Cordero asked what would happen if the transcript was delivered after the District Court had issued its decision! He concluded that there was no legal basis for putting on him the onus of coping with all that uncertainty. Is it really possible that none of these considerations crossed the District Court's mind when it twice issued a scheduling order on a prematurely transmitted incomplete record to require the filing of the appellate brief without the benefit of the transcript?

37. The District Court did not show any awareness of these considerations in its third scheduling

order of May 17. On the contrary, it put it as if:

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

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

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

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

40. When so many court officers blatantly and repeatedly disregard legal and factual considerations, every time with a detrimental effect on the same party and a beneficial effect on the other parties, is it more reasonable to wonder whether they are all, including their supervisors, performing their functions incompetently or rather to infer that they are all acting intentionally and in coordination? To answer one must take into account that on the basis of circumstantial evidence a jury of lay persons is asked to draw inferences that can provide the basis for a

finding of guilt beyond reasonable doubt, which will lead to depriving the accused of his property, his liberty, and even his life. By such standard, reasonable persons can also make similar inferences on the basis of a long series of acts committed by related people having the same effect.

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

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

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

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

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

> …record[ing] verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations…[e]ach session of the court and every other proceeding designated by rule or order of the court or by one of the judges…

44. The applicability of §753 to bankruptcy court reporters is also arrived at by elimination. Thus,

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

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

V. Conclusion and Request for Relief

46. Reasonable people can deem two acts having similar effect to be the result of pure coincidence. But when a long series of acts carried out by related persons in disregard of their official duties consistently benefit local parties known to them and injure a non-local pro se party for a period

of years,[2] reasonable people, particularly those charged with detecting and punishing other persons' wrongdoing or malfeasance, must recognize that those persons' acts form a pattern of non-coincidental, intentional, and coordinated unlawful activity. If such reasonable people are also responsible, then they must discharge their duty regardless of whether that leads them to expose and punish subordinates, acquaintances, and even colleagues. To allow them to continue disregarding the law would amount to condoning and encouraging their unlawful activity and show insensitivity to the havoc that they wreak on other people's lives. Those persons would keep committing ever bolder acts that would eventually attain a critical mass threatening to explode and expose them, thereby inducing them to engage in an ever higher-pressure-building cover up requiring ever more egregious, even criminal acts. It is a vicious circle that can only end up in disaster and shame for those actively involved and for those who had the duty to stop them but who aided and abetted them through their passivity. Reasonable, responsible, and realistic people must recognize when to cut their losses before they lose all their values and valuables. Now is the time to do so.

47. That the time is ripe to take corrective action follows from the fact that the alternative would

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

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

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

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

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

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

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

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

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

---

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

i. Dr. Cordero's **motion** of **June 20**, 2005, to stay *Pfuntner* and **join** the parties in that case to the *DeLano* appeal..... [Add:851]

    a) Dr. Cordero's **statement** of **June 18**, 2005, to the Pfuntner parties on Judge Ninfo's linkage of the *Pfuntner* and *DeLano* cases ..... [Add:853]

ii. Dr. **Cordero**'s notice of **motion** and motion of **July 13**, 2005, to **stay confirmation** hearing and order, **withdraw** case pending appeal, **remove** trustee and give **notice of** addition to **appeal .....** [Add:881]

    a) Dr. Cordero's **Affidavit** of **July 11**, 2005, in Support of his Motion to Stay Confirmation Hearing and Order, Withdraw Case Pending Appeal, Remove Trustee and Give Notice of Addition to Appeal..... [Add:886]

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

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

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

Dated: July 18, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

CERTIFICATE OF SERVICE

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

I. DeLano Parties

Ms. Mary Dianetti
612 South Lincoln Road
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tel. (585)586-6392

Christopher K. Werner, Esq.
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fax (585)232-3528

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

II. Pfuntner Parties (02-2230,WBNY)

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Chapter 7 Trustee
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Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
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fax (212) 668-2255

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

v **ORDER**

05-CV-6190L

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

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

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

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

i. Dr. Cordero's **motion** of **June 20**, 2005, to stay *Pfuntner* and **join** the parties in that case to the *DeLano* appeal..... [Add:851]

a) Dr. Cordero's **statement** of **June 18**, 2005, to the Pfuntner parties on Judge Ninfo's linkage of the *Pfuntner* and *DeLano* cases ..... [Add:853]

ii. Dr. **Cordero**'s notice of **motion** and motion of **July 13**, 2005, to **stay confirmation** hearing and order, **withdraw** case pending appeal, **remove** trustee and give **notice of** addition to **appeal ..... [Add:881]**

a) Dr. Cordero's **Affidavit** of **July 11**, 2005, in Support of his Motion to Stay Confirmation Hearing and Order, Withdraw Case Pending Appeal, Remove Trustee and Give Notice of Addition to Appeal; and ..... [Add:886]

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
, 2005.

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

case no. 05-cv-6190L

NOTICE OF MOTION AND MOTION
To compel the production of documents and take other actions necessary for the exercise of the court's supervision over the bankruptcy court and of appellant's right of appeal, and for the proper determination of this appeal

v.

DAVID and MARY ANN DELANO
Respondents and debtors in bankruptcy

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

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

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

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

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

    d) Bankruptcy Court Reporter Mary Dianetti;

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

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

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

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

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

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

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

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

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

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

FRBkrP 9004. General Requirements of Form

(a) Legibility; abbreviations

All petitions, pleadings, schedules **and other papers *shall*** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

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

Local Bankruptcy Rule 9004. PAPERS

9004-1. FORM OF PAPERS *[Former Rule 13 A]*

All pleadings **and other papers *shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially *defacing* them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)

9004-2. CAPTION *[Former Rule 13 B]*

All pleadings **and other papers *shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

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

7. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there in 11 U.S.C. is "§341 Meetings of creditors and equity security holders" (all §# references are to 11 U.S.C. unless otherwise stated). The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting

under this section including any final meeting of creditors.

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

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

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

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

10. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible "341 Hearing" before Judge Ninfo? And in *DeLano*, when did that "341 Hearing" take place?, for not only is such "Hearing" not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (¶5 above) that they "***shall*** be **dated".**

However, if the Trustee's scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

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

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

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

√ Lost employment *(Wife) Age 59*

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

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

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

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

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

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

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

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

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

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

√ To cram down secured liens

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> DISTRICT COURT LOCAL RULE 10
>
> FORM OF PAPERS
>
> (a) All text and footnotes in pleadings, motions, legal memoranda **and other papers *shall be*** plainly and legibly written, **typewritten** in a font size at least 12-point type, printed or reproduced, **without erasures or interlineations materially defacing them**, in ink…

> (b) **All papers *shall*** be endorsed with the name of the Court…**All papers *shall* be signed by an attorney** or by the litigant if appearing *pro se*, and the **name, address and telephone number** of each attorney or litigant so appearing ***shall be*** typed or printed **thereon**. **All papers *shall* be dated and paginated**. (emphasis added)

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

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

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

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

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

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

33. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is,

apart from another very unprofessional double strikethrough "~~1) Best Interest - $1255;~~" "Attorney fees". At the bottom of the page is written: "ATTORNEY'S FEES" $ 1350 and, below that, "Additional fees Yes" $16,655. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:9) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:12).

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

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

35. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶9 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their Schedule B, where they declared having only $535 in cash and account despite having earned

$291,470 in just the immediately preceding three years yet declaring nothing but $2,910 in household goods, while stating in Schedule F a whopping credit card debt of $98,092! Where did the money go or is, which could go a long way toward covering their liabilities of $185,462?

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

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

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

> avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

38. And so it turned out to be. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. (D:167-177) However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts (D:120), even though the DeLanos had listed in Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts! (D:178-185)

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

40. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had,

namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.

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

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

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

seen committed by colluding bankrupts, trustees, and judicial officers?

43. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶37 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

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

45. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded

by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.

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

47. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:15-27) once more (¶38 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:14). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29)(D:461) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road.

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

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

in this regard, as this transaction occurred almost six (6) years ago.

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

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

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

51. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:37), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:38). When Att. Werner made a belated service (E:39), it became apparent why he had tried to withhold the documents (E:40-53) from Dr. Cordero: They were printouts of pages from the website of the Monroe County

Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:54) has gone unanswered by Trustees Reiber, Schmitt (D:470, 471, 474), and Martini (E:57-60). (D:492)

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

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

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

54. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter

always avoided investigating them, making pro forma requests and satisfying himself with token documents, that is, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, Judge Ninfo was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thereby requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Bankruptcy Court Reporter Mary Dianetti, who has already refused to certify the reliability of the transcript of her own recording of the evidentiary hearing on March 1, 2005 (E:61-63).

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

III. Conclusion and Request for Relief

56. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and

coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. In fact, they confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of their having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would disclose his knowledge of systemic wrongdoing: a bankruptcy fraud scheme.

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

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

59. The conduct of Judge Ninfo and Trustee Reiber together with others calls for this Court's intervention. Indeed, the District Court has supervisory duties with respect to the Bankruptcy Court because the latter is an adjunct to it to which it refers bankruptcy cases under 28 U.S.C. §157(a) pursuant to the system set up in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, (cf. District Court Local Rule 5.1.(g)); and because as an appellate court with respect to the Bankruptcy Court this Court has an inherent duty to safeguard the integrity of the judicial process as well as of the bankruptcy system. Such integrity has been compromised by these officers with others taking decisions contrary to the available evidence and in the absence of alleged evidence to further a bankruptcy fraud scheme.
60. Hence, the documents that have not been produced are necessary for this Court to exercise its supervisory duties as well as for Dr. Cordero to exercise his right of appeal and for this Court to determine it. However, the close institutional and personal relationship between the Bankruptcy Court and this Court can impair the latter's objectivity and already led it to rush on April 22 to schedule Dr. Cordero's appellate brief in disregard of the rules and the facts, only to take no action on his motions to enable him to file that brief. Hence, for the sake of the appearance and reality of impartiality, this Court should transfer this appeal and related cases and defer to law enforcement investigators. Therefore, Dr. Cordero respectfully requests that this District Court:
    1) Order the production without delay of a copy for each of the Court, Dr. Cordero, and the successor trustee when appointed, of the following documents, each accompanied by an affidavit or a certificate pursuant to 28 U.S.C. §1746 stating that the respective document has not been the subject of any addition, omission, modification, or correction of any type:
        a) The audio tape of the meeting of creditors held on March 8, 2004, conducted by Att. Weidman and that it be transcribed and its transcript made available in paper and on a floppy disc or CD; and the video tape in which Trustee Reiber was seen providing its introduction;

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

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

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

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

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

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

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

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

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

6) Recommend that the successor trustee employ under §327 a reputable, independent, and

certified accounting and title firm based in Albany to investigate the DeLanos' financial affairs and produce a comprehensive report of their assets from 1975 to date;

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

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

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

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

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

12) Issue the proposed order;

13) By September 12, 2005, or as soon thereafter as possible, decide the three motions by Dr.

Cordero still pending in this Court (¶¶60.1)c); 60.4); and 60.9) above) or state in writing the reasons why it will not decide them, and in the latter case certify the case for appeal to the Court of Appeals for the Second Circuit.

CERTIFICATE OF SERVICE

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

I. DeLano Parties

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

Christopher K. Werner, Esq.
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Trustee George M. Reiber
South Winton Court
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Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
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Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
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II. Pfuntner Parties (02-2230, WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
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Dated: August 23, 2005
59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

v.

ORDER
05-CV-6190L

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

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

I. Persons and entities concerned by this Order

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

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

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

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

e) Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S.

Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585) 263-5812, and any and all members of her staff, including but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker;

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Substantive provisions

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

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

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

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

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

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

f) The financial documents in either or both of the DeLanos' names, or otherwise concerning a financial matter under the total or partial control of either or both of them, regardless of whether either or both exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's, since January 1, 1975, to date,

(1) such as:

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

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

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

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

(c) mortgage and/or loan documents;

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

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

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

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

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

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

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

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

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

3. Reporter Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference for investigation of her refusal to certify the reliability of the transcript of her recording of the evidentiary hearing on March 1, 2005, in the Bankruptcy Court of the DeLanos' motion to disallow Dr. Cordero's claim; Dr. Cordero's motion of July 18, 2005, for this Court to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript.

4. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*.

5. The Court recommends that the successor trustee be an experienced out of district trustee, such as a trustee based in Albany, NY, who shall certify that he or she is unfamiliar with any aspect of *DeLano*, unrelated and unknown to any party or officer in WDNY and WBNY, will faithfully represent pursuant to law the DeLanos' unsecured creditors, and exhaustively investigate the DeLanos' financial affairs on the basis of the documents described in ¶1.f) above and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets, and produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets -whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and file and serve such report together with a copy of the documents used to prepare it.

6. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶5 above; and such firm shall produce a certificate equivalent to that referred to therein.

7. The order of Bankruptcy Judge John C. Ninfo, II, of August 9, 2005, confirming the DeLanos' plan is hereby stayed; the order of Judge Ninfo of August 8, 2005, shall continue in force and M&T Bank shall continue making payments to Trustee Reiber until the appointment of the successor trustee and from then on to such trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.

8. *DeLano* is withdrawn from the Bankruptcy Court to this Court pursuant to 28 U.S.C. §157(d) pending the above-captioned appeal.

9. *DeLano* and *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY, are referred for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with any of those cases and unacquainted with any of the parties, court officers, whether judicial or administrative, or trustees that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

10. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany for a trial by jury before a judge unfamiliar with any of those cases and unrelated and unacquainted with any of the parties, court officers, whether judicial or administrative, or trustees.

11. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and Dr. Cordero shall be allowed to make his own electronic sound recording of any and all such proceedings.

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
, 2005.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant/Creditor,

DECISION and ORDER

-vs-

05-CV-6190L

DAVID G. DELANO and
MARY ANN DELANO,

Respondents/Debtors.

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

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

The matter must be resolved as follows:

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

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

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

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

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

IT IS SO ORDERED.

DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

Dated: Rochester, New York
September 13, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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

Dr. RICHARD CORDERO
Appellant and creditor

case no. 05-cv-6190L

NOTICE OF MOTION
and motion for reconsideration
of the Court's decision and order
concerning Reporter Mary Dianetti and
the transcript necessary for this appeal

DAVID and MARY ANN DELANO
Respondents and debtors in bankruptcy

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

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

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

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

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

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

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

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

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

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

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

15. Had the Court referred Reporter Dianetti to the Conference, she risked being the target of a very serious investigation given that in refusing to certify the reliability of her own transcript of her

own recording she violated her duty as a reporter, for whom §753(b) 3rd, 4th, and 5th paragraphs provide that the reporter 'shall officially certify her transcript "to the party or judge making the request". Consequently, she opened herself to the inquiry of what personal motive or external influence could have caused her to fail her duty.

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

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

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

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

18. If the Supreme Court applies to even a judge appointed under Article III of the Constitution this strict standard of disqualification by reasonable appearance of partiality, then the Conference, which is presided over by the Chief Justice, would have proceeded with at least equal strictness in disqualifying from preparing the transcript for the instant appeal a reporter who not just gave

the appearance, but provided a concrete, written statement, as did Reporter Dianetti, of refusal to provide a transcript free of any distorting influence, incomplete, or inaccurate. Therefore, a referral for investigation to the Conference of Reporter Dianetti would have resulted in her replacement, and could have ended up in her suspension or even her termination as a reporter.

19. Since the Conference is the supervising body of reporters, Reporter Dianetti must have known the potential consequences of her referral to it by this Court. Likewise, by the very nature of her job of listening to and writing down court proceedings, she must be presumed to be more aware than the average person of the risk of judgment by default: Failing to object to the referral meant that the Reporter implicitly admitted Dr. Cordero's contention against her and consented to such referral. Consequently, the Court could have granted by default Dr. Cordero's motion. (cf. District Local Rules 7.1(e) and 56.2. 3rd paragraph of the Notice)

20. Nevertheless, Reporter Dianetti was so sure that the Court would never grant by default Dr. Cordero's motion that she did not even bother to file an objection to it. How did she become so sure that she had nothing to worry about? If the District Court where Dr. Cordero had to raise that referral motion were not on the floor above the Bankruptcy Court where the Reporter works in the same small federal building, but instead this appeal had been transferred to the U.S. District Court in Albany, as repeatedly requested by Dr. Cordero, would she have reacted to the risk of losing her job with the same assured indifference?

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

21. The Court did not have to bother reading the motion only to get rid of it with a mere "in all respects denied" without any mention, let alone discussion, of the facts or the applicable law

discussed in detail by Dr. Cordero, much less citing any authority of its own. As a matter of fact, it qualified Dr. Cordero's submissions as "prolix", which gives rise to the impression that it did not read the motion because too long and boring…'with all those legal arguments, who cares?!' However, had the Court read FRBkrP 8011(a), it would have found that it provides that:

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

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

> The perceived difficulty revolves around the bankruptcy court reporter's preparation of (or failure to prepare) a transcript of proceedings before United States Bankruptcy Judge John C. Ninfo, II [sic] on March 1, 2005. The prolix submission might lead one to believe that this is a significant problem. It is not. It is a tempest in a teapot.
>
> The matter must be resolved as follows: …(¶38 below)

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

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

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

> 11. …Dr. Cordero made this point [of Reporter Dianetti's easily "nipping any suspicion in the bud"] unambiguous in his letter to her of June 25:
>
> Instead, I made what I meant you to state quite clear in my latest

letter to you of May 26:

> [since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript…provide me with that count…Therefore…
>
> 2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

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

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

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

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

29. Reporter Dianetti, instead, refused to state that number in her letters of May 3 and 19, and June 13, in response to Dr. Cordero's letters concerning his request for the transcript. By contrast, she referred him to the numbers of stenographic packs and folds that she had given him at his

request at the end of the same day on which she recorded the evidentiary hearing, that is, March 1. How strange that she had the numbers counted months earlier and was willing to give them again to Dr. Cordero, but she would not give him the number that she had necessarily just finished counting to arrive at her estimated transcript's cost and that he did not have, hence the reason why he wanted it. Why did the Court not "perceive" that the only "difficulty" here was in making sense of Reporter Dianetti's conduct?

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

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

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

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

32. So, in what did the "perceived difficulty" referred to by the Court consist? The question is all the more pertinent because, contrary to the Court's insinuation, it could not relate to 'the court reporter's preparation of the transcript' since Reporter Dianetti never actually began to prepare it, but rather refused to state what was it that she would prepare for $650 and its quality.

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

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

34. The Court must be presumed to know with certainty that a transcript is the key document of an appeal generally and of this appeal in particular. Indeed, a transcript provides an account of the events in the court below upon which the decision was rendered that is on appeal before it.

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

Furthermore, the Court knows and should know if it bothered to read Dr. Cordero's motion of August 23, not to mention that of June 20, (¶12 above), that:

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

b) the disallowance motion was used as an artifice to eliminate Dr. Cordero from *DeLano* and thereby prevent him from requesting anymore the production of documents that would prove fraud in the DeLanos' bankruptcy petition generally and their concealment of assets specifically;

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

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

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

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

g) all of which establishes the transcript of the evidentiary hearing as the key document in the appeal, indispensable to prove that Dr. Cordero's claim is valid and supports his status as

creditor of the DeLanos and that the disallowance of his claim was not just error, but rather abuse of judicial power in support of a bankruptcy fraud scheme.

35. Therefore, objecting to a transcript that will be incomplete, inaccurate, and the result of tampering influence in order both to deprive Dr. Cordero of his claim against the DeLanos and much more importantly, to conceal the bankruptcy fraud scheme that has enabled and protects the DeLanos' fraudulent petition cannot under any conception of respect for Dr. Cordero's right to appeal and the integrity of judicial process be dismissed as "a tempest in a teapot".

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

37. Yet, the Court did not sign Dr. Cordero's proposed order for the production of those documents and did not issue any order of its own for the production of any of those documents except the transcript. That means that the Court has ordered Dr. Cordero to pay Reporter Dianetti $650 to obtain that one document that it knows from a letter of the Reporter herself will not be incomplete, inaccurate, and the result of tampering influence. Will objecting to such order be

qualified by the Court in another cursory decision as "a tempest in a teapot"? Or will the Court recognize that to have issued that order and to let it stand constitute a denial to Dr. Cordero of due process and an abdication of the Court's duty to insure judicial integrity?

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

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

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

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

40. Indeed, FRBkrP 8006 provides thus:

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

41. In compliance therewith, Dr. Cordero filed together with his designation of items in the record, where the transcript of the March 1 evidentiary hearing is included as item no. 112, a copy of his letter to Reporter Dianetti, bearing the same date as the designation, that is, April 18, 2005. In it he asked her to provide a cost estimate and "let me know also the number of stenographic packs and the number of folds…that you will be using to prepare the transcript". Knowing how Reporter

Dianetti would calculate the cost of the transcript for which he would commit himself to paying her was part of his effort "to make satisfactory arrangements for payment of its cost".

42. Any reasonable, impartial, and informed observer would recognize that part of contract negotiations is determining what it is that each contractual party offers to give the other and is willing to accept from the other. This is part of bargaining at arms length, where neither party can dictate to the other what the other party must accept as well as what it must give in return. A court reporter is not endowed under any provision of law with such grossly superior bargaining power that she can impose upon a litigant not only the cost, but also the quality of a transcript on a take it or leave it basis. A reporter cannot force on an appellant a contract of adhesion. Her transcription of her record is not a captive market and she cannot hold the transcript hostage to the acceptance of her unilaterally dictated conditions by an appellant. Her treatment of the latter as a weaker and exploitable contractual party would offend a court respectful of the law, which would find a contract entered into under those conditions unconscionable and thus, unenforceable. To "make satisfactory arrangements" does not mean that the reporter is legally entitled to be the only contractual party to choose the conditions that satisfy her and that the appellant has no choice but to be dissatisfied if he wants to obtain anything passed off as a transcript at all. If the transcript does not provide a pristine reflection of the proceeding in question, then the appellant cannot possibly be satisfied with it, and if this Court is intent on administering justice on the basis of that transcript, it should not be either.

43. Nor is the Court empowered by the laws that it took an oath to uphold and apply impartially to rearrange the contract negotiating positions of a court reporter and an appellant from that of bargaining at arms' length to that of gross disparity by elevating the reporter above the need to negotiate to a higher position from which she can abusively impose her unilateral conditions on the appellant below. The Court has no such power either under the Contract Clause of Article I,

section 10, clause 1 of the U.S. Constitution providing that "No State shall…pass any Law impairing the Obligation of Contracts"; nor the XIV Amendment providing that 'no State shall "deprive any person of…property, without due process of law"; nor the V Amendment providing that "No person shall…be deprived of…property, without due process of law".

44. On the contrary, as the Constitution was interpreted in *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938), a federal court would have to apply state law to the interpretation of any contract between a court reporter and an appellant. In the instant case, that would be New York State law. The Civil Practice Law and Rules (CPLR), the New York City Civil Court Act (NYCCCA), the Uniform City Court Act (UCCA), and the Uniform Commercial Code (UCC) were the transcript somehow considered the sale of a product rather than the provision of a service of a writer for hire, contain no provision exempting a court reporter from contract negotiations on an equal and fair basis with an appellant. Neither contains any principle of law that entitles a court reporter, or any other contractual party, to compel an appellant, or any other party to a contract, to accept and pay for a product or service that she herself has produced evidence will be defective and unsuitable for the intended purpose.

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

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

1. Unquestionably, the very aim of a stenographic recording of a proceeding is to record it "verbatim", that is, word for word, so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications…determined by standards formulated by the Judicial

Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content having the same length. That is a logical and practical imperative of the system of reporting court proceedings. As the Supreme Court put it, 'the §753(b) duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible, what transpires in court', *Antoine v Byers & Anderson,* 508 US 429, 124 L Ed 2d 391, 113 S Ct 2167 (1993).

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

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

2. FRBkrP 8006 requires appellant to file a designation of items in the record and a statement of

issues on appeal and to furnish the clerk with a copy of those items. It also provides 10 days after service of that designation for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal". Likewise, it makes the transcript part of the record if a party includes it in its designation of items on appeal. (¶40 above)

3. For its part, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court." It is obvious that the record could not possibly have been complete on the very day on which appellant's designation was filed since the 10 days provided for the appellee to designate additional items had not even started to run; they would begin to run the following day in application of FRBkrP 9006(f).
4. These rules notwithstanding, the Bankruptcy Court received Dr. Cordero's designation of items, which listed the transcript among them, and a copy of his letter to Reporter Dianetti, both dated April 18, on April 21, 2005, and on that same day it transmitted them upstairs to the District Court in the same small federal building. Hence, this Court knew there was no way for the record to be complete since the Reporter might not even have had time to open the letter, let alone to respond to his efforts to "make satisfactory arrangements for payment of [the transcript's] cost". But disregarding the legal consideration that the transmittal of an incomplete record violated FRBkrP 8007(b), the Court issued the next day, April 22, an order providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". Thus, the due date was May 12.
5. It is illustrative to note here that appellee's designation of additional items was mailed in Rochester only on May 3 and delivered in NYC, where Dr. Cordero lives, only on May 10, just two days before his appellate brief was supposed to arrive in Rochester to be filed on May 12. Therefore, Dr. Cordero would not have had time to take it into consideration in his brief.
6. Moreover, FRBkrP 8007(a) allows the reporter 30 days to complete the transcript and if she has

not done so by that time, she could ask for an extension. Thus, to require the filing of the appellate brief within 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in writing that brief. It follows that the Court intended by means of its scheduling order to deprive Dr. Cordero of the use of the transcript.

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

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

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

10. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only he had not received the transcript, but also nobody knew even when the Reporter would complete it, let alone deliver it to him. Hence, if the transcript were delivered before the brief-filing deadline, he would have to scramble to read its hundreds of pages and then rework his whole brief to take them into consideration and do in a hurry any

necessary legal research. Worse yet, if the transcript were delivered after that filing deadline and before the Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief. But if the transcript were not filed timely and the Bankruptcy Clerk notified Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not be known in advance, not to mention that the circumstances of the Reporter's failure to complete it could give rise to a host of new issues. And what would happen, Dr. Cordero asked, if the transcript was delivered *after* the Court had issued its decision?! He concluded that there was no legal basis for putting on him the onus of coping with all that burdensome extra work and uncertainty.

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

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

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

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

13. The Court's last order means in practice that if Reporter Dianetti ever files her transcript and it is found incomplete, inaccurate, or the result of tampering influence, Dr. Cordero will once more have to move the Court to rescind that order and undertake corrective measures, lest he miss the brief-filing deadline and have his appeal dismissed. In terms of the law, it means that the Court issued a third order with disregard for the legal issues depriving it of jurisdiction to do so. Likewise, by refusing to return the incomplete record to the Bankruptcy Court, the Court wanted to force Dr. Cordero to move for the addition of the transcript to the record under District Local

Rule 7.1.(a)(3), thus reserving for itself the last chance to deny the motion and prevent the transcript from becoming available in any subsequent appeal to the Court of Appeals or the Supreme Court.

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

14. This is not the first time that the Court has shown disregard for the rules governing transcripts. In fact, the instant events are an exact repetition of the way the Court proceeded when Dr. Cordero requested an earlier transcript in *Pfuntner v. Trustee Gordon et al.*, (¶34 above), to which both Mr. DeLano and Dr. Cordero are parties. Thus, after the Court's colleague, Judge Ninfo, summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002, Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14, where she informed him that the due date for his designation of items was January 27. Yet, already on January 16, 2003, the Court, Judge Larimer presiding, had an order filed in docket 03cv6021L scheduling Dr. Cordero's brief for 20 days hence. Nevertheless, the Court knew that the Bankruptcy Clerk had transmitted to the Court a record unquestionably incomplete, for it consisted of merely the notice of appeal!
15. For her part, Reporter Dianetti tried to avoid submitting that transcript to Dr. Cordero and after belatedly completing it mishandled its delivery. As a result, instead of the transcript being prepared in 10 days as she had said it would, it was sent to him more than two and a half months later, after Judge Ninfo had found out what Dr. Cordero had to say at the hearing on March 26, 2003.
16. Alas!, these are not the only instances of the Court showing disregard for the law, the rules, and the facts. Indeed, the Court showed contempt for judicial process in deciding Dr. Cordero's two

appeals from *Pfuntner*, to wit, his opposition to Trustee Gordon's motion to dismiss the appeal, docket no. 03cv6021, where it disregarded, among others, FRBkrP 8002 and 9006; and his application for default judgment against David Palmer, docket no. 03mbk6001, where it disregarded FRCP 55 and the facts in the record. (Dr. Cordero's opening brief in *Cordero v. Premier Van Lines,* docket no. 03-5023, CA2, §§VII.C.7; VIII.C; and IX.D)

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

18. This series of acts is consistent with the same objective of preventing an appellant from receiving and using a transcript and effectively exercising his right to appeal. It shows that the acts are the product of non-coincidental, intentional, and coordinated violations of the rule of law by administrative and judicial officers. Such pattern evidence supports the reasonable inference that the Court intended for Dr. Cordero to file his brief without the benefit of the transcript while protecting Judge Ninfo from being incriminated by the record therein of his contempt for the requirements of fair and impartial judicial process and by the arbitrariness of his decisions on appeal. Since the Court failed to attain that objective through scheduling orders, it is now attempting to do the same through the next best means available to it, namely,

requiring that Dr. Cordero pay for a transcript of no value because Reporter Dianetti has refused to certify that it will not be incomplete, inaccurate, and resulting from tampering influence.

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

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

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

49. Indeed, Dr. Cordero has endured all this abuse for four years now. He is not quitting now that a growing number of participants need to commit ever more egregious abuse and disregard the

law, the rules, and the facts ever more blatantly in order to cover up their previous wrongdoing. The time is nearing when the mass of such wrongdoing will make their scheme implode.

50. There will be pressure from the outside too. As additional cover ups of previous cover ups of wrongdoing by their own dynamics become ever less effective and exposed, even the schemers' peers and colleagues will be unable to deny that their acts form a pattern of non-coincidental, intentional, and coordinated wrongful activity, that is, a scheme. They will not be willing to risk being associated with the schemers. At that time, the schemers will be on their own. Panic will seize them, they will multiply their mistakes, and the weakest of them will break down, causing other schemers to become unstable, and bringing down one after the other until the scheme implodes from the inside.

51. After the implosion, the schemers will face enormous tort liability to Dr. Cordero, not to mention criminal liability. They must realize that while the benefits of the scheme are not shared equally because the few at the top take the lion's share while the many below them must get by with merely diminishing crumbs, they all will share joint and several liability. Likewise, it is of little comfort to know that somebody else is serving a sentence of 20 years in jail under a provision such as 18 U.S.C. §1519, when one has been imprisoned for 10 years. And then there is that other prospect: shame, the shame of being implicated in a fraud scheme, not to mention of being incriminated and convicted, public shame and shame before friends and family.

52. Their prospect is that all they have worked for so far and all they will continue to work for from now on will have to be spent to pay their defense attorneys' fees and the award of compensatory and punitive damages to Dr. Cordero (the DeLanos have already been billed more than $16,500 by their bankruptcy lawyer just trying to avoid the production of incriminating documents to Dr. Cordero; Martha Stewart spent over $1million on her legal defense alone, without including fines, and still ended up in prison and then wearing an ankle bracelet-. Is that an acceptable

prospect for one building up his or her career, raising a family, or approaching retirement?

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

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

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

VII. Relief requested

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

    a) Reconsider its decision and order of September 13, rescind it, and refer to the Judicial Conference under 28 U.S.C. §753(c) for investigation Reporter Mary Dianetti and her

refusal to certify the reliability of the transcript of the March 1 evidentiary hearing in Bankruptcy Court concerning the DeLanos' motion to disallow; and to that end, submit to the Conference copies of his July 18 motion and the other three motions before it of June 20, July 13, and August 23 that describe its context (¶12 above) as well as the record transmitted to it by the Bankruptcy Court[2];

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

c) Transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 this appeal together with the three pending motions (¶12 above) as well as *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY, to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury by a judge unfamiliar with either case and unrelated and unacquainted with any of the parties or judicial or administrative officers;

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

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

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

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

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

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

1) Where a court reporter rendered her transcript unreliable by refusing to certify that it would not be incomplete, inaccurate, and the result of tampering influence, and the appellant moved the court to refer the reporter to the Judicial Conference of the United States for investigation and replacement; and the reporter did not object to such action by the court:

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

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

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

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

Dated: September 20, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

CERTIFICATE OF SERVICE

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

I. DeLano Parties

Ms. Mary Dianetti
612 South Lincoln Road
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Christopher K. Werner, Esq.
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2400 Chase Square
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tel. (585)232-5300; fax (585)232-3528

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

II. Pfuntner Parties (02-2230,WBNY)

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
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tel. (585) 263-5812; fax (585) 263-5862

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

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

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

DECISION AND ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

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

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

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

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

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 14, 2005.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

DECISION AND ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 17, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES PFUNTER,

Plaintiff,

-vs-

MOTION SCHEDULING ORDER

ROCHESTER AMERICANS HOCKEY CLUB, INC. and M&T BANK,

03-CV-6021

Defendants and

RICHARD CORDERO,

Defendant/Appellant,

KENNETH W. GORDON, as Trustee in Bankruptcy for PREMIER VAN LINES, INC.

Defendant/Appellee.

FILED
03 JAN 22 AM 11:12
U.S. DISTRICT COURT
W.D.N.Y. ROCHESTER

On January 17, 2003, the Appellee/Trustee filed a motion to dismiss defendant Cordero's appeal from the Bankruptcy Court. All responding papers relevant to this motion must be filed with the Court by February 14, 2003.

When all papers have been submitted, the Court will review them to determine if argument is necessary and if so, the parties will receive notice of the argument date.

IT IS SO ORDERED.

DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

Dated: January 22, 2003
Rochester, New York

#4

C:1274 J. Larimer's order of 1/22/3 requiring Dr. Cordero to respond to Tr. Gordon's dismissal motion by 2/14/3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Cordero

Plaintiff(s)

v. 6:03-cv-06021

Gordon

Defendant(s)

PLEASE take notice of the entry of an ORDER filed on 1/22/03, of which the within is a copy, and entered 1/22/03 upon the official docket in this case. (Document No. 4 .)

Dated: Rochester, New York
January 22, 2003

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:
Richard Cordero
Kenneth W. Gordon, Esq.

FILED
U.S. DISTRICT COURT
W.D.N.Y. ROCHESTER

2003 JA 24 PM 4:47

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO,

Appellant,

-vs-

KENNETH GORDON, TRUSTEE,

Appellee.

03-CV-6021

ORDER

Appellee has filed a motion to dismiss this appeal and a motion scheduling order was issued on January 22, 2003. Prior to issuing the motion scheduling order, an order setting a briefing schedule was filed on January 16, 2003. In view of the need to address the motion to dismiss before the appeal proceeds further, the January 16, 2003 order is hereby vacated.

All dates in the January 22, 2003 motion scheduling order remain in full force and effect. After the Court has ruled on the pending motion to dismiss, it shall set any necessary briefing schedule.

SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 24, 2003

#5

C:1276 J Larimer's order of 1/24/3 vacating order scheduling Dr. Cordero's appellate brief so as to rule on dismissal mtn

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Cordero

Plaintiff(s)

v. 6:03-cv-06021

Gordon

Defendant(s)

PLEASE take notice of the entry of an ORDER filed on 1/24/03, of which the within is a copy, and entered 1/27/03 upon the official docket in this case. (Document No. 5 .)

Dated: Rochester, New York
January 27, 2003

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:
Richard Cordero
Kenneth W. Gordon, Esq.

List of Orders

written by District Judge David G. Larimer, WDNY,
in *Cordero v. Trustee Gordon, - v. Palmer,* and - *v. DeLano*
showing a pattern of disregard for the law, gross mistakes of facts,
and laziness that denies due process; as of July 21, 2006
by
Dr. Richard Cordero

A. In *Cordero v. Trustee Gordon*, no. 03cv6021, WDNY (dkt. at A:458)

(cf. i. Letter of **Bankruptcy Court** Case Administrator Karen S. Tacy of **January 14**, 2003, **to** Dr. **Cordero** setting January 27 as the due **date** for **filing** his **designation of items** in his appeal from Judge Ninfo's dismissal of his cross-claims against Trustee Kenneth Gordon in *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, (dkt. at A:1551), at the hearing on December 18, 2002 ..... C:1107

1. District Judge David G. **Larimer's** scheduling order of **January 16**, 2003, in *Cordero v. Trustee Gordon,* no. 03cv6021L, WDNY, setting a **deadline 20 days** hence for Dr. **Cordero to file** his appellate **brief**; however, the record at that time consisted only of his notice of appeal (A:153), his designation of items was not even due yet, and the transcript had been requested but Court Reporter Mary Dianetti had not yet filed it either (FRBkrP 8006-8007; ToEC:47>Comment)..... C:1108

2. District Judge **Larimer's** scheduling order of **January 22**, 2003, stating that Dr. **Cordero's response** to Trustee **Gordon's** January 17 **motion** to dismiss his appeal must be filed with the District Court by February 14, 2003; thus showing that: C:1274

   a. Judge Larimer scheduled on January 16 Dr. Cordero's appellate brief before Trustee Gordon filed his motion on January 17;

   b. hence, the filing of that motion had no bearing whatsoever on either the unwarranted transfer of the incomplete record from Bankruptcy Court to District Court on January 14 or the Judge's January 16 brief scheduling order, not to mention that under FRBkrP 8007(c) the record could only be transferred at the request of a party after the latter's designation of the parts to be transferred and such request was neither made by Trustee Gordon, nor recorded by the Bankruptcy Court, nor notified to Dr. Cordero; and

   c. in light of subsequent actions by Bankruptcy Reporter Dianetti and the Bankruptcy Court as well as decisions by District Judge Larimer, the transfer occurred as a coordinated maneuver between those

parties and Judge Larimer to require Dr. Cordero to file his appellate brief before he had an opportunity to receive the transcript of the December 18 hearing and take into account in writing such brief the transcript of Judge Ninfo's biased statements and disregard for the law at the December 18 hearing.

3. District Judge **Larimer's** order of **January 24**, 2003, in ***Cordero v. Trustee Gordon***, no. 03-CV-6021L, **vacating** the **January 16** order, which scheduled Dr. Cordero's appellate brief, "in view of the need to address Trustee Gordon's motion to dismiss before the appeal proceeds further", an order that was entered only at Dr. Cordero's instigation after his calling the District Court earlier on January 24 and requesting of Clerk Brian that he bring to Judge Larimer's attention that if Trustee Gordon's motion, which had no return date, let alone a date for Judge Larimer to rule on it, was granted and the case dismissed, Dr. Cordero would have been required to research and write his appellate brief for nothing.....C:1276

4. District Judge **Larimer's** decision and order of **March 12**, 2003, in ***Cordero v. Trustee Gordon*** granting the Trustee's motion to dismiss Dr. Cordero's notice of appeal as untimely; a decision that Judge Larimer wrote without taking into account, let alone discussing, any of the detailed legal and factual arguments that Dr. Cordero had developed in his February 12 brief (A:158) in opposition to the Trustee's motion to dismiss, but where the Judge instead made gross mistakes of fact (A:1536§1, 1655¶50) A:200

5. District Judge **Larimer's order** of **March 27**, 2003, in ***Cordero v. Trustee Gordon*** denying in all respects but without stating any reason at all Dr. Cordero's motion for rehearing of the grant of Trustee Gordon's motion to dismiss the notice of appeal.....A:211

B. In *Cordero v. Palmer*, no. 03mbk6001, WDNY (dkt. at A:462)

6. District Judge **Larimer's** order of **March 11**, 2003, in ***Cordero v. Palmer*** **accepting** Judge **Ninfo's recommendation not to enter against** David **Palmer the default** judgment applied for by Dr. Cordero in his application of December 26, 2002 (A:290); and instead requiring the conduct of "an inquest concerning damages before default judgment is appropriate", without providing any legal basis whatsoever for any such "inquest", or reading his peer's recommendation carefully so as not to make gross mistakes of fact (A:1324§B, 1340¶54, 1367¶¶130-131), or even acknowledging the filing of Dr. Cordero's March 2 motion (A:311, 312) in favor of entering such default judgment, where Dr. Cordero discussed FRCivP 55 as its basis and noted that Palmer had been defaulted by Bankruptcy Clerk Paul Warren back on February 4 (A:303) A:339

7. District Judge **Larimer's** order of **March 27**, 2003, in ***Cordero v. Palmer***,

no. 03-MBK-6001L, **denying,** again in all respects and not only **without** providing any legal basis, but also **without** engaging in **any discussion at all,** Dr. Cordero's March 19 motion for rehearing (A:342) of the Judge's March 11 decision denying entry of default judgment against David Palmer, which indicates that Judge Larimer disposed of Dr. Cordero's briefs and motions without bothering even to read them, despite being required to read them (28 U.S.C. §157(c)(1); cf. A:1655¶¶51-53), a pattern confirmed by his lazy and perfunctory orders in *DeLano* A:350

C. In *Cordero v. DeLano*, no. 05cv6190, WDNY (dkt. at Pst:1181)

(cf. ii. Dr. **Cordero**'s letter of **April 18**, 2005, **to** Bankruptcy Court **Reporter** Mary **Dianetti** requesting that she **state** "the number of stenographic packs and the number of folds in each pack that you used to record that hearing and that you will be using to prepare the transcript" and on that basis indicate the cost of transcribing her own recording of the evidentiary hearing in *In re DeLano*, no. 04-20280, WBNY (dkt. at D:496) on March 1, 2005, of the motion of Debtors David Gene and Mary Ann DeLano to disallow Dr. Cordero's claim against Mr. DeLano, whom Dr. Cordero had brought (A:82, 87) into *Pfuntner v. Trustee Gordon et al*. (i above) as a third-party defendant.....Add:681)

(iii. Cover letter of **Bankruptcy Court** Case Administrator Karen S. Tacy of **April 22**, 2005, **to** Dr. **Cordero** accompanying her **transmittal** forms **to** the **District Court** of his appeal from the disallowance by Bankruptcy Judge John C. Ninfo, II, of his claim in *DeLano* and informing him that the District Court Civil Case Number for *Cordero v. DeLano* is 05cv6190L (L for District Judge David G. Larimer).....Add:686)

(iv. **Bankruptcy Court** transmittal form of **April 21**, 2005, addressed **to District** Court **Clerk** Rodney C. Early; marking as **transmitted** Dr. Cordero's April 9 "**Notice** of Appeal" (D:1) and April 18 "Statement of Issues and **Designated Items** of Appellant(s)" (Di); while marking as missing documents the "Statement of Issues and/or Designated items of Appellee(s)" .....Add:687)

8. District Judge **Larimer's** order of **April 22**, 2005, informing Dr. **Cordero** that his appeal was docketed on that date and that he is **scheduled** "to file and serve his **brief** within twenty **(20) days** after entry of this order on the docket".....Add:692

   a. whereby again (¶2 above) in a coordinated maneuver with the Bankruptcy Court, which once more violated FRBkrP 8007 by transmitting an incomplete record that did not even include the DeLanos' statement or designation,

b. Judge Larimer required on April 22 Dr. Cordero to file his appellate brief by a date certain before Reporter Dianetti had even had a chance to respond to his April 18 letter concerning the transcript, thus ensuring that Dr. Cordero would not be able either to take it into account when writing his brief or incorporate it in the record for any subsequent appeal to the Court of Appeals or the Supreme Court, and

c. thus protecting Judge Larimer's peer, namely, Judge Ninfo, who sits downstairs in the same small federal building so propitious for the development of a web of personal relationships (Stat. of Facts 4¶4 et seq.), from the transcript becoming available

d. given that such transcript would contain:

   1) not only incriminating evidence of Judge Ninfo's bias and disregard for the law at the March evidentiary hearing (Pst:1255, 1266§§E.1.-e),

   2) but also the testimonial evidence provided by Mr. DeLano, the only witness to take the stand and the only source of evidence after he (D:313, 325) and Judge Ninfo (D:327) denied Dr. Cordero *every single document* that he had requested (D:287, 317) to rebut the motion to disallow his claim (D:218; cf. Pst:1257¶¶4-5) against Mr. DeLano (cf. Pst:1259¶9), who under examination by Dr. Cordero made statements corroborating the latter's contentions on that claim (Pst:1281§d),

   3) as well as the account of the events at the hearing (Pst:1288§§e-f) showing that the DeLanos' motion to disallow was a subterfuge supported by Judge Ninfo in order to disallow Dr. Cordero's claim and thereby strip him of standing to participate in *DeLano* before he could prove that the DeLanos had engaged in concealment of assets (D:193, 370§C) as part of a bankruptcy fraud scheme supported by Judge Ninfo and other members of the web of personal relationships;

e. so that Judge Larimer, the Bankruptcy Court, and Reporter Dianetti tried to suppress the transcript lest it reveal the evidentiary hearing as a process-abusive sham! and expose Judge Ninfo as a biased judicial officer involved in wrongdoing (cf. Pst:1290§§g-j)…just as they had tried to do in connection with the transcript of the hearing of December 18, 2002 (¶¶1-2 above), and as Judge Larimer continued trying in his orders following that of April 22, 2005 (see below). (Cf. under 18 U.S.C. §1961(5) of the Racketeer Influenced and Corrupt Organization Act, two predicate acts committed within 10 years are sufficient to constitute a "pattern of racketeering activity".)

9. District Judge **Larimer's** order of **May 3**, 2005, **rescheduling** Dr. Cordero's appellant's **brief for June 13** without making any reference to, much less discussing, any of Dr. Cordero's legal and practical arguments (Add:695) for not scheduling the brief until after the filing of the transcript, whose preparation was not yet even in sight due to Reporter Dianetti's failure to provide the requested information (C:1155-1165) Add:831

10. District Judge Larimer's rescheduling order of May 17, 2005, pretending that "Appellant requested additional time within which to file and serve his brief", and requiring that "Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy court is filed with the Clerk of the Bankruptcy Court", and thus without referring to or discussing Dr. Cordero's arguments (Add:836) for the Judge to comply with FRBkrP 8007 .....Add:839

11. District Judge **Larimer's** order of **September 13**, 2005, stating that Dr. **Cordero's** motion (Add:911) "to **refer** a bankruptcy court **reporter** to the Judicial Conference **for** an **"investigation"** is **denied in all respects**" because "The prolix submissions might lead one to believe that this is a significant problem. It is not. It is a tempest in a teapot" and with nothing more, let alone a legal argument to justify as "a tempest in a teapot" Reporter Dianetti's refusal to certify, as requested by Dr. Cordero, that her transcript would be accurate, complete and free of tampering influence (C:1163-1165), to which Dr. Cordero objected as an impairment of the transcript's reliability and a self-indictment of her professional responsibility (28 U.S.C. §753(a) 3rd¶), the Judge went on to order that "The matter must be resolved as follows", where he required Dr. Cordero to request in writing the Reporter to prepare the transcript because he "has no right to "condition" his request in any manner" (but see Add:1004§IV), and prepay her fee of $650.....Add:991

12. Judge **Larimer**'s order of **October 14**, 2005, a) stating that "The motion for reconsideration [Add:993] is in all respects denied", with not a single argument indicating that the Judge had even read it or noticed that it was returnable on November 18, whereby his premature order deprived the other parties of the right to write a paper or be heard on it, and revealed that he assumed or knew that they would not exercise such right and that even if they did, it would not matter because he had already predetermined that the motion was to be denied; and b) then **directing** Dr. Cordero to **request** the **transcript within 14 days** and pay the $650 fee lest he be found to have failed to perfect his appeal and have it dismissed.....Add:1019

13. District Judge Larimer's order of October 17, 2005, "den[ying] in their entirety" Dr. Cordero's three pending motions [Add:851, 881, 951] but referring to not even one of his legal arguments if only to show that the Judge had bothered to read the motions before expediently getting them out of the way with once more the lazy and conclusory fiats that "there is no basis in

law to support such relief", "these motions are wholly without merit", and "it completely lacks merit" Add:1021

14. District Judge **Larimer's** order of **November 21**, 2005, a) granting in part Dr. Cordero's November 15 motion [Add:1081] as if "Appellant requests an extension of time to file his brief", rather than requests the District Court to comply with the FRBkrP on transcript docketing, appeal entering, and brief scheduling; b) confirming, as requested by Dr. Cordero, that **"**briefs are deemed filed the day of mailing"; and c) stating that "the remainder of the motion is denied" because "the appeal was docketed in April 2005 and all parties were notified…[and] it now appears that the record on appeal is complete", whereby the Judge implicitly admitted that the record was incomplete when he issued his April 22 order *seven months earlier!* (Add:692) scheduling Dr. Cordero to file his brief within 20 days (cf.Add:695, 836) Add:1092

15. District Judge **Larimer's** order of **December 19**, 2005, stating that **"**Appellant's motion is **denied in all respects"** concerning Dr. Cordero's December 7 motion (Add:1097) to withdraw *DeLano* and *Pfuntner* from Bankruptcy Court and nullify Judge Ninfo's order [Add:1094] **denying** Dr. Cordero's motion to **revoke** [Add:1038] due to fraud Judge Ninfo's order of confirmation [Add:941] of the DeLanos' plan [D:59]; and b) Judge Ninfo's order **confirming** [Add:941] such plan despite the evidence that the DeLanos concealed assets (Add:1055§B, 1064) as part of a bankruptcy fraud scheme (Add:1095) Add:1155

16. District Judge **Larimer's** order of **January 4**, 2006, **denying** Dr. Cordero's **request** "that the Addendum in Support of Appellant's Brief **be filed electronically**…" because it "exceeds 1,300 pages. Scanning this lengthy document into the system would be very time consuming and unnecessary", without mentioning that the Addendum only runs from page Add:509 to 1155 and has ranges of page numbers reserved, i.e. Add:657-680, 697-710, 753-770, 846-850, etc., so that its actual page count is less than 590; and that the transcript of the evidentiary hearing on March 1, 2005, had been provided by Reporter Dianetti on paper as well as in a digital, PDF file on a CD at the request of Dr. Cordero, who in turn provided a copy of that file (Tr.1 et seq.) to the Judge together with PDF files of his appellate brief (Pst:1231), the Designation of Items (D:1 et seq.), and the Addendum (Add:509 et seq.), so that there was no need to do any scanning at all, which shows that Judge Larimer was disingenuous in disregarding and misrepresenting the facts (cf. Add:839, 925¶¶37-38) to the end of making those incriminating documents unavailable publicly on the World Wide Web, i.e., the Internet, through PACER (Public Access to Court Electronic Records) Pst:1214

(cf. v. List of Hearings and Decisions presided over or written by Judge Ninfo, in *Pfuntner* and *DeLano*, as of May 10, 2006 (D:496; Add:531; Pst:1181)] ..... C:1110)

Blank

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

January 8, 2006

[Sample of letters to the Judicial Council, 2nd Cir.]

Circuit Judge Dennis Jacobs
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007-1561

Dear Judge Jacobs,

I am addressing you, as member of the Judicial Council of the Second Circuit, so that you may bring to the attention of the Council two district local rules and cause it to abrogate them by exercising its authority to do so under 28 U.S.C. §§332(d)(4) and 2071, the latter providing thus:

> **§ 2071. Rule-making power generally**
>
> (a) The Supreme Court and **all courts** established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules **shall be consistent with Acts of Congress and rules of practice and procedure** prescribed under section 2072 of this title.
>
> (c)(1)**A rule of a district court** prescribed under subsection (a) shall remain in effect unless **modified or abrogated by the judicial council** of the relevant circuit. (emphasis added)

In question is Rule 5.1(h) of the Local Rules of Civil Procedure adopted by the U.S. District Court, WDNY. (pages i-iii below) It requires over 40 discrete pieces of factual information to plead a claim under the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. §§1961-68. By requiring unjustifiably detailed facts to file the claim, Rule 5.1(h) is inconsistent with the notice pleading provision of FRCivP 8. Hence, in adopting it, the Court contravened and exceeded its authority under the enabling provision of FRCivP 83. (1-4).

It is suspicious that the Court has singled out RICO to raise an evidentiary barrier before discovery has started under FRCivP 26. The suspicion is only aggravated by the series of acts of District Court officers of disregard for the law, the rules, and the facts so consistent with those of the Bankruptcy Court, WBNY, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. (4-12) These acts include the efforts to keep out of the record on appeal a transcript −cf. the secrecy fostered by Local Rule 83.5 banning recording devices in "the Court and its environs" (iv; 3¶6)− of an evidentiary hearing used to eliminate from a bankruptcy case a creditor who was inquiring why the bankrupt bank officer with 39 years' experience is allowed not to account for over $670,000 and a trustee to have over 3,909 *open* cases. (12-19) The evidence leads to conclude that the District Court devised Rule 5.1(h) as a preemptive attack to deter and impede the filing of any RICO claim so that, with the aid of Rule 83.5, no evidence collection through recording or discovery may expose a bankruptcy fraud scheme and the schemers.

Therefore, I respectfully request that **(1)** you bring the attached Statement and CD before the Council so that it may abrogate Rules 5.1(h) and 83.5; **(2)** investigate those District and Bankruptcy Courts for supporting a bankruptcy fraud scheme and the schemers; and **(3)** report this case to the Attorney General under 28 U.S.C. §3057(a). Meantime, I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

List of members of the Judicial Council, 2nd Circuit

to whom were sent the letters of January 8, 2006, and
the statement requesting the abrogation of WDNY
local rule 5.1(h) on filing a case under RICO and
local rule 83.5 prohibiting cameras and other devices, because
inconsistent with FRCP and supportive of a bankruptcy fraud scheme

by

Dr. Richard Cordero

Madam Justice **Ginsburg**
Circuit Justice for the Second Circuit
The **Supreme Court** of the U.S.
1 First Street, N.E.
Washington, D.C. 20543
tel. (202)479-3000

Circuit judges addressed individually:

The Hon. Jose A. **Cabranes**

The Hon. Guido **Calabresi**

The Hon. Dennis **Jacobs**

The Hon. Rosemary S. **Pooler**

The Hon. Chester J. **Straub**

The Hon. Robert D. **Sack**

U.S. Court of Appeals
for the Second Circuit
Member of the Judicial Council
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District judges:

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445 Broadway, Suite 330
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The Hon. Edward R. **Korman**
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The Hon. Robert N. **Chatigny**
U.S. District Court, for the District of **Connecticut**
Richard C. Lee U.S. Courthouse
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The Hon. William **Sessions**, III
U.S. District Court for the District of **Vermont**
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Burlington, VT 05402-0928
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

...

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

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).

(2) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 83.5

CAMERAS AND RECORDING DEVICES

(a) No one other than officials engaged in the conduct of court business and/or responsible for the security of the Court shall bring any camera, transmitter, receiver, portable telephone or recording device into the Court or its environs without written permission of a Judge of that Court.

Environs as used in this rule shall include the Clerk's office, all courtrooms, all chambers, grand jury rooms, petit jury rooms, jury assembly rooms, and the hallways outside such areas.

(b) The Presiding Judge may waive any provision of this rule for ceremonial occasions and for non-judicial public hearings or gatherings.

RULE 16.2

ARBITRATION

(a) **Purpose and Scope**. This rule governs the consensual arbitration of civil actions as provided by 28 U.S.C. § 651 *et seq*. Its purpose is to promote the speedy, fair and economical resolution of controversies by informal procedures.

(g) **Arbitration Hearing: Conduct of Hearing**.

(7) **Transcripts**. A party may cause a transcript or recording to be made of the hearing at its expense but shall, at the request and expense of an opposing party, make a copy available to that party.

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

January 7, 2006

STATEMENT

To the Judicial Council of the Second Circuit

on how Rule 5.1(h) of the Local Rules of Civil Procedure of the U.S. District Court, WDNY,[1] requires exceedingly detailed facts to plead a RICO claim so that it contravenes FRCivP 8 and 83 and should be abrogated, and

how Rules 5.1(h) and 83.5 constitute a preemptive attack on any RICO claim that could expose the District and Bankruptcy Courts' support for a bankruptcy fraud scheme and the schemers

by

Dr. Richard Cordero

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A. Judge Ninfo and the trustees protected Mr. DeLano, a bank officer who despite his 39 years' experience went bankrupt, from having to produce documents that could expose his concealment of assets and thereby induce Mr. DeLano to enter into a plea bargain where he would incriminate top schemers in the bankruptcy fraud scheme 1295

B. Judge Larimer supported the cover up by trying repeatedly to prevent Dr. Cordero from obtaining the transcript and by denying also *every single document* that he requested, thus protecting from exposure the DeLanos as well as the bankruptcy fraud scheme and the schemers 1303

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[1] These Local Rules can be downloaded from the Court's website at http://www.nywd.uscourts.gov/; they are also contained on the CD attached hereto, which also includes the documents referred to between parentheses.

I. Local Rule 5.1(h) contravenes FRCivP 8 and 83

1. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that "each averment of a pleading shall be simple, concise, and direct". For its part, FRCivP 83(a)(1) provides that "A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and §2075". As stated in the Advisory Committee Notes, 1985 Amendment to Rule 83, local rules shall "not undermine the basic objective of the Federal Rules", which Rule 84 sets forth as "the simplicity and brevity of statement which the rules contemplate". Thereby the national Rules, as indicated in the 1995 Amendments to Rule 83, aim at preventing that a local rule with "the sheer volume of direc-tives may impose an unreasonable barrier". In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (1st Cir. 2000) stated that "Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose".
2. Yet such barrier is precisely what the U.S. District Court, WDNY, erects with its Local Rule 5.1(h) (pages ii-iv above) [C:1287], which requires a party to provide over 40 discrete pieces of factual information to plead a claim under the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. §§1961-68 (1970, as amended). Such burdensome requirement contravenes the statement of the Supreme Court that to provide notice a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)). On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

3. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is "relaxed in situations where requisite factual information is peculiarly within defendant's knowledge or control", *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). Actually, Rule 9(b) provides that "Malice, intent, knowledge, and other condition of mind of a person may be averred **generally**" (emphasis added). So even in fraud cases the purpose of the complaint remains that of putting defendant on notice of the claim so that he may know what is at stake and decide how to answer; it does not change into a pretext for the court to prevent the filing of the claim or dismiss it on the pleadings.
4. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances", by the absolute and strict standard of "facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party's RICO claim". To require "facts…in detail and with specificity" is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of "allegations and other factual contentions…likely to have evidentiary support after a reasonable opportunity for further investigation or discovery". Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that "We recognize that the degree of particularity should be determined in light of such circumstances as whether the plaintiff has had an opportunity to take discovery of those who may possess knowledge of the pertinent facts". By contrast, Local Rule 5.1(h) provides no opportunity for discovery, but instead requires setting forth facts with "detail and specificity us[ing its] numbers and letters" so as to facilitate spotting any "failure" to comply, which would "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a

directive".

5. It is suspicious that the District Court singles out RICO and blatantly impedes the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting an evidentiary barrier at the pleading stage that so flagrantly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose". But Local Rule 5.1(h) defeats that purpose so that it incurs the sanction stated in *Weibrecht v. Southern Illinois Transfer, Inc.*, 241 F.F3 875, 879 (7th Cir. 2001) "to the extent a local rule conflicts with a federal statute, the local rule must be held invalid".

6. For its part, District Local Rule 83.5 banning cameras and recording devices anywhere in "the Court and its environs" (iv above) [C:1290] defeats the public policy expressed by the Judicial Conference "to promote public access to information", which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF, 28 U.S.C. §1914. Defying logic, such devices may be allowed "for non−judicial hearings or gatherings", that is, for inconsequential activities in terms of the business of the Court as well as for the "informal procedures" of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits "a transcript or recording to be made" as a matter of course (iv above). However, a litigant is forbidden to bring a recording device to make a transcript of a 'formal proceeding' where matters that could support a RICO claim would be formally discussed…for that would complicate the District Court's unlawful effort to deprive him of the transcript and prevent him from demonstrating by comparison the dismal

quality of the official transcript. This is illustrated in this case (12§B & ¶52 below) and shows the insidious purpose of Local Rule 83.5.

7. Likewise, the sinister purpose behind Local Rule 5.1(h) is revealed by the evidence that court officers of both the District and the Bankruptcy Court, WBNY, together with trustees and third parties, have engaged in so long a series of mutually reinforcing acts of disregard for the law, the rules, and the facts as to form a pattern of non-coincidental, intentional, and coordinated wrong-doing (4§II below). They all of do business in the same small federal building in Rochester, NY, so propitious for the formation of a clique, that houses those Courts as well as the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI. Their pattern of conduct shows that…

II. Rule 5.1(h) is the result of the abusive exercise by the District Court of its local rule-issuing power to preemptively strike down any potential RICO claim that through the collection of evidence, whether by recording devices or discovery, could expose a bankruptcy fraud scheme and the schemers

8. The facts presented here lead (5§A below) from the Bankruptcy Court, WBNY, Judge John C. Ninfo, II, presiding, and its misuse of an evidentiary hearing in a process-abusive stratagem to eliminate Dr. Richard Cordero, a creditor, from *In re DeLano*, docket no. 04−20280, by disallowing his claim before he could obtain certain documents that would expose a bankruptcy fraud scheme and the schemers, (12§B below) to the repeated efforts by the District Court, Judge David G. Larimer presiding, to prevent Dr. Cordero from obtaining the incriminating transcript (see attached CD) of that hearing for his appeal, namely, *Cordero v. DeLano*, docket no. 05cv6190L, WDNY, and to impede public access to the transcript and to the appeal's supporting documents.

A. Judge Ninfo and the trustees protected Mr. DeLano, a bank officer who despite his 39 years' experience went bankrupt, from having to produce documents that could expose his concealment of assets and thereby induce Mr. DeLano to enter into a plea bargain where he

would incriminate top schemers in the bankruptcy fraud scheme

9. Mr. David and Mrs. Mary Ann DeLano are not average debtors. Mr. David DeLano has worked in financing for 7 years and as an officer at two banks for 32 years: 39 years professionally managing money!…and counting, for he is still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), as a manager in credit administration (Transcript page 15, line 17 to page 16, line 15=Tr:15/17-16/15). As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, Mr. DeLano is a member of a class of people who should know better than to go bankrupt.
10. As for Mrs. Mary Ann DeLano, she was a specialist in business Xerox machines. As such, she is a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines.
11. Hence, the DeLanos are professionals with expertise in borrowing, dealing with bankruptcies, and learning and applying technical instructions. They must be held to a high standard of responsibility…but instead they were allowed to conceal assets because they know too much.
12. Indeed, because of his very long career in finance and banking, Mr. DeLano has learned not only how borrowers use or abuse the bankruptcy system, but also and more importantly, how trustees and court officers handle their petitions so that rightfully or wrongfully they are successful in obtaining bankruptcy relief. Actually, Mr. DeLano works precisely in the area of bankruptcies at M&T Bank, collecting money from delinquent commercial borrowers and even liquidating their companies (Tr:17.14-19). As a matter of fact, he was in charge of the defaulted loan to Premier Van Lines, a storage company that filed for bankruptcy, *In re Premier Van Lines*, docket no. 01-20692, WBNY, (*Premier*), and gave rise to *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY, (*Pfuntner;* Addendum to the Designated Items, page 531 et seq.=Add:531), and to the claim of Dr. Cordero against Mr. DeLano (Add:534/after entry 13;

891/fn.1). Both cases were brought before Judge Ninfo.

13. In preparation for their golden retirement, the DeLanos too appeared before Judge Ninfo by filing a joint voluntary bankruptcy petition on January 27, 2004 (Designated Items in the Record, pages 27-60=D:27-60; D:496) under 11 U.S.C. Chapter 13 (references to §# are to Title 11 unless the context requires otherwise). They listed 21 creditors, 19 as unsecured, including Dr. Cordero (references to Schedules (Sch:) and other petition parts are to D:27/…; here D:27/Sch:F).

14. Based on what and whom Mr. DeLano knew, the DeLanos could expect their petition to glide smoothly toward being granted (D:269¶¶37-39)…except that a most unforeseen event occurred: a creditor, Dr. Cordero, went through the trouble of examining their petition. Realizing how incongruous their declarations in it were, he invoked §1302(b) and §704(4) and (7) to request a financial investigation of the DeLanos and documents of their in- and outflow of money. (D:63) That set off the alarms, for court officers and trustees were aware that Mr. DeLano could not be allowed to go down on a charge of bankruptcy fraud since he knows about their intentional and coordinated disregard for the law, the rules, and the facts in handling bankruptcy petitions, that is, of their participation in a bankruptcy fraud scheme. In other words, they are all in the same boat and if Mr. DeLano sinks, they plummet. Hence, the schemers closed ranks to protect Mr. DeLano from being investigated or having to produce incriminating documents.

15. Yet even a person untrained in bankruptcy could realize the incongruity of their declarations:

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

    b) but they declared having only $535 in hand or accounts (D:27/Sch:B); yet, they and their attorney, Christopher Werner, Esq., know they can afford to pay $18,005 in legal fees for over a year's maneuvering to avoid producing the documents requested by Dr. Cordero to find the whereabouts of their $291,470 (Add:872-875; 942), not to mention any other concealed assets;

c) indeed, they amassed a whopping debt of $98,092 (D:27/Sch:F), although the average credit card debt of Americans is $6,000, and spread it over 18 credit cards so that no issuer would have a stake high enough to make litigation cost-effective;

d) despite all that borrowing, they declared household goods worth only $2,910 (D:27/Sch:B) …that's all they pretend to have accumulated throughout their combined worklives, including Mr. DeLano's 39 years as a bank officer, although they earned over a *100* times that amount, $291,470, in only the three years of 2001-03…unbelievable!;

e) they also strung mortgages since 1975 through which they received $382,187 (21/Table 1 below) to pay for their home; yet today, 30 years later, they still live in the same home but now owe $77,084 and have equity of merely $21,415 (D:27/Sch:A). *Mindboggling!* (Add:1058¶54)

16. Although the DeLanos have received over $670,000, as shown by even the few documents that they reluctantly produced at Dr. Cordero's instigation, the officers that have a statutory duty to investigate evidence of bankruptcy fraud or report it for investigation not only disregarded such duty (21/Table 2 below), but also refused to require them to produce even statements of their bank and debit card accounts, which can show the flow of their receipts and payments.

17. What has motivated these officers to protect the DeLanos by sparing them production of incriminating documents? (D:458§V) This questions is pertinent because all of them have been informed of the incident at the beginning of *DeLano* that not only to a reasonable person, but all the more so to one charged with the duty to prevent bankruptcy fraud, would have shown that the DeLanos had committed fraud and were receiving protection from exposure: The meeting of their creditors, held pursuant to §341 on March 8, 2004, was attended only by Dr. Cordero. (D:68, 69) Yet, Trustee Reiber's attorney, James W. Weidman, Esq., unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos' having committed fraud, and when he would not reveal what he knew, Mr. Weidman, with the Trustee's approval, rather than let

him examine the DeLanos under oath, as §343 requires, while officially being tape recorded, put an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)

18. Far from Trustee Reiber, Assistant U.S. Trustee Kathleen Schmitt, and U.S. Trustee for Region 2 Deirdre A. Martini investigating this cover up, they attempted or condoned the attempt to limit to one hour Dr. Cordero's examination of the DeLanos at an adjourned meeting (D:70). They must have known that this limitation was unlawful since §341 provides for a *series* of meetings for the broad scope of examination set forth under FRBkrP 2004(b). (D:283) Upon realizing how broadly Dr. Cordero would examine the DeLanos, the officers attempted or condoned the attempt to prevent the examination by not holding the adjourned §341 meeting at all! (D:296, 299§II)

19. Meantime, Dr. Cordero kept asking Trustees Reiber, Schmitt, and Martini to conduct an investigation of the DeLanos and require them to produce certain documents, including the statements of their bank and debit card accounts, that could show their money flows. (D:77, 104, 112) They refused to request those documents. Instead, Trustee Reiber made a request that was pro forma since it concerned documents for only the last 3 years rather than at least 15 years comprised in the period of "1990 and prior Credit card purchases" in which the DeLanos declared 15 times to have incurred their credit card debts. (D:27/Sch:F) Likewise, his request concerned only 8 of their 18 credit card accounts. (D:120, 124) Yet, even those documents the Trustee allowed them to produce with missing pages or not at all! (D:289¶9 & Table I; 373§1)

20. No doubt Trustee Reiber knew that his document request was objectively insufficient to ascertain the flow of money. But as of April 2, 2004, Trustees Schmitt and Martini had allowed him to carry 3,909 *open* cases! (PACER at https:// ecf.nywb.uscourts.gov; D:92§C) All cannot be investigated just to oppose the confirmation of their debt repayment plan, when one is busy collecting the percentage set by law from every payment under a confirmed plan. (D:458§V)

21. While Trustee Reiber went on with his pretense at investigating the DeLanos and the latter

produced only the documents that they wanted, Dr. Cordero filed his proof of claim on May 19, 2004 (D:142-146). Up to then the DeLanos had treated, and for months thereafter continued to treat, Dr. Cordero as a creditor.

22. However, on July 9, 2004, Dr. Cordero filed a statement showing on the basis of even the few documents that the DeLanos had produced at his instigation (D165-188) that they had committed bankruptcy fraud, particularly concealment of assets. So he requested from Judge Ninfo an order for documents that could lead to the whereabouts of the assets. (D:196§§IV-V; 207, 208) Only then did they come up with the idea of a motion to disallow his claim (D:218) as a means to get rid of him before he could expose the bankruptcy fraud scheme and the schemers.

23. Judge Ninfo not only failed to issue the requested order, though he knew its contents and had agreed to issue it (D:217, 232§I), but also maneuvered to prevent even its docketing (D:234§§II & IV) As to the motion to disallow, which the DeLanos filed on July 22, 2004 (D:218), he disregarded without discussion its defects of untimeliness, laches, and bad faith (D:253§§V & VI) as well as the presumption of validity under FRBkrP 3001(f) in favor of a claim with a filed proof (D:256§VII). The Judge also disregarded Dr. Cordero's analysis showing that the motion was an artifice to get rid of him and his requests for documents that could prove the DeLanos' fraud. (D:240§IV, 253§V) Instead, he heard the motion on August 25 and required Dr. Cordero to take discovery of Mr. DeLano in the other case where his claim had originated (D:272/2nd¶; Add:891/ fn.1), in an attempt contrary to law to try it piecemeal within *DeLano* and eliminate Dr. Cordero from both (D:444§§I & II; Add:851). On December 15, 2004, discovery would be closed and the date set for an evidentiary hearing where to introduce the evidence gathered. (D:278¶¶3 & 4)

24. Revealingly enough, Judge Ninfo wrongly identified the case in which Dr. Cordero's claim originated as "Adversary Proceeding in Premier Van Lines (01-20692)", just as Att. Werner had done in his cursory motion (D:218). Had either read Dr. Cordero's proof of claim (D:144), they

could have realized that his claim against Mr. DeLano originated in *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, not in *Premier*. But since they had decided to eliminate him from *DeLano* regardless of his proof, they had not bothered to read it.

25. Further proving that the motion was an artifice, discovery was rigged, for both the DeLanos (D:314) and Judge Ninfo (D:327¶1) unlawfully denied *every single document* that Dr. Cordero requested (D:287§§A & C, 320§II). What a mockery of process! Since Dr. Cordero did not take discovery of any other *Pfuntner* party, 'they had no clue what he could possibly do at the evidentiary hearing' (Tr:122/16-122/11). Hence, to find out in advance, the so-called meeting of creditors was set for and held on February 1, 2005. It was not intended for Dr. Cordero to examine the DeLanos, but rather for them to depose him! The facts prove it.

26. So, after Judge Ninfo issued his order concerning the evidentiary hearing, Trustees Reiber used it as a pretext to claim that it prevented him from holding the adjourned meeting of creditors and that it could only be held after the hearing…since it was a foregone conclusion that at the hearing the claim of Dr. Cordero would be disallowed and he would be stripped of standing to even call for a meeting. (D:301, 302) They were acting in coordination to evade their duty!

27. An appeal to Trustee Martini was never replied to (D:307). On the contrary, Trustee Reiber reiterated his decision not to hold the meeting. (D:311, 316) Dr. Cordero showed in a motion that a Judicial Branch officer could not prohibit the performance by an Executive Branch appointee of a duty imposed by the Legislative Branch. (D:321§III & ¶30.c) The Judge denied the motion summarily, thus displaying again his unwillingness and inability to argue the law. (D:328¶4) Another appeal to Trustee Martini went by without response. (D:330)

28. Eventually Trustee Reiber agreed to hold a §341 meeting, but gave no explanation for his reversal in his letter to Dr. Cordero of December 30, 2004 (D:333). However, on December 15, Judge Ninfo had set the date for the evidentiary hearing of the motion to disallow for March 1, 2005

(D:332). Now such meeting came in handy to find out what Dr. Cordero would do at the hearing.

29. That is why Trustee Reiber allowed Att. Werner to micromanage the meeting. (D:464/4th & 5th¶¶), while refusing again to request statements of the DeLanos' bank and debit card accounts. Even the few mortgage documents that he got the Attorney to agree to produce, he allowed him to produce late, only after Dr. Cordero had reminded the Trustee that they were past due. (D:341) Yet, Att. Werner attempted to avoid production (D:473 & 477), and then produced incomplete (D:342) or objectively useless documents (D:477-491). Then the Judge disallowed the claim (D:3) and the Trustee just stopped answering Dr. Cordero's requests (D:492).

30. For her part, Trustee Schmitt attempted to avoid producing copies of the tapes of the meeting of creditors on February 1, 2005, despite Dr. Cordero's request (D:474), sending instead tapes of a different meeting (D:476). Similarly, although Trustee Reiber wrote that "At the request of Dr. Cordero, I will have court reporter [sic] available as well as having a tape recording made of the meeting" (D:333), when Dr. Cordero requested a copy, Trustee Reiber denied it and told him to buy it from the reporter, preposterously alleging that the latter owns its copyright. But what the reporter produced is work for hire and Dr. Cordero was the reason for the Trustee to hire the reporter.

31. Neither the trustees nor the DeLanos ever intended the meeting of creditors to function as stated in the 1978 Legislative Report for §343: "The purpose of the examination is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge". Rather, it was an opportunity for them to pump information out of Dr. Cordero, just as Att. Weidman had tried to do at the first meeting on March 8, 2004, when he repeatedly asked Dr. Cordero what he knew about the DeLanos having committed fraud. The meeting on February 1, 2005, was another abuse of process, a coordinated charade! (Add:966§B)

32. At the evidentiary hearing on March 1, Judge Ninfo abandoned his duty impartially to take in evidence and behaved as Chief Advocate for Mr. DeLano while the latter was the only witness examined and Dr. Cordero the only one to introduce evidence. Although Mr. DeLano made consistent admissions against self-interest and his own attorney deemed his testimony "a fair statement of his position and facts" (Tr:187/21−25), the Judge arbitrarily dismissed them as made while "confused" (D:16)…a still employed bank officer with 39 years' experience bearing witness to his own actions! (Dr. Cordero's Brief=Br:24§§b-d) Thus he reached the predetermined outcome, with no discussion of the law (Br:37§i), just as in his written decision (D:3), of disallowing the claim and stripping Dr. Cordero of standing to participate in *DeLano* anymore.[2] Dr. Cordero appealed on April 11, 2005 (D:1) and requested the transcript of the sham evidentiary hearing.

B. Judge Larimer supported the cover up by trying repeatedly to prevent Dr. Cordero from obtaining the transcript and by denying also *every single document* that he requested, thus protecting from exposure the DeLanos as well as the bankruptcy fraud scheme and the schemers

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

34. What is more, Judge Larimer repeatedly maneuvered to deprive Dr. Cordero of the transcript of

[2] See in the CD attached hereto Dr. Cordero's Comments of March 18, 2005, against the reappointment to a new term of office of Judge Ninfo as well as his Supplements of August 2 and of September 5, 2005, submitted to the Court of Appeals and to each member of the Judicial Council of the Second Circuit.

the evidentiary hearing on March 1, 2005, where his colleague, Judge Ninfo, disallowed his claim in *DeLano*. This he did by issuing orders with disregard for the rules so as to schedule Dr. Cordero to file his appellate brief by a date by which he, Judge Larimer, knew the transcript would not be ready for Dr. Cordero to use it in writing his brief or make it part of the record.

35. Thus, Bankruptcy Clerk Paul Warren received Dr. Cordero's Designation of Items in the Record on April 21, 2005 (Add:690) and on that same day transmitted an incomplete record to the District Court in violation of FRBkrP 8007. (Add:686-689) In turn, Judge Larimer ordered the next day, April 22, that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". (Add:692) Yet, the copy of Dr. Cordero's letter of April 18 to Reporter Dianetti accompanying the Designation (Add:681) gave notice to the Judge that the Reporter had barely received the original and that no "satisfactory arrangements" with her for the transcript's preparation and payment, as required under FRBkrP 8006, could have been made. There was not even a date in sight for the transcript's completion, let alone the record's. (Add:1007§V)

36. Judge Larimer issued that April 22 scheduling order as well as those of May 3 and 17 (Add:831, 839; cf. 695, 836), although he had no jurisdiction to issue any orders in the case because the record was incomplete under FRBkrP 8006 and 8007(b), consisting only of the Notice of Appeal and the Designation of Items, so that the transfer of the record from Judge Ninfo's court to him had been unlawful. By disregarding such clear contravention of the Rules, Judge Larimer showed contempt for due process of law and his intent to deprive Dr. Cordero of the transcript.

37. When due to Dr. Cordero's objections, those unlawful orders failed to prevent his eventual receipt of the transcript, Bankruptcy Court Reporter Mary Dianetti entered the scene. She refused to agree to certify that her transcript of her own stenographic recording of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero complained that her refusal rendered its reliability suspect and moved on July

18 for her referral for investigation to the Judicial Conference under 28 U.S.C. §753. (Add:911)

38. Faced with that objective basis for 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 the Reporter and investigate her refusal. Instead, Judge Larimer disregarded Dr. Cordero's factual and legal analysis and issued another lazy "The motion is in all respects denied", stating that if Dr. Cordero wanted the transcript, he had to request it from Reporter Dianetti (Add:991). He thus revealed his intention to determine the appeal based on a transcript that was suspect before being prepared. By contrast, he refused to request the DeLanos and the trustees to produce documents that they have unjustifiably withheld and that could contribute to establishing the facts, thereby furnishing a just basis for judicial resolution of a controversy. (Add:951, 1022)

39. In his motion of September 20 for reconsideration (Add:993) of that denial, Dr. Cordero pointed out how suspicious it was that although the Reporter could lose her job if referred to the Conference for investigation and replacement, she was so sure that Judge Larimer would not refer her that she did not bother to file even a pink *stick-it* note to object to the initial motion of July 18 (Add:1001§§III & V). The suspicion was only graver because the risk of losing her career as a reporter was particularly heightened since this was the second time that she and Judge Larimer had tried to prevent Dr. Cordero from obtaining a transcript, which they first did in *Pfuntner* in January-March 2003. (Add:922§III, 1011§A) Nevertheless, disregarding once more and without any discussion Dr. Cordero's point of pattern evidence and legal arguments, Judge Larimer simply forced Dr. Cordero in his decision of October 14 to request the transcript from the Reporter and pay her for it lest his appeal be dismissed. (Add:1019, cf. 1025, 1027) Yet, Dr. Cordero's suspicion had been aggravated by the fact that Reporter Dianetti did not object to the motion for reconsideration either! How did the Reporter become so sure that Judge Larimer

would not grant either of Dr. Cordero's motions due to her failure to answer any of them? If she did not care, why did the Judge protect her instead of granting either motion by default?

40. Exactly these facts and questions apply, mutatis mutandis, to Trustee Reiber. He too felt no need to object to Dr. Cordero's motions of July 13, August 23, and September 20 requesting his removal as trustee for the DeLanos for failure to investigate them and obtain documents. (Add:881, 953§I, 1017§e) Did he learn from Judge Larimer that the motions would not be granted by both violating the prohibition on "ex parte meetings", FRBkrP 9003(b), "or other communications concerning a pending…proceeding", Canon 3A(4) of the Code of Judicial Conduct?

41. Moreover, none of the other parties filed an answer to the September 20 motion although they had it for over three weeks before the October 14 and 17 orders were issued. (Add:1019, 1021) Does their conduct constitute further evidence of non-coincidental, intentional, and coordinated acts in support of a bankruptcy fraud scheme? Would they have shown such indifference had this case been before a judge that they did not know at the U.S. District Court, NDNY, in Albany?

42. In neither of his orders did Judge Larimer discuss Dr. Cordero's factual or legal contentions. Instead, he lazily resorted to the catch-all phrase "denied in all respects" to dispatch five motions 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 fall under the condemnation of 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".

43. The arbitrariness of Judge Larimer's decisions is also revealed in that the September 20 motion for reconsideration was returnable on November 18 because on its very first page it "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". (Add:993) Dr. Cordero was not only entitled but also required to make such statement under District Local Rule 7.1 "Service and Filing of Papers". Yet, as prematurely as October 14 the Judge issued his order "denying [it] in all respects". (Add:1019) So he decided over a month too early a motion that was not officially before him. Of course, he failed to explain his rush to deny the motion to reconsider and through it the original motion concerning Reporter Dianetti of July 18 (Add:911), which means that for months he had disregarded it.

44. By rushing to a decision, Judge Larimer deprived the other parties of the opportunity to file their answers. He deprived Dr. Cordero of the opportunity both to know those answers and reply thereto. More significantly, he deprived himself of the opportunity to receive such answers and reply. Thereby he showed that instead of approaching the motion 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 authority. He showed prejudice and bias. (cf. 22/Table 3:Comment on J. Ninfo's order by knee-jerk reaction)

45. Dr. Cordero complied with Judge Larimer's order by requesting the transcript and paying for it. (Add:1031) However, the District Court failed to comply with its duty, for whereas Reporter Dianetti filed her transcript on November 4 with the Bankruptcy Court, which in turn transmitted it "forthwith" that same day from the first floor of the small, 6-story federal building to the District Court upstairs, the latter failed to file it as required under FRBkrP 8007(b). This non-compliance with the Rule caused Dr. Cordero to spend his time, effort, and money to research and write yet another motion on November 15 to move the District Court to comply with its duty to docket the transcript, enter the appeal, and schedule his brief. (Add:1081)

46. When the transcript was finally filed, it was only in the form of "Paper maintained in Clerk's office" (Post Addendum, page 1183, entry23=Pst:1183/entry 23). Yet, Reporter Dianetti

submitted also a digital version as a PDF file and the Bankruptcy Court stated in the *DeLano* docket "Transmittal to U.S. District Court of Transcript…on CD-Rom".(D:508e/entry 145) So it could have been effortlessly uploaded to make it available to the public through PACER. Hence Judge Larimer failed to follow through on his own order that "The copy will be of such quality and in a format for the Court to scan it into the CM/ECF system" (Add:992¶3). Is the failure to do so a recognition of the transcript's substandard quality (¶52 below) or of its incriminating content?

47. In this context, note the Second Circuit Local Rule 32(a)(1) requiring the submission also of a copy in digital format as a PDF file of a brief and "any supplemental material", which even pro se liti-gants are encouraged to apply; and CA2 Local Rule 25 providing for the scanning of any paper document filed with the Court; both of which apply without page count limitation. (Pst:1171) In line with them, Dr. Cordero submitted his appellate brief, his Designated Items, its Addendum, and the transcript, both in paper and as digital, PDF files on a CD-ROM, like the one attached hereto.

48. But that CD was returned to him (Pst:1213). Yet, "The Court clearly established, by General Order dated October 1, 2003, electronic filing procedures applicable to all civil and criminal cases", including "in PDF format…on CD-ROMs" (Pst:1209-10), making them mandatory for all attorneys admitted to WDNY (Pst:1191), and doing so without excluding digital filings on CD-ROMs by non-practicing attorneys, such as Dr. Cordero. What is more, Judge Larimer has formally indicated by elimination that he prefers to receive such filings in digital format rather than paper. (Pst:1211) Disregarding such official and personal choices, Judge Larimer refused to file electronically the Addendum (Pst:1214). While the brief was so filed, he did not even mention in his order of January 4, 2006, Dr. Cordero's PDF files. Instead, he pretended that only the paper version of only the Addendum was available and that it "exceeds 1,300 pages [and]

scanning this lengthy document into the system would be very time consuming and is unnecessary". (id.) However, the Addendum consists of pages xv-xxvii, and 509-1155, and it has page numbers reserved, i.e. 657-680, 697-710, 753-770, 846-850, etc, so that its actual page count is less than 590. How disingenuous of Judge Larimer to disregard and misrepresent the facts! (cf. Add:839, 925¶¶37-38)

49. In that order, he quoted the Court's Administrative Procedure Guide for electronic filing §2(o)(i) (Pst:1203) providing that "[t]he court…may…authorize conventional filing of other documents otherwise subject to these procedures" (Pst:1215), which is totally inapplicable since Dr. Cordero never requested "conventional filing" so that the Judge could not "authorize" it; what "Dr. Cordero …orally requested" was that his PDF files on the CD "be filed electronically" (Pst:1214) Then Judge Larimer added that "pursuant to section 2(o)(i)(8)(c), "[a]ll other documents in the case, including briefs, will be filed and served electronically unless the court otherwise orders"…but this would be a quotation for applying to Dr. Cordero's files the Court's order making electronic filing the rule, were it not dealing with "(8) Social Security Cases"! (Pst:1205) While Judge Larimer could not care less to find out what his own Court's Guide provides, he knows that he must at all cost, even disingenuously, keep the transcript from Dr. Cordero and prevent electronic public access to it, the Designated Items, and the Addendum. Should you and the Judicial Council not be curious to review them on the attached CD and find out why the Judge so fears that those files support Dr. Cordero's contentions that expose a bankruptcy fraud scheme and the schemers?

50. To answer, consider that after filing the transcript, the Judge rescheduled on November 21 the filing of Dr. Cordero's brief, stating that "It now appears that the record on appeal is complete, and no further action pursuant to Fed.R.Bankr.P. 8007 is required" (Add:1093). Thereby he unwittingly admitted both that the record was incomplete when he issued his order of April 22

(Add:692)−

7 months earlier! at a time when there was not even an arrangement for Reporter Dianetti to begin preparing her transcript, let alone file it (Add:681, cf. 686-696, 831-845)− requiring Dr. Cordero to file his brief by May 12, and consequently, that he had violated FRBkrP 8006 and 8007.

51. Judge Larimer showed contempt for the law when he violated those Rules and allowed others to violate them too. Hence, it is reasonable to infer from his refusal to refer Reporter Dianetti to the Judicial Conference (¶37 above) that he was protecting himself and them from revealing such contempt. Nevertheless, the Judicial Council can ascertain his contemptuous attitude by reviewing the quality of work that he accepts or approves from them or produces himself. (22/Table 3 below)

52. Reporter Dianetti's transcript (in attached CD) illustrates this attitude. In it everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so many solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. So the participants at the evidentiary hearing, though professionals, come across in it as a bunch of speech impaired illiterates. Do you speak as they do? Those defects are compounded by the misalignment of *every* page of her PDF version and the ensuing discrepancy between the page numbers of that and the paper version. Her transcript cannot represent the standard of competence under 28 U.S.C. §753 to which the Conference or the Council holds reporters.

53. Thus the Judicial Council too can draw a significant inference from the work of Judges Larimer and Ninfo and the work that they, as chief judges who set the example of attitude and performance in their respective courts, accept from others: They manifest an anything-goes mentality. It is as tolerant of others' substandard performance as it is self-indulgent in their own lazy, sloppy orders. The little pride that they take in their own work reflects itself in their little respect for the rights of others; hence their contempt for due process, which allows them to use transcripts that are an objectively inferior reproduction of court proceedings, such as those of

Reporter Dianetti, as the record on which they determine…your rights, your property claims, and maybe your liberty as a litigant. Do you like it? (Add:626¶86) That mentality has no qualms about either abusing the local rule-issuing power so as to protect them preemptively with Local Rules 5.1(h) and 83.5 from RICO claims or supporting a bankruptcy fraud scheme and the schemers.

III. Conclusion and Relief Requested

54. The brewing influence-peddling scandal in Washington centered on Lobbyist Jack Abramoff shows that officers even at the top of the Legislative and Executive Branches are venal. So why should your peers in the Judiciary be deemed incorruptible? (Add:621§1) The fact is that over $670,000 is unaccounted for in just the one case of the DeLanos, and Trustee Reiber has now more than 3,909 cases and Chapter 7 Trustee Kenneth Gordon had 3,383 as of June 26, 2004, out which 3,382 were before Judge Ninfo (Add:592§A), from whom they can land on appeal before Judge Larimer. Hence, through Local Rules 5.1(h) and 83.5, the District and the Bankruptcy Court cause injury in fact by depriving litigants in general, and Dr. Cordero in particular, of access to RICO to protect their rights, thus forcing them to engage in costly, protracted, and exhausting litigation conducted abusively with the purpose of preventing the exposure of a bankruptcy fraud scheme and the schemers. Will you protect the legally abused or join abusive peers?

55. Therefore, Dr. Cordero respectfully requests that the Judicial Council of the Second Circuit:

a) abrogate Local Rules 5.1(h) and 83.5, and declare RICO claims to be pled like any other;

b) investigate the District and the Bankruptcy Court for supporting a bankruptcy fraud scheme and the schemers, and stay the reappointment of Judge Ninfo until the investigation is done;

c) refer Reporter Dianetti to the Judicial Conference under 28 U.S.C. §753 for investigation of her refusal to agree that her transcript would be complete, accurate, and free from tampering influence, and of her qualification as a reporter in light of the substandard quality of her transcript;

d) refer this Statement together with the evidentiary documents on the CD to U.S. Attorney General Alberto Gonzales under 18 U.S.C. §3057(a), with the recommendation that this case be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with the case and unacquainted with any of the court officers, trustees, or parties directly or indirectly related to it or that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation;

e) inform Dr. Cordero of the action taken.

Dated: January 7, 2006

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Table 1: The DeLanos' mortgages and their unaccounted-for proceeds

Mortgages referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	**Exhibit: page #**	**Amounts of the mortgages**
1) took out a mortgage for $26,000 in 1975;	D:342	$26,000
2) another for $7,467 in 1977;	D:343	7,467
3) still another for $59,000 in 1988; as well as	D:346	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	D:176	59,000
5) owed $59,000 to M&T in 1988;	D:176	59,000
6) another mortgage for $29,800 in 1990;	D:348	29,800
7) even another one for $46,920 in 1993; and	D:349	46,920
8) yet another for $95,000 in 1999	D:350-54	95,000
To buy a home appraised on 11/23/03 at $98,500 (D:27/Sch:A)	Total	$382,187

Table 2: Officers that have disregarded their statutory duty to investigate the DeLano Debtors

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

Table 3

Contempt for the law and litigants' rights shown in the dismal quality of the work produced by Judges Larimer and Ninfo and accepted by them from lawyers and clerks			
	Officer of the court & type of work	**References to work produced or accepted**	**Comment**
1.	Judge Larimer and his orders	Add:692, 831, 839, 991, 1019, 1021, 1092, 1155 Pst:1214	He rarely cites and never analyzes the law or the rules, and never discusses the motions on which he rules, which he dismisses so frequently with a lazy "has no merits and is denied in all respect" , which points to his not even reading them (Add:609§B, 1084§II); when he ventures beyond an offhand dismissal, his orders are sloppy because of grave mistakes of law and fact.

2.	Judge Ninfo and his orders	D:3; 220, 272, 327, 332; Add:719, 725, 729, 731, 741, 749	His orders are equally devoid of legal reasoning and damned by any botched attempt at citing authority (Br:37§i) so that they are conclusory fiats; or worse yet, knee-jerk reactions kicked out before receipt of any answer from the other parties, as shown by the chain of events in Add:1038→1065→1066→1094→1095→1125→ →1126. (cf. ¶44 above)
3.	*Űber*-experienced Trustee Reiber (D:431§C; Add:891/Table)	Add:937-939	He submitted shockingly unprofessional and perfunctory scraps of papers to confirm the DeLanos' debt repayment plan, which Judge Ninfo approved as "the Trustee's Report" (Add:941/2nd ¶; cf. 1041§I, 1094), as did Judge Larimer (Add:953§I, 980§d, 1022/last¶; cf. 1055§B).
4.	Christopher Werner, Esq., the DeLanos' attorney in the bankruptcy case *DeLano* Michael Beyma, Esq., Mr. DeLano's attorney in *Pfuntner* and partner in Underberg & Kessler, the law firm of which Judge Ninfo was a partner before becoming a judge	Br:25§c; D:118, 205, 211 & 214-216 271, 314, 325; Add:936, 988, 1069	He writes back-of-napkin like statements with no discussion of the law, the facts, or the opposing party's arguments, so imitative of the Judges' own orders; hence Judge Ninfo found it unobjectionable that: a)) Att. Werner, who, according to PACER, at the time had appeared before Judge Ninfo in 525 cases, appeared at the evidentiary hearing on March 1, 2005, of his motion to disallow Dr. Cordero's claim without having read the claim or brought a copy of it (Br:32§e; Tr:54/6−55/5, 64/10−66/18, 124/4-20, 137/8-21, 143/17-145/13); and b) Attorneys Werner and Beyma suborned perjury by signaling and mouthing answers to Mr. DeLano while on the stand during that evidentiary hearing (Br:33§f).
5.	Clerks of court	¶¶35 & 45 above; D:106, 232§§I & II, 397§1, 416§F, 476, 495; Add:832	Their disregard for the rules that they are supposed to apply shows participation in a pattern of non-coincidental, intentional, and coordinated wrongdoing, for if their actions were simply 'mistakes' due to incompetence, then it would be reasonable to expect that half of such 'mistakes' would redound to Dr. Cordero's disadvantage and half to his advantage, rather than all of them consistently have a detriment impact on Dr. Cordero's procedural and substantive rights.

Table of Exhibits

of the statement of January 7, 2006
to the Judicial Council of the Second Circuit
on why Rules 5.1(h) and 83.5 of the Local Rules of Civil Procedure
of the U.S. District Court, WDNY, should be abrogated because they
are inconsistent with FRCP 8 and 83 and
are used by the District Court and the Bankruptcy Court, WBNY,
to prevent the exposure of, and their support for,
a bankruptcy fraud scheme and the schemers

by
Dr. Richard Cordero

1) **Local Rule 32(a)1**. on **briefs in digital format** of the Local Rules of Civil Procedure of the U.S. Court of Appeals for the Second Circuit ..... Pst♦:1171

2) **Local Rule 25** on submitting an **unbound copy** of the brief if no PDF copy is submitted, id. Pst:1173

3) **Docket** for *Cordero v. DeLano*, no. 05cv6190L, WDNY Pst:1180

4) United States District Court for the Western District of New York **Administrative Procedures Guide** Pst:1189

5) Notice of February 6, 2004, on the **obligation** in WDNY to **file using** the Electronic Case Filing (**ECF**) system or a disk Pst:1209

6) Notice of July 5, 2005, on WDNY judicial **officers who want** filings on **paper** despite the Case Management (CM)/ECF system Pst:1211

7) Letter of District Court Deputy Clerk John H. Folwell returning Dr. Cordero's PDF files on a disk accompanying his paper copies Pst:1213

8) District Judge **Larimer's order** of **January 4**, 2006, thus **refusing** to **post** on PACER Dr. **Cordero's exhibits**, namely, the Designated items in the record on appeal, the Addendum thereto, and the transcript of the evidentiary hearing in Bankruptcy Court in *DeLano* on March 1, 2005, thereby making them unavailable publicly **on the World Wide Web**, i.e., the Internet Pst:1214

♦Pst:=PostAddendum in the record on appeal in *Cordero v. DeLano*, no. 05cv6190L, WDNY. The exhibits listed here are in the Pst files contained in the D Add Pst Transcript folder on the accompanying CD.

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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

January 11, 2006

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: *Your Letter of January 8, 2006*

Dear Mr. Cordero:

Your letter, referenced above, addressed to Judge Dennis Jacobs, has been forwarded to this office for a response.

Our records indicate that you have no matter pending before this Court. Unless jurisdiction has been established through the filing of a Notice of Appeal or writ of mandamus, neither Judge Jacobs, nor any judge of this Court, has the authority to grant the relief you seek.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia C. Allen, Deputy Clerk

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[C:1318-1330 reserved]

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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May 2, 2004

Mr. Pasquale J. Damuro [(212)384-1000; emergency (212)384-5000]
Assistant Director in Charge
FBI New York
26 Federal Plaza, 23rd. Floor
New York, NY 10278-0004

Dear Mr. Damuro,

I hereby submit to the Bureau evidence of bankruptcy fraud and judicial misconduct. Evidence of the latter initially involved the Chief Judge of the Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, and then implicated the Chief Judge of the District Court for that District, the Hon. David G. Larimer. I filed a complaint about them (1, infra) only to be shocked by evidence of misconduct on the part of the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., (10 and 15, infra), against whom I also lodged a complaint, which, like the initial one, has neither been dismissed nor investigated. The gravamen of the complaints is that these judges together with administrative officers have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

Now evidence has emerged of circumstances that not only point to the underlying forces that may be driving such wrongdoing, but that also indicate the presence of the most powerful driver of government corruption: a lot of money! This is the result of the concentration of *thousands* of bankruptcy cases on each of a handful of appointed private trustees (20 and 23.XI, infra). They have every financial interest in rubberstamping as many bankruptcy petitions as possible, not only regardless of their merits for relief under the Bankruptcy Code, but also especially those with the least such merits. From each petition approved by the court, the trustees are paid at least a legal fee as a percentage of the debtors' payments to the creditors. Are judicial officers and U.S. trustees being paid not to stop this scheme or even to exercise their power to extend it?

There is money to spread, for this scheme is self-reinforcing. The more people learn that bankruptcy petitions can be rubberstamped by paying due attention to certain steps, the more they have every incentive to binge on their credit, for they know there is no repayment day, just a bankruptcy petition waiting to be filed with one or more fees (21.X and 29, infra). As the scheme develops, it also claims more victims: the creditors, whose interests are ignored by their representatives, the trustees. The latter are being protected, despite the evidence (11-12; 23.1-4, infra), by the local and regional U.S. trustees, just as Chief Judge Walker has taken no action on the complaint about Judge Ninfo in *nine* months! How did he become a member of the panel hearing my appeal (03-5023)?, which was, by contrast, dismissed. How big is this scheme?!

I respectfully ask that you **do not** refer this matter to your Buffalo office, let alone that in Rochester, located in the same federal building where the judges and U.S. trustee sit, and whose agent refused to investigate it out of fear for his career. To discuss his reaction and similar evidence from the Circuit Executive and Court of Appeals Clerks (26 and 28, infra), I request a meeting with you. If you won't do anything about his matter either, which is taking a tremendous toll on me, I will bring it to the media by May 19.

Sincerely,

Dr. Richard Cordero

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of the evidence submitted on May 2 and 6, 2004
to the U.S. Attorney's Office and the FBI Bureau in New York City
of a pattern of non-coincidental, intentional, and
coordinated acts of wrongdoing by
judicial officers and bankruptcy trustees in CA2 and WDNY
supporting bankruptcy fraud

by
Dr. Richard Cordero

1. Dr. Richard Cordero's **Statement of facts** of **August 11, 2003**, in support of a **complaint** under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit **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 .....1 [C:63]

2. Clerk Patricia **Allen**'s **acknowledgment** of September 2, 2003, of receipt **of** the **complaint** about Judge Ninfo, docketed as **03-8547**.....6 [C:73]

3. Dr. **Cordero**'s letter of **February 2**, 2004, **to** the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring about** the status of the **complaint** about Judge Ninfo .....7 [C:105]

4. Chief Judge **Walker**'s reply of **February 4**, 2004, by Deputy Clerk Allen **returning** unfiled Dr. Cordero's February 2 **letter of inquiry** .....9 [C:109]

5. Dr. Cordero's **Statement of facts** of **March 19, 2004**, 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 .....10 [C:271]

6. Dr. **Cordero**'s letter of **March 24**, 2004, **to** the Hon. Dennis **Jacobs**, as the circuit judge eligible to become the next chief judge of the circuit, to ask two questions **concerning** Clerk **Allen's handling** of the mis-conduct **complaint** of March 19, 2004, **about** Chief Judge **Walker** .....15 [C:316]

7. Clerk Allen's **acknowledgment** of **March 30**, **2004**, of receipt **of** the **complaint about** Chief Judge **Walker**, docketed as **04-8510** .....18 [C:326]

8. **Circuit Executive** Karen Greve **Milton**'s letter of **March 30**, 2004, responding **to** Dr. **Cordero**'s letter to members of the Judicial Council .....19 [C:143]

9. A **trustee with 3,909 *open* cases** cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith .....20 [C:1335]

10. A case that illustrates how a **bankruptcy petition** riddled with red flags as to its good faith is **accepted without review** by the trustee and readied for approval by the WDNY Bankruptcy Court .....21 [C:1337]

11. Another **trustee with 3, 092 cases** was upon a performance and fitness to serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to him and a party and to uncritically writing their comments in an opinion that the U.S. Trustee for Region 2 would not investigate.....23 [C:1340]

12. Dr. **Cordero**'s letter of **April 28** to Clerks **MacKechnie** and Allen, and of **April 29**, 2004, to Circuit Executive **Milton** .....27 [C:510-511]

13. **Bankruptcy petition** filed on **January 27**, 2004, by David and Mary Ann **DeLano**, in the WDNY Bankruptcy Court, **docket no. 04-20280,** suspicious but accepted without review by the trustee .....30 [C:1401]

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Analysis of Evidence

of judicial wrongdoing and bankruptcy fraud

submitted on May 2 and 6, 2004

to the U.S. Attorney's Office and the FBI Bureau in New York City

by

Dr. Richard Cordero

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III. Another trustee with *3,092 cases* was upon a performance-and-fitness-to-serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to the Trustee and a party and to uncritically writing down their comments in an opinion, which the Trustee for Region 2 would not investigate 1340

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I. A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith

1. Pacer is the federal courts' electronic document retrieval service. The information that it provides sheds light on why trustees may be quite unwilling and unable to spend any time investigating the bankruptcy petitions submitted to them by debtors to establish the reliability of their figures and statements. When queried with the name George Reiber, Trustee, -the standing Chapter 13 trustee in the Western District of New York- it returns this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, Pacer comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end thus:

Table 1. Illustrative row of Pacer's presentation of Trustee George Reiber's 3,909 *open* cases in the Bankruptcy Court

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

2. Trustee Reiber has 3,909 *open* cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink in the left cell that can call that case to step up to the screen for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added; §2-2.1. of the Trustee Manual). By the way, JCN after the case number in the left cell stands for John C. Ninfo, the judge before whom the case has been brought.
3. Trustee Reiber is the trustee for the DeLano case (section 10, infra). For him "meaningful distribution" under the DeLanos' debt repayment plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).
4. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. However, increasing the base would require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life, such as a golden pot retirement. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt

repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2)). "Mmm…not good!"

5. The obvious alternative is "never investigate anything, not even patently suspicious cases. Just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover." Of necessity, such a scheme redounds to the creditors' detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor only to get what was owed them to begin with.
6. Have U.S. Trustees contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty "to investigate the financial affairs of the debtor" (11 U.S.C. §§1302(b)(1) and §704(4)) and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (§704(7))?
7. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate debtors' financial affairs, ever more debtors with ever less deserving cases for relief under the Bankruptcy Code go ahead and file their petitions. What is worse, as people with no debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed with the required fee…or perhaps 'fees'?

II. A case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for approval by the bankruptcy court

8. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (case 04-20280; 28, infra). The figures in its schedules and the surrounding circumstances should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber (section 9, supra) and Attorney James Weidman (11-12, supra) were about to submit its repayment plan to the court

for approval when Dr. Richard Cordero, a creditor, objected in a five page analysis of the figures in the schedules. Even so, the Trustee and his attorney vouched for the petition's good faith. Let's list the salient figures and circumstances:

9. The DeLanos incurred scores of thousands of dollars in credit card debt,
10. at the average interest rate of 16% or the delinquent interest rate of over 23%,
11. carried it for over 10 years by making only the minimum payments,
12. have ended up owing $98,092 to 18 credit card issuers listed in Schedule F,
13. owe also a mortgage of $77,084,
14. have near the end of their work life an equity in their house of only $21,415,
15. declared earnings in 2002 of $91,655 and in 2003 of $108,586,
16. yet claim that after a lifetime of work their tangible personal property is only $9,945,
17. claim as exempt $59,000 in a retirement account,
18. claim another $96,111.07 as a 401-k exemption,
19. make a $10,000 loan to their son and declare it uncollectible,
20. but offer to repay only 22 cents on the dollar without interest for just 3 years,
21. argue against having to provide a single credit card statement covering any length of time 'because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies', even though the DeLanos must still receive every month the **monthly** credit card statement from each of the issuers of the 18 credit cards and as recently as last January they must have consulted such statements to provide in Schedule F their account number with, and address of, each of those 18 issuers, and
22. pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is *a 15 year bank officer!*, or rather more precisely, a bank **loan** officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay over the loan's life, and who is still employed that capacity by a major bank, namely, Manufacturers and Traders Trust Bank. He had to know better!
23. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his "experience in banking", from which he should have learned his obligation to keep financial documents for a certain number of years,

pretend that he does not have them to back up his petition? Those are self-evident questions that have a direct bearing on the petition's good faith. Did Trustee Reiber and Attorney Weidman ever ask them? How did they ascertain the timeline of debt accumulation and its nature if they did not check those credit card statements before approving the petition and getting it ready for submission to the court?

24. Until the DeLanos provide financial documents supporting their petition, including credit card statements, let's assume arguendo that when Mr. DeLano lost his job at a financial institution and took a lower paying job at another in 1989, the combine income of his and his wife, a Xerox technician, was $50,000. Last year, 15 years later, it was over $108,000. Let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and a home equity of merely $21,415!, and this does not begin to take into account what they already owned before 1989, let alone all their credit card borrowing. Where did the money go? Or where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?
25. Did Trustee Reiber and Attorney Weidman ever get the hint that the figures and circumstances of this petition just did not make sense or were they too busy with their other 3,908 cases and the in-take of new ones to ask any questions and request any supporting financial documents? How many of their other cases did they also accept under the motto "don't ask, don't check, cash in"? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?
26. For his part, Trustee Reiber is being allowed to hold on to the DeLanos' case to belatedly "investigate" it, which he is doing only because of Dr. Cordero's assertion of his right to be furnished with financial information about the DeLanos (para. 6, supra). Yet, not to replace the Trustee –as requested by Dr. Cordero- but rather to allow him to be the one to investigate the DeLanos now, disregards the Trustee's obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, who approved it for submission to the court, thereby rendering himself liable as his principal and casting doubt on his own proper handling of his other thousands of cases.
27. Indeed, if an egregious case as the DeLano's passed muster with them, what about the others?

Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably give rise to the question of what kind of supervision the Trustee and his attorney have been receiving from the assistant and the regional U.S. trustees. From there the next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

28. What were they all thinking!? Whatever it was, from their perspective it is evident that the best self-protection is not to set in motion an investigative process that can escape their control and end up crushing them. This proves the old-axiom that a person, just as an institution, cannot investigate himself zealously, objectively, and reassuringly. A third independent party, unfamiliar with the case and unrelated to its players, must be entrusted with and carry out the investigation and then tender its uncompromising report to all those with an interest in the case.

III. Another trustee with *3,092 cases* was upon a performance-and-fitness-to-serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to the Trustee and a party and to uncritically writing down their comments in an opinion, which the Trustee for Region 2 would not investigate

29. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.

30. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge

Ninfo did not investigate whether the Trustee had submitted to him false statement, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and in its depth to uncritically accepting at face value what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.

31. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.
32. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has *thousands* of cases. The statistics on Pacer as of November 3, 2003, showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases!

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court compared with the number of cases of bankruptcy attorneys appearing there
https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

NAME	**# OF CASES AND CAPACITY IN WHICH APPEARING SINCE**					
	since	trustee	since	attorney	since	party
Trustee Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Trustee Kathleen D.Schmitt	09/30/02	9				
Attorney David D. MacKnight			04/07/82	479	05/20/91	6
Attorney Michael J. Beyma			01/30/91	13	12/27/02	1
Attorney Karl S. Essler			04/08/91	6		
Attorney Raymond C. Stilwell			12/29/88	248		

33. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section 0, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed,

in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct?

34. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (1-5 and 11-12, supra). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.

35. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times on a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the entries in Table 3:

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

36. When locals must pay such respect to the judge, there develops among them a vassal-lord

relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the Fiefdom of Rochester. Therein the law of close personal relationships rules.

37. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local who dared assert his rights against them under a foreign law, that is, the laws of Congress.
38. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came through to protect his vassal. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 33, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.
39. Are the local assistant U.S. trustee with her supervisory power and Trustee Gordon with his 3,092 cases and the money in a vassal-lord relationship to each other? Does the Region 2 Trustee know that a non-local has no chance whatsoever of turning the trustee into the subject of a "thorough inquiry" by the local U.S. trustee? Consequently, should she have investigated Trustee Gordon? What homage do local and regional U.S. trustees receive and what fief do they grant?

May 2, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Blank

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

May 6, 2004

Mr. David N. Kelley [(212)637-2200; fax (212)637-2611]
U.S. Attorney for the Southern District of NY
One St. Andrews Plaza
New York, NY 10007

Dear Mr. Kelley,

I hereby submit to your U.S. Attorney's Office evidence of bankruptcy fraud and judicial misconduct. Evidence of the latter initially involved the Chief Judge of the Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, and then implicated the Chief Judge of the District Court for that District, the Hon. David G. Larimer. I filed a complaint about them (1, infra) only to be shocked by evidence of misconduct on the part of the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., (10 and 15, infra), against whom I also lodged a complaint, which, like the initial one, has neither been dismissed nor investigated. The gravamen of the complaints is that these judges together with administrative officers have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

Now evidence has emerged of circumstances that not only point to the underlying forces that may be driving such wrongdoing, but that also indicate the presence of the most powerful driver of government corruption: a lot of money! This is the result of the concentration of *thousands* of bankruptcy cases on each of a handful of appointed private trustees (20 and 23.XI, infra). They have every financial interest in rubberstamping as many bankruptcy petitions as possible, not only regardless of their merits for relief under the Bankruptcy Code, but also especially those with the least merits. From each petition approved by the court, the trustees are paid a legal fee as a percentage of the debtors' payments to the creditors. Who and what else is being paid?

There is money to spread, for this is a self-reinforcing scheme: The more people learn that bankruptcy petitions can be rubberstamped, the more they have every incentive to binge on their credit, for they know there is no repayment day, just a bankruptcy petition waiting to be filed with one or more fees (21.X and 29, infra). As the scheme develops, it also claims more victims: the creditors, whose interests are ignored by their representatives, the trustees. The latter are not being investigated by the U.S. trustees or the Rochester courts despite the evidence of a lot amiss (11-12; 23:26-28, infra), just as Chief Judge Walker has taken no action on the complaint about Judge Ninfo in *nine* months! How did he become a member of the panel hearing my appeal (03-5023)?, which, by contrast, was dismissed. How big is this scheme?!

I respectfully ask that you **do not** refer this matter to your Buffalo office, let alone that in Rochester, located in the same federal building where the judges and U.S. trustee sit. This is to avoid the same reaction as that of the FBI agent who refused to investigate it out of fear for his career, just as the Clerk of Court and the Circuit Executive, who work in the same building as Chief Judge Walker, will not even answer my letters (27 and 28, infra). If you too won't do anything about his matter, which is taking a tremendous toll on me, I will bring it to the media by May 24. Thus, I request a meeting with you.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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tel. (718) 827-9521; CorderoRic@yahoo.com

May 6, 2004

Ms. Roslynn Mauskopf [(718)254-7000; fax (718)254-6479]
U.S. Attorney for the Eastern District of NY
147 Pierrepont Street
Brooklyn, NY 11201

Dear Ms. Mauskopf,

I hereby submit to your U.S. Attorney's Office evidence of bankruptcy fraud and judicial misconduct. Evidence of the latter initially involved the Chief Judge of the Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, and then implicated the Chief Judge of the District Court for that District, the Hon. David G. Larimer. I filed a complaint about them (1, infra) only to be shocked by evidence of misconduct on the part of the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., (10 and 15, infra), against whom I also lodged a complaint, which, like the initial one, has neither been dismissed nor investigated. The gravamen of the complaints is that these judges together with administrative officers have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

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There is money to spread, for this is a self-reinforcing scheme: The more people learn that bankruptcy petitions can be rubberstamped, the more they have every incentive to binge on their credit, for they know there is no repayment day, just a bankruptcy petition waiting to be filed with one or more fees (21.X and 29, infra). As the scheme develops, it also claims more victims: the creditors, whose interests are ignored by their representatives, the trustees. The latter are not being investigated by the U.S. trustees or the Rochester courts despite the evidence of a lot amiss (11-12; 23:26-28, infra), just as Chief Judge Walker has taken no action on the complaint about Judge Ninfo in *nine* months! How did he become a member of the panel hearing my appeal (03-5023)?, which, by contrast, was dismissed. How big is this scheme?!

I respectfully ask that you **do not** refer this matter to your Buffalo office, let alone that in Rochester, located in the same federal building where the judges and U.S. trustee sit. This is to avoid the same reaction as that of the FBI agent who refused to investigate it out of fear for his career, just as the Clerk of Court and the Circuit Executive, who work in the same building as Chief Judge Walker, will not even answer my letters (27 and 28, infra). If you too won't do anything about his matter, which is taking a tremendous toll on me, I will bring it to the media by May 24. Thus, I request a meeting with you.

Sincerely,

Dr. Richard Cordero

C:1346 Dr. Cordero's letter of 5/6/4 to US Att Mauskopf, EDNY, re evidence of judicial wrongdoing & bkr fraud

U.S. Department of Justice
United States Attorney
Eastern District of New York

One Pierrepont Plaza, 14th Floor
147 Pierrepont Street
Brooklyn, New York 11201-2776

May 12, 2004

BY FIRST CLASS MAIL

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

Dear Mr. Cordero:

Your letter to United States Attorney Roslynn R. Mauskopf dated May 6, 2004, has been referred to the undersigned for response. As you are aware, the allegations set forth in your letter are currently the subject of two proceedings pending before the Judicial Council of the Second Judicial Circuit of the United States, to wit, the matters docketed as Judicial Conduct Complaint Nos. 03-8547 and 04-8510. Because the allegations discussed in your letter are the subject of these pending proceedings, and because United States Attorney's Offices have no involvement in complaints alleging judicial misconduct and no authority to take any action with regard to such complaints, we are unable to discuss your allegations with you or to take any other action in regards to them. If you are not satisfied with the Judicial Council's ultimate resolution of your complaints, you may exercise the rights afforded to you in 28 U.S.C. §§ 351 *et seq.* To the extent that your letter purports to raise allegations of impropriety on the part of private Trustees appointed by the Bankruptcy Court in the Western District of New York, you should direct those allegations to the office of the Honorable Deirdre Martini, United States Trustee for Region 2, 33 Whitehall Street, 21st Floor, New York, NY 10004, or to the Assistant United States Trustee for the Western District.

Sincerely yours,

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York

By: _____
F. FRANKLIN AMANAT
Assistant United States Attorney
Deputy Chief, Civil Division
(718) 254-6024

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May 24, 2004

Mr. Pasquale J. Damuro
Assistant Director in Charge
FBI New York
26 Federal Plaza, 23rd. Floor
New York, NY 10278-0004

[212-384-1000; emergency 212-384-5000]

Dear Mr. Damuro,

In my letter to you of May 2, I brought to your attention evidence of bankruptcy fraud and judicial misconduct. I pointed out that judges together with administrative officers in the U.S. courts for the Western District of New York in Rochester and the Court of Appeals for the Second Circuit have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. I further indicated how the concentration of thousands of open cases in the hands of a single trustee can generate the money that incites to wrongdoing through the acceptance for a fee of meritless bankruptcy petitions. One such petition was filed by David and Mary Ann DeLano last January 27 in the Bankruptcy Court in Rochester, dkt. no. 04-20280. It deserves your attention because it is even facially so meritless for bankruptcy relief –Mr. DeLano is even a 15-year bank loan officer-. As a test case, its investigation can yield insight into how the bankruptcy scheme is being run. The coordinated effort by the trustees to prevent me from investigating it is now revealed by more evidence and justifies my renewed request that the FBI investigate it.

The DeLanos' petition was approved by Trustee George Reiber for submission to, and confirmation by, the court on March 8. Although it names me as a creditor and I traveled from NYC to Rochester to attend the meeting of creditors on that date, James Weidman, the Trustee's attorney, repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos; the Trustee ratified his action. I requested U.S. Assistant Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre Martini to remove them from the case and appoint an independent trustee to investigate how such a questionable petition (8, infra) was readied for confirmation and why I was not allowed to examine the Debtors. While Assistant Schmitt initially agreed, Trustee Martini refused to do so and effectively took the case from Trustee Schmitt (16, 55, infra).

Since then Trustee Martini has engaged in deception (1-5, infra) to avoid sending me information that could allow me to investigate this case on my own. Trustee Reiber has done likewise and in addition pretended to be investigating the case, but only after I requested that he describe his investigation did he for the first time, on April 20, ask the DeLanos for financial documents (44-54, infra). To date not even he, let alone me, has received any (61, infra). Why did Trustee Martini keep him on the case without investigating how many of his 3,909 open cases (20 in May 2 file) he approved despite not having even asked for supporting documents?

The accompanying materials supplement those already submitted and buttress my request that the FBI investigate this whole matter. I will keep investigating at my expense, but it will be unfortunate if the FBI waited until the explosion of corruption news in the media before realizing that it had leads, but failed to follow them.

Sincerely,

Dr. Richard Cordero

Table of Exhibits

with updating evidence submitted on May 24, 2004
to FBI Assistant Director in Charge Pasquale J. Damuro
to request an FBI investigation
of a coordinated effort by U.S. and private bankruptcy trustees
to prevent an investigation by a creditor of the bankruptcy petition
in *In re DeLano*, no. 04-20280, WBNY
that can expose a bankruptcy fraud scheme and a cover up

by
Dr. Richard Cordero

A. Documents presented for the first time:

1. Dr. Richard **Cordero**'s letter of **May 10**, 2004, to U.S. Trustee for Region 2 Deirdre A. **Martini** stating that the letter that he received from her on May 6 but antedated as of April 14, was not accompanied by any list that she mentioned in her letter as being enclosed .....1 [D•:141]

2. Stick-it of May 19, 2004, on **News release of April 16, *2003***, titled U.S. Credit Reporting Companies Launch New Identity Fraud Initiative, **sent by Trustee Martini** to Dr. Cordero instead of the requested list of credit card companies with their addresses, phone numbers, and names of contact persons .....2 [D:154]

3. Dr. **Cordero**'s letter of **May 23**, 2004, to Trustee **Martini** requesting that she send him the list of credit card companies that she pretended to have sent him and that she refer the case to the FBI and relinquish control of it .....5 [D:158]

• **D:**=Designated items, i.e. documents, in the record for the appeal from Bankruptcy Judge Ninfo's decision in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*, 05cv6190L, WDNY. These items are contained on the accompanying CD in the D folder.

The latter also holds **Add:**=Addendum to the D: files; **Pst:**= PostAddendum; and **Tr:**=transcript of the evidentiary hearing in *DeLano* held before Judge Ninfo on March 1, 2005.

Mr. DeLano is a 3rd-party defendant whom Dr. Cordero brought into *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, Judge Ninfo presiding. Later on, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against him arising from *Pfuntner*.

B. Documents provided with Dr. Cordero's letter of May 2, 2004, to Director Damuro, presented in chronological order with inclusion of the above ones, each keeping its original page number:

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8. Letter of Christopher K. **Werner**, Esq., attorney for the DeLanos, of **March 19**, 2004 to Trustee **Reiber** providing dates for the examination under 11 U.S.C. §341 of the DeLanos .....14 [D:73]
9. Trustee **Reiber**'s letter of **March 24**, 2004, **to** Dr. **Cordero** .....15 [D:74]
10. Dr. **Cordero**'s **Memorandum** of **March 30**, 2004, **to the parties** on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY .....16 [D:77]
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18. Dr. **Cordero**'s letter of **April 26**, 2004, **to** Trustee **Martini** requesting again that **Trustee Reiber be removed** and a trustee unrelated to the parties and unfamiliar with the case be appointed .....55 [D:137]

19. Trustee **Reiber**'s letter of **April 27**, 2004, **to** Dr. **Cordero** stating that he has not yet received the requested documents from the DeLanos that he needs to ask meaningful questions at the independent hearing that he wants to hold .....56 [D:138]

20. Dr. **Cordero**'s letter of **May 10**, 2004, **to** Trustee **Martini** stating that the **letter** that he received from her on May 6 but antedated as of April 14, was **not accompanied by any list** that she mentioned in her letter as being enclosed .....1 [D:141]

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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

[Sample of letter sent to each of the 37 members]

June 11, 2004

The Hon. F. James Sensenbrenner, Jr.
Chairman
U.S. House of Representatives, Judiciary Com.
2138 Rayburn, House Office Building
Washington, DC 20515

Dear Representative Sensenbrenner,

I hereby submit to you and your Committee evidence of judicial misconduct and bankruptcy fraud. Evidence of the former initially involved the Chief Judge of the Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, and then implicated the Chief Judge of the District Court for that District, the Hon. David G. Larimer. I filed a complaint about them on August 11, 2003, with the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., (pgs. 1, 6, infra), only to be shocked by his disregard for the law and even refusal to accept additional evidence (7, 9). Indeed, despite the law of Congress at 28 U.S.C. §351 et seq. requiring "prompt" and "expeditious" handling of such complaints, Chief Judge Walker has neither dismissed nor investigated mine in 10 months! So on March 19, I complained about him (10, 15, 16). But in disregard also of the Circuit's Rules Governing §351 complaints, requiring certain steps to be taken "promptly" and "expeditiously", none has been taken. This justifies asking how the Chief Judge got on the panel that heard my appeal (dkt no. 03-5023) and dismissed it without even discussing how misconduct tainted the appealed orders.

Now evidence has emerged of the operation of the most powerful driver of misconduct: a lot of money! This is the result of the concentration of *thousands* of bankruptcy cases on each of a handful of private trustees (19). They have every financial interest in rubberstamping as many bankruptcy petitions as possible since they are paid percentage fees from each one confirmed by the court (cf. 27). In turn, the more people learn that bankruptcy petitions can be rubberstamped, the stronger the incentive to binge on their credit, knowing that there is no repayment day, just a petition to be filed after making the demanded payments. So is generated money to pay those with power to stop or promote this self-reinforcing scheme. Its evidence is in a test case.

It is petition 04-20280 (28). Without asking for any supporting documents despite its being patently suspicious (25.IV), the trustee readied it for confirmation on March 8 by Judge Ninfo. At my relentless instigation, the trustee asked for documents on April 20 (61, 63). To date the debtors have provided none. All this is condoned by the U.S. assistant and Region 2 trustees, who refuse to replace or investigate the trustee, though he prevented any examination at the meeting of creditors (11-12) and may be proceeding just as unlawfully in his other thousands of cases. Thus the scheme is protected while it claims more victims: the creditors, whose interests are ignored by their representatives, the trustees. In turn, the judges are protected by useless §351 complaints, for how else do you explain that in a society as litigious as ours, there can be years in which not one complaint is pending before the Judicial Conference (64-70)? That law needs to be revised, but before that, you can take action to find out who is in this scheme. How big is it!?

Therefore, I respectfully request that you cause the Committee to investigate this matter (71). While I have written to all your colleagues, I hope that when I bring this to the media (72) you appear as the one who first recognized and did your most to stamp out a scheme of bankruptcy fraud and judicial misconduct. Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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

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

[Sample of letter sent to each of the 19 members]

June 11, 2004

The Hon. Orrin G. Hatch
Chairman
U.S. Senate, Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Hatch,

I hereby submit to you and your Committee evidence of judicial misconduct and bankruptcy fraud. Evidence of the former initially involved the Chief Judge of the Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, and then implicated the Chief Judge of the District Court for that District, the Hon. David G. Larimer. I filed a complaint about them on August 11, 2003, with the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., (pgs. 1, 6, infra), only to be shocked by his disregard for the law and even refusal to accept additional evidence (7, 9). Indeed, despite the law of Congress at 28 U.S.C. §351 et seq. requiring "prompt" and "expeditious" handling of such complaints, Chief Judge Walker has neither dismissed nor investigated mine in 10 months! So on March 19, I complained about him (10, 15, 16). But in disregard also of the Circuit's Rules Governing §351 complaints, requiring certain steps to be taken "promptly" and "expeditiously", none has been taken. This justifies asking how the Chief Judge got on the panel that heard my appeal (dkt no. 03-5023) and dismissed it without even discussing how misconduct tainted the appealed orders.

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Therefore, I respectfully request that you cause the Committee to investigate this matter (71). While I have written to all your colleagues, I hope that when I bring this to the media (72) you appear as the one who first recognized and did your most to stamp out a scheme of bankruptcy fraud and judicial misconduct. Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

Table of Members of the Judiciary Committees

of the U.S. House of Representatives and the U.S. Senate
to whom was individually addressed the letter of June 11, 2004
requesting an investigation of the accompanying
evidence of a judicial misconduct and bankruptcy fraud scheme
by
Dr. Richard Cordero

	Repfirst name	Replast name	Title	State	SenFirstName	SenLastName	phone	fax
1.	Spencer	Bachus		Alabama				
2.	Tammy	Baldwin	Subcommittee on Courts	Wisconsin				
3.	Howard L.	Berman	Subcommittee on Courts	California				
4.	Marsha	Blackburn		Tennessee				
5.	Rick	Boucher	Subcommittee on Courts	Virginia				
6.	Chris	Cannon		Utah				
7.	John R.	Carter		Texas				
8.	Steve	Chabot		Ohio				
9.	Howard	Coble		North Carolina			(202) 225-3065	(202) 225-8611
10.	John	Conyers, Jr.	Ranking Democratic Member Subcommittee on Courts	Michigan				
11.	William D.	Delahunt	Subcommittee on Courts	Massachusetts				
12.	Tom	Feeney		Florida				
13.	Jeff	Flake		Arizona				
14.	Randy J.	Forbes		Virginia				
15.	Elton	Gallegly		California				
16.	Bob	Goodlatte		Virginia				
17.	Mark	Green		Wisconsin				
18.	Melissa A.	Hart		Pennsylvania				
19.	John N.	Hostettler		Indiana				
20.	Henry J.	Hyde		Illinois				
21.	William L.	Jenkins		Tennessee				

22.	Ric	Keller		Florida				
23.	Steve	King		Iowa				
24.	Sheila	Jackson-Lee		Texas				
25.	Zoe	Lofgren	Subcommittee on Courts	California				
26.	Martin T.	Meehan	Subcommittee on Courts	Massachusetts				
27.	Jerrold	Nadler		New York				
28.	Mike	Pence		Indiana				
29.	Linda T.	Sanchez		California				
30.	Adam B.	Schiff		California				
31.	Robert C.	Scott		Virginia				
32.	F. James	Sensenbrenner, Jr.	Chairman	Wisconsin				
33.	Lamar	Smith		Texas				
34.	Maxine	Waters	Subcommittee on Courts	California				
35.	Melvin L.	Watt		North Carolina				
36.	Anthony D.	Weiner	Subcommittee on Courts	New York				
37.	Robert	Wexler	Subcommittee on Courts	Florida				
38.			Chairman	UTAH	Orrin G.	Hatch		
39.			Ranking Democratic Member	VERMONT	Patrick J.	Leahy		
40.				IOWA	Charles E.	Grassley		
41.				MASSACHUSETTS	Edward M.	Kennedy		
42.				PENNSYLVANIA	Arlen	Specter		
43.				DELAWARE	Joseph R.	Biden, Jr.		
44.				ARIZONA	Jon	Kyl		
45.				WISCONSIN	Herbert	Kohl		
46.				OHIO	Mike	DeWine		
47.				CALIFORNIA	Dianne	Feinstein		
48.				ALABAMA	Jeff	Sessions		
49.				WISCONSIN	Russell D.	Feingold		
50.				SOUTH CAROLINA	Lindsey	Graham		
51.				NEW YORK	Charles E.	Schumer		
52.				IDAHO	Larry	Craig		
53.				ILLINOIS	Richard J.	Durbin		
54.				GEORGIA	Saxby	Chambliss		
55.				NORTH CAROLINA	John	Edwards		
56.				TEXAS	John	Cornyn		

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Committee on the Judiciary
2138 Rayburn HOB
Washington, DC 20515
(202)225-3951

Judiciary@mail.house.gov House of Representatives Judiciary Committee

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Democratic Members of the H. Rep. Judiciary Committee with websites:

• John Conyers • Howard L. Berman • Rick Boucher • Jerrold Nadler • Robert C. Scott • Melvin L. Watt • Zoe Lofgren Sheila Jackson-Lee	• Maxine Waters • Martin T. Meehan • William Delahunt • Robert Wexler • Tammy Baldwin • Anthony D. Weiner • Adam B. Schiff • Linda T. Sanchez

Att.: Michelle, Office Assistant
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510
Phone: (202) 224-5225
Fax: (202) 224-9102

http://judiciary.senate.gov/index.cfm

Table of Exhibits

accompanying the individually addressed letter of June 11, 2004
to each of the 56 members of the Judiciary Committees
of the U.S. House of Representatives and the U.S. Senate
containing evidence warranting an investigation
of a judicial misconduct and bankruptcy fraud scheme

by

Dr. Richard Cordero

1. Dr. Richard Cordero's **Statement of facts** of **August 11, 2003**, in support of a **complaint** under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit **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 .....1 [C:63]

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11. Trustee **Reiber**'s letter of **April 20**, 2004, **requesting** Mr. Werner to provide him with financial **documents** concerning the DeLanos .....61 [D:120]

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Mr. DeLano is a 3rd-party defendant whom Dr. Cordero brought into *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, Judge Ninfo presiding. Later on, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against him arising from *Pfuntner*.

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Trustees with thousands of open cases and one case that opens a window into the operation of the bankruptcy fraud scheme

by
Dr. Richard Cordero

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****

I. A scheme that works by taking money from many credit card issuers but not so much from anyone as to make it cost-effective to spend time, effort, and money pursuing a pennies-on-the dollar recovery in risky bankruptcy proceedings

1. The critical fact that should pique one's curiosity and intrigue one into examining this case further is that each trustee has *thousands of open cases*. This fact can be corroborated independently through Pacer, as shown below. It inescapably begs the question: How can one lawyer in a one or two lawyer law firm, as are those in play here, can possibly have the

time to pay anything remotely close to adequate attention to so many cases? Keep in mind that the trustee must examine each petition to determine whether it meets the requirements of the Bankruptcy Code so that he may recommend to the court that its plan of debt repayment be confirmed. That requires his review of not only all the schedules that make up a petition, but also financial documents that provide the basis for the figures and statements that the debtor used to fill out the schedules.

2. Indeed, the trustee, as the representative of the creditors, must ascertain, for example, whether the debtor has truthfully stated all his debts, has neither hidden any of his assets nor underestimated the value of those that he has declared, and has not overestimated his current expenditures. But that is just the beginning, for then the trustee must monitor the debtor's performance of his debt repayment plan as the debtor makes monthly payments over the three to five years of the plan's life. How many seconds a month can the trustee dedicate to each of *3,909 open cases!*? Meanwhile he continues to take in new ones and must conduct in person the meeting of creditors, which he may have to adjourn one or more times. He must also appear in court not only to confirm debtors' plans, but also to state his views at hearings of motions raised by any of the parties. That is why he cannot waste time reviewing petitions. Here is where knowledge of other people's normal behavior in bankruptcy cases or, better still, what others have agreed to do, becomes such a key element for the trustee.
3. Many creditors, including institutional ones, cannot afford to spend the considerable amount of time, effort, and thus money necessary to recover on their bankruptcy claims unless the latter exceed a certain threshold of cost-effective participation. It comes down to not throwing good money after bad. As a result, people who know this cost barrier exploit their knowledge: They incur debts below the threshold, but to as many creditors as they can. Hence, the ideal target creditor is a credit card issuer, whose debt is unsecured and whose balance transfer feature allows the debtor to regulate his debt's threshold levels. So the debtor can charge to a card up to a certain limit of debt; keep making the minimum monthly payment to avoid a negative credit bureau report that would alert other issuers and could trigger their acceleration clauses; and move on to charging the next credit card. An industry insider, such as a bank loan official, would be in a position, not only to find out the threshold of participation of many credit card issuers, but also to use that knowledge for personal benefit as well as for the benefit of others, whether his clients or other parties. Knowledge is

a valuable asset and if it joins the legal authority vested in officers in the right position, the basic elements of a scheme are in place.

4. As this knowledge is provided to more people and as more and more bankruptcy peti-tions are approved without any review of supporting documents, let alone any determination of their good faith, the number of debtors filing petitions just keeps growing. Overwhelmed by them, the creditors must increase their threshold of participation. This dynamic puts in motion a vicious circle in which a necessary threshold is exploited by petitions below it and the increasing number of such petitions requires setting a higher threshold, which is exploited in turn and so on.
5. At the same time, money keeps rolling in for the schemers. For one thing, even if the total debt to any one creditor is intentionally kept relatively low, the debts to all creditors add up to serious money, as shown below. To escape paying all that money, a debtor has an incentive to pay all fees, legal and otherwise, demanded by the schemers. Similarly, even if the schemers make a small amount of money on each petition, they accept so many cases, *thousands of them!*, that their total in-take also adds up to serious money. They can be so indiscriminate in accepting cases regardless of their merits precisely because they do not waste time reviewing any petition beyond what is strictly necessary to make sure that it is below the creditors' threshold of participation. Actually, in the logic of the scheme, the fewer the merits for relief under the Bankruptcy Code a petition has, the higher its value to the schemers, who can raise any acceptance fee proportionally higher. High too as well as widespread are the loss and pain that they cause to so many creditors: those who trusted them enough to lend them their money and those who believed them to be doing the right thing on their behalf rather than engaging in irresponsible and self-serving conduct that rendered them liable for claims of compensation. Neither debtors not schemers should be allowed to break bankruptcy laws and get rich with it.

II. A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith

6. Pacer is the federal courts' electronic document retrieval service. The information that it provides sheds light on why trustees may be quite unwilling and unable to spend any time

investigating the bankruptcy petitions submitted to them by debtors to establish the reliability of their figures and statements. When queried with the name George Reiber, Trustee, -the standing Chapter 13 trustee in the Western District of New York- it returns this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, Pacer comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end thus:

Table 1. Illustrative row of Pacer's presentation of Trustee George Reiber's 3,909 *open* cases in the Bankruptcy Court

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

7. Trustee Reiber has 3,909 *open* cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink in the left cell that can call that case to step up to the screen for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added; §2-2.1. of the Trustee Manual). By the way, JCN after the case number in the left cell stands for John C. Ninfo, the judge before whom the case has been brought.
8. Trustee Reiber is the trustee for the DeLano case (section IV, infra). For him "meaningful distribution" under the DeLanos' debt repayment plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as

well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).

9. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. However, increasing the base would require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life, such as a golden pot retirement. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2)). "Mmm…not good!"
10. The obvious alternative is "never investigate anything, not even patently suspicious cases. Just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover." Of necessity, such a scheme redounds to the creditors' detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor only to get what was owed them to begin with.
11. Have U.S. Trustees contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty "to investigate the financial affairs of the debtor" (11 U.S.C. §§1302(b)(1) and §704(4)) and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (§704(7))?
12. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate debtors' financial affairs, ever more debtors with ever less deserving cases for relief under the Bankruptcy Code go ahead and file their petitions. What is worse, as people with no debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every

incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed with the required fee…or perhaps 'fees'?

III. Another trustee with *3,092 cases* was upon a perform-ance and fitness to serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to him and a party and to uncritically writing their comments in an opinion that the Trustee for Region 2 would not investigate

13. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.
14. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge Ninfo did not investigate whether the Trustee had submitted to him false statement, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and in its depth to uncritically accepting at face value what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.
15. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by

documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.

16. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has *thousands* of cases. The statistics on Pacer as of November 3, 2003, showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases!

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court
compared with the number of cases of bankruptcy attorneys appearing there
https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

NAME	NUMBER OF CASES AND CAPACITY IN WHICH APPEARING					
	since	trustee	since	attorney	since	party
Trustee Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Trustee Kathleen D.Schmitt	09/30/02	9				
Attorney David D. MacKnight			04/07/82	479	05/20/91	6
Attorney Michael J. Beyma			01/30/91	13	12/27/02	1
Attorney Karl S. Essler			04/08/91	6		
Attorney Raymond C. Stilwell			12/29/88	248		

17. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section 0, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed, in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct?

18. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (1-5 and 11-12, supra). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.
19. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times on a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the following entries:

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

20. When locals must pay such respect to the judge, there develops among them a vassal-lord relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the

Fiefdom of Rochester. Therein the law of close personal relationships rules.

21. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local who dared assert his rights against them under a foreign law, that is, the laws of Congress.
22. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came through to protect his vassal. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 17, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.
23. Are the local assistant U.S. trustee with her supervisory power and Trustee Gordon with his 3,092 cases and the money in a vassal-lord relationship to each other? Does the Region 2 Trustee know that a non-local has no chance whatsoever of turning the trustee into the subject of a "thorough inquiry" by the local U.S. trustee? Consequently, should she have investigated Trustee Gordon? What homage do local and regional U.S. trustees receive and what fief do they grant?

IV. A case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for confirmation by the bankruptcy court

24. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (case 04-20280; 28, infra). The figures in its

schedules and the surrounding circumstances should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber (section II, supra) and Attorney James Weidman (11-12, supra) were about to submit its repayment plan to the court for approval when Dr. Richard Cordero, a creditor, objected in a five page analysis of the figures in the schedules. Even so, the Trustee and his attorney vouched for the petition's good faith. Let's list the salient figures and circumstances:

a) The DeLanos incurred scores of thousands of dollars in credit card debt,

b) at the average interest rate of 16% or the delinquent interest rate of over 23%,

c) carried it for over 10 years by making only the minimum payments,

d) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F,

e) owe also a mortgage of $77,084,

f) have near the end of their work life an equity in their house of only $21,415,

g) declared earnings in 2002 of $91,655 and in 2003 of $108,586,

h) yet claim that after a lifetime of work their tangible personal property is only $9,945,

i) claim as exempt $59,000 in a retirement account,

j) claim another $96,111.07 as a 401-k exemption,

k) make a $10,000 loan to their son and declare it uncollectible,

l) but offer to repay only 22 cents on the dollar without interest for just 3 years,

m) argue against having to provide a single credit card statement covering any length of time 'because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies', even though the DeLanos must still receive every month the **monthly** credit card statement from each of the issuers of the 18 credit cards and as recently as last January they must have consulted such statements to provide in Schedule F their account number with, and address of, each of those 18 issuers, and

n) pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is *a 15 year bank officer!*, or rather more

precisely, a bank **loan** officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay over the loan's life, and who is still employed that capacity by a major bank, namely, Manufacturers and Traders Trust Bank. He had to know better!

25. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bank-ruptcy? How could Mr. DeLano, despite his "experience in banking", from which he should have learned his obligation to keep financial documents for a certain number of years, pretend that he does not have them to back up his petition? Those are self-evident questions that have a direct bearing on the petition's good faith. Did Trustee Reiber and Attorney Weidman ever ask them? How did they ascertain the timeline of debt accumulation and its nature if they did not check those credit card statements before readying the petition for submission to the court?
26. Until the DeLanos provide financial documents supporting their petition, including credit card statements, let's assume arguendo that when Mr. DeLano lost his job at a financial institution and took a lower paying job at another in 1989, the combine income of his and his wife, a Xerox technician, was $50,000. Last year, 15 years later, it was over $108,000. Let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and a home equity of merely $21,415!, and this does not begin to take into account what they already owned before 1989, let alone all their credit card borrowing. Where did the money go? Or where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?
27. Did the Trustee and his Attorney ever get the hint that the petitions' figures and circumstances made no sense or were they too busy with their other 3,908 cases and the in-take of new ones to ask any questions and request any supporting documents? How many other cases did they also accept under the motto "don't ask, don't check, cash in"? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?
28. For his part, Trustee Reiber is being allowed to hold on to the DeLanos' case to belatedly

"investigate" it, which he is doing only because of Dr. Cordero's assertion of his right to be furnished with financial information about the DeLanos (para. 11, supra). Yet, not to replace the Trustee –as requested by Dr. Cordero- but rather to allow him to be the one to investigate the DeLanos now, disregards the Trustee's obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, who approved it for submission to the court, thereby rendering himself liable as his principal and casting doubt on his own proper handling of his other thousands of cases.

29. Indeed, if an egregious case as the DeLano's passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from the U.S. assistant and regional trustees. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

30. What were they all thinking!? Whatever it was, from their perspective it is evident that the best self-protection is not to set in motion an investigative process that can escape their control and end up crushing them. This proves the old-axiom that a person, just as an institution, cannot investigate himself zealously, objectively, and reassuringly. A third independent party, unfamiliar with the case and unrelated to its players, must be entrusted with and carry out the investigation and then tender its uncompromising report to all those with an interest in the case.

Dr. Richard Cordero

May 24, 2004

59 Crescent Street
Brooklyn, NY 11208

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

Table of All 15 Memoranda and Orders

of The Judicial Conference of the United States
Committee to Review Circuit Council Conduct and Disability Orders
since the adoption of the Judicial Conduct and Disability Act of 1980

sent to Dr. Cordero from the General Counsel's Office of the Administrative Office of the U.S. Courts and showing how few complaints under 28 U.S.C. §351 et seq. are allowed to reach the Judicial Conference as petitions for review of judicial council action

	In re Complaint of	Docket no.	Status	Circuit Council	
1.	George Arshal	82-372-001	Incomplete after p.3	Court of Claims	
2.	Gail Spilman	82-372-002		6th	
3.	Thomas C. Murphy	82-372-003		2nd	
4.	Andrew Sulner	82-372-004		2nd	
5.			Missing?		
6.	John A. Course	82-372-006		7th	
7.	Avabelle Baskett, et al.	83-372-001		Court of Claims	
8.	of bankruptcy judge	84-372-001		9th	
9.	Fred W. Phelps, Sr. et al. v. Hon. Patrick F. Kelly	87-372-001		10th	
10	Petition No. 88-372-001	88-372-001		not stated	
11	Donald Gene Henthorn v. Judge Vela and Magistrate Judges Mallet and Garza	92-372-001		5th	
12	In re: Complaints of Judicial Misconduct	93-372-001		10th	
13	In re: Complaints of Judicial Misconduct	94-372-001		D.C. Ct. of Appeals	
14	In re: Complaints of Judicial Misconduct	95-372-001		9th	
15	In re: Complaints of Judicial Misconduct or Disability [Dist. Judge John H. McBryde]	98-372-001		5th	
16	In re: Complaint of Judicial Misconduct	01-372-001	Incomplete after p.3	D.C. Ct. of Appeals	
17	Agenda E-17, Conduct and Disability; March 2003: no petitions for review pending; Committee "is monitoring the status of Spargo v. NYS Comms. on Judicial Conduct, 244 F.Supp.2d 72(NDNY 2003)		p. 2 is missing or p. 1 and 3 are mismatched		
18	Agenda E-17, Conduct and Disability; September 2003: no petitions for review pending; the Committee "has continued to monitor congressional activity in the area of judicial conduct an disability", p.35				
19	Agenda E-17, Conduct and Disability; March 2004: no petitions for review for received or pending				

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

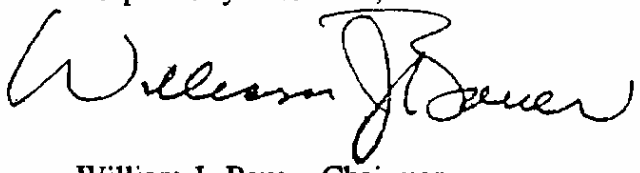
TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

PETITIONS FOR REVIEW

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,



William J. Bauer, Chairman
Pasco M. Bowman
Carolyn R. Dimmick
Barefoot Sanders
Stephanie K. Seymour

NOTICE

NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

SEPTEMBER 23, 2003
WASHINGTON, D.C.

JUDICIAL CONFERENCE OF THE UNITED STATES
CHIEF JUSTICE WILLIAM H. REHNQUIST,
PRESIDING
LEONIDAS RALPH MECHAM, SECRETARY

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

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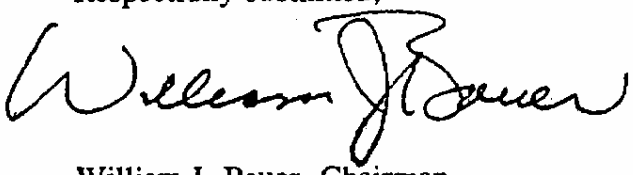

William J. Bauer, Chairman
Pasco M. Bowman
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Stephanie K. Seymour

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REPORT OF THE JUDICIAL CONFERENCE COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee to Review Circuit Council Conduct and Disability Orders last met on August 30-31, 2001. Since that meeting the Committee has communicated by mail and telephone.

AMENDMENTS TO THE JUDICIAL CONDUCT AND DISABILITY ACT

The 21st Century Department of Justice Appropriations Authorization Act, Division C, Title I, Subtitle C, §§ 11041-43 (Pub. L. No. 107-273, 11/2/02), amended the Judicial Conduct and Disability Act, the former 28 U.S.C. § 372(c), in several minor respects. For the most part the provisions of that Act have been preserved verbatim.

The statute makes essentially four changes in the provisions of the Judicial Conduct and Disability Act:

1. As a matter of form, the statute recodifies section 372(c) as sections 351 through 364 of title 28.

NOTICE
NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

and Disability Act, 28 U.S.C. § 372(c)(6)(B), because of the judge's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others." The sanctions consisted of (1) a public reprimand, (2) a one-year suspension from new case assignments, and (3) a three-year suspension from hearing cases in which certain listed attorneys appeared. The court of appeals had affirmed the district court's dismissal of the district judge's challenges to the public reprimand, and had ruled that the district judge's challenges to the one-year and three-year suspensions should have been dismissed as moot.

The denial of certiorari by the Supreme Court would appear to finally put an end to this long-running litigation.

PETITIONS FOR REVIEW

The Committee has not received any petitions for review of judicial council action taken under 28 U.S.C. § 354 (section 372(c)(6)) since the Committee's last report to the Judicial Conference. Nor are there any petitions for review pending from before that time.

Respectfully submitted,

William J. Bauer, Chairman
Pasco M. Bowman
Carolyn R. Dimmick
Barefoot Sanders
Stephanie K. Seymour

Contact Information

sent on June 11, 2004, to
the U.S. House of Representatives and U.S. Senate Judiciary Committees
useful to investigate the evidence of
a judicial misconduct and bankruptcy fraud scheme
by
Dr. Richard Cordero

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Judges of the United States Courts

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Impeachments of Judges

A Guide to the Preservation of Judges' Papers (pdf)

Impeachments of Federal Judges

John Pickering, U.S. District Court for the District of New Hampshire.

Impeached by the U.S. House of Representatives on March 2, 1803, on charges of mental instability and intoxication on the bench; Trial in the U.S. Senate, March 3, 1803, to March 12, 1803; Convicted and removed from office on March 12, 1803.

Samuel Chase, Associate Justice, Supreme Court of the United States.

Impeached by the U.S. House of Representatives on March 12, 1804, on charges of arbitrary and oppressive conduct of trials; Trial in the U.S. Senate, November 30, 1804, to March 1, 1805; Acquitted on March 1, 1805.

James H. Peck, U.S. District Court for the District of Missouri.

Impeached by the U.S. House of Representatives on April 24, 1830, on charges of abuse of the contempt power; Trial in the U.S. Senate, April 26, 1830, to January 31, 1831; Acquitted on January 31, 1831.

West H. Humphreys, U.S. District Court for the Middle, Eastern, and Western Districts of Tennessee.

Impeached by the U.S. House of Representatives, May 6, 1862, on charges of refusing to hold court and waging war against the U.S. government; Trial in the U. S. Senate, May 7, 1862, to June 26, 1862; Convicted and removed from office, June 26, 1862.

Mark W. Delahay, U.S. District Court for the District of Kansas.

Impeached by the U.S. House of Representatives, February 28, 1873, on charges of intoxication on the bench; Resigned from office, December 12, 1873, before opening of trial in the U.S. Senate.

Charles Swayne, U.S. District Court for the Northern District of Florida.

Impeached by the U.S. House of Representatives, December 13, 1904, on charges of abuse of contempt power and other misuses of office; Trial in the U.S. Senate, December 14, 1904, to February 27, 1905; Acquitted February 27, 1905.

Robert W. Archbald, U.S. Commerce Court.

Impeached by the U.S. House of Representatives, July 11, 1912, on charges of improper business relationship with litigants; Trial in the U.S. Senate, July 13, 1912, to January 13, 1913; Convicted and removed from office, January 13, 1913.

George W. English, U.S. District Court for the Eastern District of Illinois.

Impeached by the U.S. House of Representatives, April 1, 1926, on charges of abuse of power; resigned office November 4, 1926; Senate Court of Impeachment adjourned to December 13, 1926, when, on request of the House manager, impeachment proceedings were dismissed.

Harold Louderback, U.S. District Court for the Northern District of California.

Impeached by the U.S. House of Representatives, February 24, 1933, on charges of favoritism in the appointment of bankruptcy receivers; Trial in the U.S. Senate, May 15, 1933, to May 24, 1933; Acquitted, May 24, 1933.

Halsted L. Ritter, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, March 2, 1936, on charges of favoritism in the appointment of bankruptcy receivers and practicing law while sitting as a judge; Trial in the U.S. Senate, April 6, 1936, to April 17, 1936; Convicted and removed from office, April 17, 1936.

Harry E. Claiborne, U.S. District Court for the District of Nevada.

Impeached by the U.S. House of Representatives, October 9, 1986, on charges of income tax evasion and of remaining on the bench following criminal conviction; Trial in the U.S. Senate, October 7, 1986, to October 9, 1986; Convicted and removed from office, October 9, 1986.

Alcee L. Hastings, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, August 3, 1988, on charges of perjury and conspiring to solicit a bribe; Trial in the U.S. Senate, October 18, 1989, to October 20, 1989; Convicted and removed from office, October 20, 1989.

Walter L. Nixon, U.S. District Court for the Southern District of Mississippi.

Impeached by the U.S. House of Representatives, May 10, 1989, on charges of perjury before a federal grand jury; Trial in the U.S. Senate, November 1, 1989, to November 3, 1989; Convicted and removed from office, November 3, 1989.

Remarks of the Chief Justice

Federal Judges Association Board of Directors Meeting
May 5, 2003

Thank you Judge Jolly. I thought I would speak today about two topics that are of great concern to federal judges around the country. The first, of course, is the perennial topic of judicial pay. The second is the issue of Congressional concern about sentencing in the federal courts of the federal judiciary.

One of the critical challenges of American government is to preserve the legitimate independence of the judicial function while recognizing the role Congress must play in determining how the judiciary functions. Article III of the Constitution grants to Article III judges two significant protections of their independence: they have tenure during good behavior, and their compensation may not be diminished during their term of office. But federal judges are heavily dependent upon Congress for virtually every other aspect of their being -- including when and whether to increase judicial compensation.

Last December I met with President Bush to discuss the need for an increase in judges' pay. The President subsequently issued a statement urging Congress to authorize a pay increase for federal judges. On January 7, 2003, the National Commission on the Public Service, chaired by Paul Volcker, issued its report, "Urgent Business for America - Revitalizing the Federal Government for the 21st Century." Among its recommendations is that "Congress should grant an immediate and significant increase in judicial, executive and legislative salaries" and that "[i]ts first priority in doing so should be an immediate and substantial increase in judicial salaries." At the March meeting of the Judicial Conference, the Attorney General spoke in favor of increasing judges' pay, as did Senators Hatch and Leahy.

Whether this means that the stars are aligned for Congress to pass a bill to increase our pay, I cannot say. But I can say that we are closer than we have been for several years, and I am still hopeful that we may get something through during this Congress. The progress we have made is in large part due to the efforts of many federal judges, including the members and leadership of the Federal Judges Association. I particularly want to note the hard work of Deanell Tacha and Richard Arnold, the Chair and Vice-Chair of the Judicial Branch Committee of the Judicial Conference, Judge John Walker, who has helped pave the way for the President's support, and Judge Robert Katzmann, who worked very closely with the Volcker Commission.

The second topic I would like to address is the recent efforts by some in Congress to look into downward departures in sentencing by federal judges, in particular our colleague Judge James Rosenbaum. We can all recognize that Congress has a legitimate interest in obtaining information which will assist in the legislative process. But the efforts to obtain information may not threaten judicial independence or the established principle that a judge's judicial acts cannot serve as a basis for his removal from office.

It is well settled that not only the definition of what acts shall be criminal, but the prescription of what sentence or range of sentences shall be imposed on those found guilty of such acts, is a legislative function - in the federal system, it is for Congress. Congress has recently indicated rather strongly, by the Feeney Amendment, that it believes there have been too many downward departures from the Sentencing Guidelines. It has taken steps to reduce that number. Such a decision is for Congress, just as the enactment of the Sentencing Guidelines nearly twenty years ago was.

The new law also provides for the collection of information about sentencing practices employed by federal judges throughout the country. This, too, is a legitimate sphere of congressional inquiry, in aid of its legislative authority. But one portion of the law provides for the collection of such information on an individualized judge-by-judge basis. This, it seems to me, is more troubling. For side-by-side with the broad authority of Congress to legislate and gather information in this area is the principle that federal judges may not be removed from office for their judicial acts.

This principle is not set forth in the Constitution, which does grant federal judges tenure during good behavior and protection against diminution in salary. But the principle was established just about two centuries ago in the trial of Justice Samuel Chase of the Supreme Court by the Senate. Chase was one of those people who are intelligent and learned, but seriously lacking in judicial temperament. He showed marked partiality in at least one trial over which he presided, and regularly gave grand juries partisan federalist charges on current events.

For this the House of Representatives, at President Thomas Jefferson's instigation, impeached him, and he was tried before the Senate in 1805. That body heard fifty witnesses over a course of ten full days. The Jeffersonian Republicans had more than a two-thirds majority in the body, and if they had voted as a block Chase would have been convicted and removed from office. Happily, they did not vote as a block; the article on which the House managers obtained the most votes to convict was the one dealing with his charges to the grand jury; there the vote to convict was nineteen to fifteen, a simple majority but short of the requisite two-thirds vote needed to convict.

The significance of the outcome of the Chase trial cannot be overstated -- Chase's narrow escape from conviction in the Senate exemplified how close the development of an independent judiciary came to being stultified. Although the Republicans had expounded grandiose theories about impeachment being a method by which the judiciary could be brought into line with prevailing political views, the case against Chase was tried on a basis of specific allegations of judicial misconduct. Nearly every act charged against him had been performed in the discharge of his judicial office. His behavior during the Callender trial was a good deal worse than most historians seem to realize, and the refusal of six of the Republican Senators to vote to convict even on this count surely cannot have been intended to condone Chase's acts. Instead it

represented a judgement that impeachment should not be used to remove a judge for conduct in the exercise of his judicial duties. The political precedent set by Chase's acquittal has governed that day to this: a judge's judicial acts may not serve as a basis for impeachment.

In the years since the Chase trial, eleven federal judges have been impeached. Of those, three were acquitted, two resigned rather than face trial, and six were convicted. One conviction -- that of Judge West H. Humphreys in 1862 -- was by default since he had accepted appointment as a Confederate judge in Tennessee. The other five convictions were for offenses involving financial improprieties, income tax evasion, and perjury -- misconduct far removed from judicial acts.

But the principle that a judge may not be impeached for judicial acts does not mean that Congress cannot change the rules under which judges operate. Congress establishes the rules to be applied in sentencing; that is a legislative function. Judges apply those rules to individual cases; that is a judicial function. There can be no doubt that collecting information about how the sentencing guidelines, including downward departures, are applied in practice could aid Congress in making decisions about whether to legislate on these issues. There can also be no doubt that the subject matter of the questions, and whether they target the judicial decisions of individual federal judges, could amount to an unwarranted and ill-considered effort to intimidate individual judges in the performance of their judicial duties. We must hope that these inquiries are designed to obtain information in aid of the congressional legislative function, and will not trench upon judicial independence.

Thank you.

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Dr. Richard Cordero

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June 29, 2004

Mr. David N. Kelley
U.S. Attorney for the Southern District of NY
One St. Andrews Plaza [(212)637-2200; fax (212)637-2611]
New York, NY 10007

Dear Mr. Kelley,

On May 6, I mailed you a letter with supporting documents in which I laid out evidence of judicial misconduct and bankruptcy fraud involving judges and other officers in the U.S. courts in Rochester and the Court of Appeals for the Second Circuit. They have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. I pointed out how the concentration of *thousands* of open cases in the hands of a single trustee can generate the money that incites to wrongdoing through the acceptance for a fee of meritless bankruptcy petitions. One such petition, dated January 26, 2004, was filed by David and Mary Ann DeLano in Rochester, dkt. no. 04-20280 WBNY. It deserves your attention because it is so meritless (page 8, para. 23, infra) for bankruptcy relief –Mr. DeLano is and has been a *loan* bank officer for 15 years- that its investigation as a test case (4.C) can yield insight into the bankruptcy scheme (1.A). To that end and since my submission cannot be found (but see iv), I am sending you a copy and this update.

The DeLanos' petition (92-127) was approved by Trustee George Reiber for confirmation on March 8 by the court. Although it names me as a creditor and I traveled from NYC to Rochester to attend the meeting of creditors on that date, James Weidman, the Trustee's attorney –it was unlawful for him to conduct the meeting-, repeatedly asked *me* how much I knew about the DeLanos having committed fraud. When I revealed nothing, he prevented me from examining them; the Trustee ratified his action as did Judge J. Ninfo. I requested his supervisors, Assistant U.S Trustee Kathleen Schmitt and U.S. Trustee for Region 2 Deirdre Martini, to replace Trustee Reiber with an independent trustee to investigate how such a questionable petition was approved and why I was not allowed to examine the Debtors. They have refused and he has not investigated anything. Instead, Trustee Martini has engaged in deception (77-84) to avoid sending me information that could allow me to investigate this case further.

Due to my insistence, Trustee Reiber obtained some documents from the debtors (28-58). Because they are late, he has moved for dismissal, which would also protect him from my investigation. Indeed, my analysis of those documents (16-27a) reveals their incompleteness as well as debt underreporting, account unreporting, and concealment of assets. Why did Trustee Martini keep him on the case without investigating how many of his *3,909 open cases* (2.B) he approved without regard for their merits (8.D)? Yet, this is not the only trustee with such practices (4.C).

The misconduct of CA2 judges (85-89) and the Region 2 trustee within your district should be enough to give you jurisdiction to investigate any link between it and the misconduct and bankruptcy fraud in WDNY. I can support that proposition with facts beyond this executive summary because I have dealt with these people for 2½ years and have read or researched and written over 1,500 pages of documents. Consequently, I respectfully request to meet with you.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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June 29, 2004

Ms. Janet Sandt
Legal Assistant [(212)637-2200; fax (212)637-2611]
U.S. Attorney's Office
One St. Andrews Plaza
New York, NY 10007

Dear Ms. Sandt,

Thank you for calling me last Tuesday, June 22, concerning my letter of last May 6 with supporting documents to U.S. Attorney David Kelley. Therein I laid out evidence of judicial misconduct and bankruptcy fraud involving judges in the U.S. Bankruptcy and District Courts in Rochester and the Court of Appeals for the Second Circuit as well as private and U.S. trustees and debtors there and here in NYC.

As stated, despite my inquiries, my submission has not yet been found, although I mailed it on May 7 (see page iv, infra). Hence, I am grateful that you requested a copy to review it. Since this is an on going case in both cities, herewith is an update. It concentrates on the workings of a bankruptcy fraud scheme (1A, infra) and the analysis (16-27a) of financial documents from bankruptcy petitioners (28-58). Their petition (92-127) can be considered a test case that through concrete facts and identified persons can provide firm stepping stones for your investigation (8D). The analyzed documents reveal not only their suspicious incompleteness despite repeated requests that at my instigation (59-76) the private trustee belatedly made for a whole set (11-15), but also debt underreporting, account unreporting, and concealment of assets. These findings beg the questions: How could the private and U.S. trustees (77-84) approve such a meritless (8, para. 23) bankruptcy petition? How many of the *3,909 open cases* of *the same trustee* (2.B) are also meritless? Why does the bankruptcy judge keep confirming them? (4C)

Included in the update is also a letter with supporting material to the CA2 Chief Judge. I complain about the refusal to make available to me misconduct orders that by law are required to be made publicly available and which I need to prepare my appeal, which is deadlined to July 9, to the CA2 judicial circuit from his dismissal of my judicial misconduct complaint (85-89). To date, two weeks since my initial request on June 16, the Chief Judge has neither answered my letter nor made available the orders. This event and those that I described in the previous submissions concerning misconduct of CA2 judges (1st of May 2) and the Region 2 Trustee (2nd of May 24) here in NYC should suffice to provide your office with jurisdiction to investigate the link between misconduct here and misconduct and bankruptcy fraud in Rochester.

To be as persuasive as possible and enable you and your colleagues to assess this case on the best available evidence, I have included many copies of key documents; this will spare you having to hunt for them. However, I can provide pertinent clarifications and important details given my dealings with these people for 2½ years and familiarity with over 1,500 pages of documents. Thus, I respectfully request that you bring to Mr. Kelley's attention my cover letters, which are executive summaries for busy decision-makers, and arrange for us to meet. Meantime, I look forward to hearing from you soon and thank you for getting the review process underway.

Sincerely,

Dr. Richard Cordero

C:1392 Dr. Cordero's request of 6/29/4 to Legal Assis Sandt to forward to Att Kelley evid of jud & bkr fraud scheme

Dr. Richard Cordero

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June 29, 2004

Mr. David Jones
Chief of the Bankruptcy Unit in Civil Matters
U.S. Attorney's Office
One St. Andrews Plaza [(212)637-2200; fax (212)637-2611]
New York, NY 10007

Dear Mr. Jones,

Thank you for calling me last Tuesday, June 22, concerning my letter of May 6 with supporting documents to U.S. Attorney David Kelley. Therein I laid out evidence of judicial misconduct and bankruptcy fraud involving judges in the U.S. Bankruptcy and District Courts in Rochester and the Court of Appeals for the Second Circuit as well as trustees and debtors there and here in NYC. As stated, despite my inquiries, my submission has not yet been found, although I mailed it on May 7 (see page iv, infra). Thus, I am grateful that you requested a copy.

Since this is an on going case in both cities, herewith is an update. It concentrates on the workings of a bankruptcy fraud scheme (1A, infra) and the analysis (16-27a) of financial documents from bankruptcy petitioners (28-58). Their petition (92-127) can be considered a test case that through concrete facts and identified persons can provide firm stepping stones for your investigation (8D). The analyzed documents reveal not only their suspicious incompleteness despite repeated requests that at my instigation (59-76) the private trustee belatedly made for a whole set (11-15), but also debt underreporting, account unreporting, and concealment of assets. These findings beg the questions: How could the private and U.S. trustees (77-84) approve such a meritless (8, para. 23) bankruptcy petition? How many of the *3,909 open cases* of *the same trustee* (2.B) are also meritless? Why does the bankruptcy judge keep confirming them? (4C)

Contrary to some views, the evidence contained in my initial submission, let alone as buttressed by this update, is sufficient to raise reasonable suspicion of wrongdoing, which your office can investigate to determine whether criminal activity has been or is being committed. It is not for me, as a private citizen rather than a private investigator, to go out and search for other creditors that can join me and lend credibility to my claims. In the process, I would risk a defamation lawsuit, which I could hardly defend since I lack what is required to investigate this case, such as your Office's subpoena power, manpower to conduct interviews and depositions, and the means to engage in forensic accounting and hunt for concealed assets or evidence of bribes. Nor can each piece of evidence be discarded individually as non-probative of any crime. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart to look at them collectively? Circumstantial cases in which a person can lose even his life look at the totality of circumstances. So here.

To be as persuasive as possible and enable you and your colleagues to assess this case on the best available evidence, I have included many copies of key documents; this will spare your having to search for them. However, I can provide pertinent clarifications and important details given my dealings with these people for 2½ years and familiarity with over 1,500 pages of documents. Thus, I respectfully request that you bring to Mr. Kelley's attention my cover letters, which provide executive summaries for busy decision-makers, and arrange for us to meet. Meantime, I look forward to hearing from you soon and thank you for getting the review underway.

Sincerely,

Dr. Richard Cordero

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June 29, 2004

Karen Patton Seymour, Esq.
Chief of the Criminal Division (212)637-2200; fax (212)637-2611]
U.S. Attorney's Office
One St. Andrews Plaza
New York, NY 10007

Dear Ms. Seymour,

Last May 6, I sent a letter with supporting documents to U.S. Attorney David Kelley. Therein I laid out evidence of judicial misconduct and bankruptcy fraud involving judges in the U.S. Bankruptcy and District Courts in Rochester and the Court of Appeals for the Second Circuit as well as trustees and debtors there and here in NYC. However, nobody can find that submission, which I mailed on May 7 (see page iv, infra). While inquiring about it, I was told that if it ever appeared, it would be sent to you. Consequently, I am submitting to you a copy.

Since this is an on going case in both cities, herewith is an update. It concentrates on the workings of a bankruptcy fraud scheme (1A, infra) and the analysis (16-27a) of financial documents from bankruptcy petitioners (28-58). Their petition (92-127) can be considered a test case that through concrete facts and identified persons can provide firm stepping stones for your investigation (8D). The analyzed documents reveal not only their suspicious incompleteness despite repeated requests that at my instigation (59-76) the private trustee belatedly made for a whole set (11-15), but also debt underreporting, account unreporting, and concealment of assets. These findings beg the questions: How could the private and U.S. trustees (77-84) approve such a meritless (8, para. 23) bankruptcy petition? How many of the *3,909 open cases* of *the same trustee* (2.B) are also meritless? Why does the bankruptcy judge keep confirming them? (4C)

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Sincerely, Dr. Richard Cordero

C:1394 Dr. Cordero's request of 6/29/4 to Crim Chief Seymour to forward to Att Kelley evid of jud & bkr fraud scheme

Dr. Richard Cordero

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June 29, 2004

Donna Drori, Esq.
Assistant U.S. Attorney [(212)637-2200; fax (212)637-2611]
U.S. Attorney's Office
86 Chambers Street, 3rd Fl.
New York, NY 10007

Dear Ms. Drori,

Thank you for calling me last Thursday, June 24, concerning my letter of last May 6 with supporting documents to U.S. Attorney David Kelley. Therein I laid out evidence of judicial misconduct and bankruptcy fraud involving judges in the U.S. Bankruptcy and District Courts in Rochester and the Court of Appeals for the Second Circuit as well as private and U.S. trustees and debtors there and here in NYC.

As stated, despite my inquiries, my submission has not yet been found, although I mailed it on May 7 (see page iv, infra). Hence, I am grateful that you requested a copy to review it. Contrary to some views, the evidence contained in my initial submission, let alone as buttressed by this update, is sufficient to raise reasonable suspicion of wrongdoing, which your office can investigate to determine whether criminal activity has been or is being committed. It is not for me, as a private citizen rather than a private investigator, to go out and search for other creditors that can join me and lend credibility to my claims. In the process, I would risk a defamation lawsuit, which I could hardly defend since I lack what is required to investigate this case, such as you Office's subpoena power, manpower to conduct interviews and depositions, and the means to engage in forensic accounting and hunt for concealed assets or evidence of bribes. Nor can each piece of evidence be discarded individually as non-probative of any crime. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart to look at them collectively? Circumstantial cases in which a person can lose even his life look at the totality of circumstances. So here.

Included in the update is also a letter with supporting material to the CA2 Chief Judge. I complain about the refusal to make available to me misconduct orders that by law are required to be made publicly available and which I need to prepare my appeal, which is deadlined to July 9, to the CA2 judicial circuit from his dismissal of my judicial misconduct complaint (85-89). To date, two weeks since my initial request on June 16, the Chief Judge has neither answered my letter nor made available the orders. This event and those that I described in the previous submissions concerning misconduct of CA2 judges (1st of May 2) and the Region 2 Trustee (2nd of May 24) here in NYC should suffice to provide your office with jurisdiction to investigate the link between misconduct here and misconduct and bankruptcy fraud in Rochester.

To be as persuasive as possible and enable you and your colleagues to assess this case on the best available evidence, I have included many copies of key documents; this will spare your having to hunt for them. However, I can provide pertinent clarifications and important details given my dealings with these people for 2½ years and familiarity with over 1,500 pages of documents. Thus, I respectfully request that you bring to Mr. Kelley's attention my cover letters, which provide executive summaries for busy decision-makers, and arrange for us to meet. Meantime, I look forward to hearing from you soon and thank you for getting the review underway.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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June 29, 2004

Mr. Pasquale J. Damuro
Assistant Director in Charge [(212)637-2200; fax (212)637-2611]
FBI New York
26 Federal Plaza, 23rd. Floor
New York, NY 10278-0004

Dear Mr. Damuro,

Last May 2 and 24, I sent you a letter with supporting documents and then with updating ones, respectively. Therein I laid out evidence of judicial misconduct and bankruptcy fraud involving judges in the U.S. Bankruptcy and District Courts in Rochester and the Court of Appeals for the Second Circuit in NYC as well as trustees and debtors there and here. While I never received acknowledgment of receipt, this past week A.S.S.A. Robert Silveri succeeded in tracking them down and promptly getting its review under way. I have requested that he bring this matter to your attention with a view to obtaining your input and opening an investigation.

Since this is an on going case in both cities, herewith is an update. It concentrates on the workings of a bankruptcy fraud scheme (1A, infra) and the analysis (16-27a) of financial documents from bankruptcy petitioners (28-58). Their petition (92-127) can be considered a test case that through concrete facts and identified persons can provide firm stepping stones for your investigation (8D). The analyzed documents reveal not only their suspicious incompleteness despite repeated requests that at my instigation (59-76) the private trustee belatedly made for a whole set (11-15), but also debt underreporting, account unreporting, and concealment of assets. These findings beg the questions: How could the private and U.S. trustees (77-84) approve such a meritless (8, para. 23) bankruptcy petition? How many of the *3,909 open cases* of *the same trustee* (2.B) are also meritless? Why does the bankruptcy judge keep confirming them? (4C)

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To be as persuasive as possible and enable you to assess this case on the best available evidence, I have included many copies of key documents. This will spare your agents having to hunt for them. By the same token, it is an effort on my part to cause your Office to investigate this pattern of wrongdoing. Since I can provide pertinent clarifications and important details given my dealings with these people for 2½ years and familiarity with over 1,500 pages of documents, I respectfully request a meeting with you. Meantime, I would appreciate it if you would acknowledge receipt of my three submissions.

Sincerely,

Dr. Richard Cordero

C:1396 Dr. Cordero's request of 6/29/4 to FBI Damuro to meet to discuss new evidence of jud & bkr fraud scheme

Dr. Richard Cordero

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June 29, 2004

Mr. Robert M. Silveri
Acting Supervisory Special Agent, Squad C-4
FBI New York
26 Federal Plaza, 23rd. Floor
New York, NY 10278-0004 [(212)637-2200; fax (212)637-2611 ext. 2219]

Dear Mr. Silveri,

Thank you for tracking down and discussing with me my submissions of last May 2 and 24, to Assistant Director in Charge Pasquale Damuro. Therein is evidence of judicial misconduct and bankruptcy fraud involving U.S. judges and other officers in Rochester and the Second Circuit Court of Appeals in NYC. They have disregarded the law, rules, and facts so repeatedly as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. The concentration of *thousands* of cases in a single trustee can generate the money that incites to wrongdoing through the acceptance for a fee of meritless petitions for bankruptcy relief. This update bears on one such petition, the DeLanos'. It deserves your attention because it is so meritless (page 8, para. 23, infra) –Mr. DeLano is and has been a *loan* bank officer for 15 years- that its investigation as a test case (4.C) can yield insight into the bankruptcy scheme (1.A).

The DeLanos' petition (92-127) was approved by Trustee George Reiber for confirmation on March 8 by the court. Although it names me as a creditor and I traveled from NYC to Rochester to attend the meeting of creditors on that date, James Weidman, the Trustee's attorney –it was unlawful for him to conduct the meeting-, repeatedly asked *me* how much I knew about the DeLanos having committed fraud. When I revealed nothing, he prevented me from examining them; the Trustee ratified his action as did Judge J. Ninfo. I requested his supervisors, Assistant U.S Trustee Kathleen Schmitt and U.S. Trustee for Region 2 Deirdre Martini, to replace Trustee Reiber with an independent trustee to investigate how such a questionable petition was approved and why I was not allowed to examine the Debtors. They have refused and he has not investigated anything. Instead, Trustee Martini has engaged in deception (77-84) to avoid sending me information that could allow me to investigate this case further.

Due to my insistence, Trustee Reiber obtained some documents from the debtors (28-58). Because they are late, he has moved for dismissal, which would also protect him from my investigation. Indeed, my analysis of those documents (16-27a) reveals their incompleteness as well as debt underreporting, account unreporting, and concealment of assets. Why did Trustee Martini keep him on the case without investigating how many of his *3,909 open cases* (2.B) he approved without regard for their merits (8.D)? Yet, this is not the only trustee with such practices (4.C).

The misconduct of CA2 judges (85-89) and the Region 2 trustee within your district should be enough to give you jurisdiction to investigate any link between it and the misconduct and bankruptcy fraud in WDNY. I can support that proposition with facts because I have dealt with these people for 2½ years and have read or researched and written over 1,500 pages of documents. Thus, I respectfully request that you bring to Mr. Damuro's attention my cover letters, which provide executive summaries, and arrange for us to meet. Meantime, I thank you for getting this review underway and look forward to hearing from you soon.

Sincerely, Dr. Richard Cordero

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containing the update sent on June 29, 2004
to U.S. Att. David N. Kelley, SDNY,
FBI Assistant Director in Charge Pasquale J. Damuro
and officers in their respective offices
concerning the *DeLano* test case for investigating
a judicial wrongdoing and bankruptcy fraud scheme
by
Dr. Richard Cordero

1. A **trustee with** *thousands* **of open cases** and one case that opens a window into the operation of the bankruptcy fee scheme ..... 1 [C:1401]

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* **D:**=Designated items, i.e. documents, in the record for the appeal from Bankruptcy Judge Ninfo's decision in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*, 05cv6190L, WDNY. These items are contained on the accompanying CD in the D folder.

The latter also holds **Add:**=Addendum to the D: files; **Pst:**= PostAddendum; and **Tr:**=transcript of the evidentiary hearing in *DeLano* held before Judge Ninfo on March 1, 2005.

Mr. DeLano is a 3rd-party defendant whom Dr. Cordero brought into *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, Judge Ninfo presiding. Later on, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against him arising from *Pfuntner*.

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Trustees with thousands of open cases and one case that opens a window into the operation of the bankruptcy fraud scheme

(as of June 26, 2004)

by
Dr. Richard Cordero

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A. A scheme that works by taking money from many credit card issuers but not so much from anyone as to make it cost-effective for any issuer to spend time, effort, and money pursuing a pennies-on-the dollar recovery in risky bankruptcy proceedings

1. The critical fact that should pique one's curiosity and intrigue one into examining this case further is that each trustee has *thousands of open cases*. This fact can be corroborated independently through Pacer, as shown below. It inescapably begs the question: How can one lawyer in a one or two lawyer law firm, as are those in play here, can possibly have the time to

pay anything remotely close to adequate attention to so many cases? Keep in mind that the trustee must examine each petition to determine whether it meets the requirements of the Bankruptcy Code so that he may recommend to the court that its plan of debt repayment be confirmed. That requires his review of not only all the schedules that make up a petition, but also financial documents that provide the basis for the figures and statements that the debtor used to fill out the schedules.

2. Indeed, the trustee, as the representative of the creditors, must ascertain, for example, whether the debtor has truthfully stated all his debts, has neither hidden any of his assets nor underestimated the value of those that he has declared, and has not overestimated his current expenditures. But that is just the beginning, for then the trustee must monitor the debtor's performance of his debt repayment plan as the debtor makes monthly payments over the three to five years of the plan's life. How many seconds a month can the trustee dedicate to each of *3,909 open cases!*? Meanwhile he continues to take in new ones and must conduct in person the meeting of creditors, which he may have to adjourn one or more times. He must also appear in court not only to confirm debtors' plans, but also to state his views at hearings of motions raised by any of the parties. That is why he cannot waste time reviewing petitions. Here is where knowledge of other people's normal behavior in bankruptcy cases or, better still, what others have agreed to do, becomes such a key element for the trustee.
3. Many creditors, including institutional ones, cannot afford to spend the considerable amount of time, effort, and thus money necessary to recover on their bankruptcy claims unless the latter exceed a certain threshold of cost-effective participation. It comes down to not throwing good money after bad. As a result, people who know this cost barrier exploit their knowledge: They incur debts below the threshold, but to as many creditors as they can. Hence, the ideal target creditor is a credit card issuer, whose debt is unsecured and whose balance transfer feature allows the debtor to regulate his debt's threshold levels. So the debtor can charge to a card up to a certain limit of debt; keep making the minimum monthly payment to avoid a negative credit bureau report that would alert other issuers and could trigger their acceleration clauses; and move on to charging the next credit card. An industry insider, such as a loan bank officer, would be in a position, not only to find out the threshold of participation of many credit card issuers, but also to use that knowledge for personal benefit as well as for the benefit of others, whether his clients or other parties. Knowledge is a valuable asset and if it joins the legal

authority vested in officers in the right position, the basic elements of a scheme are in place.

4. As this knowledge is provided to more people and as more and more bankruptcy peti-tions are approved without any review of supporting documents, let alone any determination of their good faith, the number of debtors filing petitions just keeps growing. Overwhelmed by them, the creditors must increase their threshold of participation. This dynamic puts in motion a vicious circle in which a necessary threshold is exploited by petitions below it and the increasing number of such petitions requires setting a higher threshold, which is exploited in turn and so on.
5. At the same time, money keeps rolling in for the schemers. For one thing, even if the total debt to any one creditor is intentionally kept relatively low, the debts to all creditors add up to serious money, as shown below. To escape paying all that money, a debtor has an incentive to pay all fees, legal and otherwise, demanded by the schemers. Similarly, even if the schemers make a small amount of money on each petition, they accept so many cases, *thousands of them!*, that their total in-take also adds up to serious money. They can be so indiscriminate in accepting cases regardless of their merits precisely because they do not waste time reviewing any petition beyond what is strictly necessary to make sure that it is below the creditors' threshold of participation. Actually, in the logic of the scheme, the fewer the merits for relief under the Bankruptcy Code a petition has, the higher its value to the schemers, who can raise any acceptance fee proportionally higher. High too as well as widespread are the loss and pain that they cause to so many creditors: those who trusted them enough to lend them their money and those who believed them to be doing the right thing on their behalf rather than engaging in irresponsible and self-serving conduct that renders them liable for claims of compensation. Neither debtors not schemers should be allowed to break bankruptcy laws and get rich with it.

B. A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith

6. Pacer is the federal courts' electronic document filing and retrieval service. The information that it provides sheds light on why trustees may be quite unwilling and unable to spend any time investigating the bankruptcy petitions submitted to them by debtors to establish the reliability of their figures and statements. When queried on April 2, 2004, with the name

George Reiber, Trustee, -the standing Chapter 13 trustee in the Western District of New York- it returned this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, Pacer came back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that ended thus:

Table 1. Illustrative row of PACER's presentation of Standing Chapter 13 Trustee George Reiber's 3,909 *open* cases in the Bankruptcy Court, WBNY

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

7. As of last April 2, Trustee Reiber had 3,909 *open* cases! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink in the left cell that can call that case to step up to the screen for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber took care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added; §2-2.1. of the Trustee Manual). By the way, JCN after the case number in the left cell stands for the Hon. John C. Ninfo, II, the U.S. bankruptcy judge in Rochester before whom that case and so many others, as shown below, was brought.
8. Trustee Reiber is the trustee for the DeLano case (section D, infra). For him "meaningful distribution" under the DeLanos' debt repayment plan is 22 cents on the dollar with no interest accruing during the repayment period (see the DeLano's bankruptcy petition at the end of this package). No doubt, avoiding 78 cents on the dollar as well as credit card compounding interest as well as late and over the limit fees is even more meaningful to the DeLanos. By the same

token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).

9. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. However, increasing the base would require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life, such as a golden pot retirement. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2)). "Mmm…not good!"
10. The obvious alternative is "never investigate anything, not even patently suspicious cases. Just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover." Of necessity, such a scheme redounds to the detriment of the creditors, whose interests the trustee is supposed to represent, since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor only to get what was owed them to begin with.
11. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate debtors' financial affairs, ever more debtors with ever less deserving cases for relief under the Bankruptcy Code go ahead and file their petitions. What is worse, as people with no debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed with the required fee…or perhaps 'fees'?
12. Have U.S. Trustees contributed to the development of that income maximizing mentality and implementing scheme by failing to demand that panel trustees –who are private trustees under their supervision- perform their duty "to investigate the financial affairs of the debtor" (11 U.S.C. §§1302(b)(1) and §704(4)) and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (§704(7))?

C. Another trustee with *3,383 cases* was upon a performance- and-fitness-to-serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to him and a party and to uncritically writing down their comments in an opinion, which the Trustee for Region 2 would not investigate

13. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero to the bankruptcy court and others, and merely referred him back to the same people that had referred him to Trustee Gordon.
14. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge Ninfo did not investigate whether the Trustee had submitted to him false statements, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and held back in its depth to uncritically accepting at face value what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.
15. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.
16. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has

thousands of cases. The statistics on Pacer as of November 3, 2003, showed that Trustee Gordon was the trustee in 3,092 cases! What is more, as of June 26, 2004, Pacer replied on page https://ecf.nywb.uscourts.gov/cgi-bin/login.pl to a query of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". The latest one is:

2-04-22525-JCN	Thomas E. Smith	filed 06/14/04

17. This means that in fewer than 8 months and excluding weekends and holidays and without taking into account any vacation, sick days, training, or conference attendance, Trustee Gordon has taken on an additional 291 cases or an average of 2 cases per day! What kind of 'quality time' can he give to the review of the filing data and ascertainment of legal compliance and good faith of two new cases a day while at the same time he monitors all his enormous load of other cases?…and goes to court for hearings, and writes reports for the court, and confers with his supervisor, the assistant U.S. Trustee, and discusses the concerns of creditors…that too?, well, perhaps not too often, for he also prosecutes or defends lawsuits in 142 cases, the latest one being, according to Pacer:

2-04-22720-JCN	Norman G Kraft and Ellen K Kraft	filed 06/23/04

To top it off, he is also named a party in 76 cases, the latest of which Pacer identifies as being:

2-04-02014-JCN	Gordon v. Murphy	filed 01/29/04

18. Now comes a critically important piece of information, or rather three, for Pacer shows that in all those 76 cases in which Trustee Gordon is named a party, the judge has been none other than JCN, that is, the Hon. John C. Ninfo, II; that in 138 out of those 142 cases in which Trustee Gordon was named an attorney, the judge has been Judge Ninfo; and that in all but one of the 3,383 cases in which Trustee Gordon was the trustee, Judge Ninfo has been the judge. They have worked together in thousands of cases!, for years, day in and day out, with Trustee Gordon appearing before Judge Ninfo in the same session several times for different cases. It is more than reasonable to assume that they have developed, if not a personal bond, then the

working relationship between a grantor of rulings who is not to be challenged and a petitioner of rulings who wants them to be favorable. Such relationship benefits from cooperation and mutual support as well as the avoidance of even the appearance of defiance, not to mention antagonism. It induces its participants to become partners. Outsiders had better abstain from challenging either of them, let alone both of them.

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court compared with the number of cases of bankruptcy attorneys appearing there as of November 3, 2003, at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

NAME	# OF CASES AND CAPACITY IN WHICH APPEARING SINCE					
	since	trustee	since	attorney	since	party
Trustee Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Trustee Kathleen D.Schmitt	09/30/02	9				
Attorney David D. MacKnight			04/07/82	479	05/20/91	6
Attorney Michael J. Beyma			01/30/91	13	12/27/02	1
Attorney Karl S. Essler			04/08/91	6		
Attorney Raymond C. Stilwell			12/29/88	248		

19. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section II, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed, in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct toward Dr. Cordero?
20. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (see

his misconduct complaints). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.

21. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over complying with the laws and rules of Congress or being truthful about the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times in a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the following entries:

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight[1]	3
Kathleen Schmitt	3	Raymond Stilwell[2]	2

22. When locals must pay such respect to the judge, there develops among them a vassal-lord relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them

[1] David MacKnight, Esq., is the attorney of Mr. James Pfuntner, the owner of a warehouse used by Mr. David Palmer, the owner of Premier Van Lines, the moving and storage company that went bankrupt.

[2] Raymond Stilwell, Esq., was the attorney representing Mr. David Palmer.

when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the Fiefdom of Rochester. Therein the law of close personal relationships reigns supreme.

23. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local, Dr. Cordero, who dared assert his rights against them under a foreign law, that is, the laws of Congress.
24. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came to his vassal's assistance. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 19, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.
25. However, while this case started with Dr. Cordero, a non-citizen of the Fiefdom of Rochester, being dragged from New York City as a defendant into that diverse jurisdiction, it did not end when Dr. Cordero, naively thinking that he was in a federal court, had the 'temerity' to challenge the Deferential Counsel *to* the Court Gordon, and Lord Ninfo had no qualms in defending his Counsel by disregarding legality and dismissing Dr. Cordero's challenge. Far from it, thereupon Dr. Cordero, still disoriented by a compass pointing to the law of Congress, had the 'boldness' to go on appeal to the district court. Then it was time for Duke of the District David Larimer, who rules from the floor above that of Lord Ninfo in the same federal building, to come to the rescue of his very close colleague. By likewise disregarding the law, the rules, and the facts, the Duke dismissed Dr. Cordero from his jurisdiction.
26. Dr. Cordero came back to New York City to appeal to the judges of the circuit, whom he thought second to none in their respect for the law, their sense of duty, and fair-mindedness.

What a foolish idea! Only a man that believes in law and order can be led astray by so misguiding idealism. Tightly knitted and long lasting working conditions give rise to office politics and vested interests that engulf into a morass of compromise and upside down priorities all but the strongest individuals. These are the ones who can stand alone on a limb for what is right and can even provide a point of anchor to those battered and in danger of being sunk by wave after wave of the misconduct of officers who were supposed to provide a safe haven. In what category of persons do you put yourself through your acts?

D. A case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for confirmation by the bankruptcy court

27. Are the local assistant U.S. trustee with her supervisory power and Trustee Gordon of the Seventh Chapter with his 3,383 cases and the money that they generate in a vassal-lord relationship to each other? Is the Region 2 Trustee aware that a non-local has no chance whatsoever of turning the trustee into the subject of a "thorough inquiry" by the local U.S. trustee? Consequently, should she have investigated Trustee Gordon? What homage do local and regional U.S. trustees receive and what fief do they grant? Let's consider some facts.

28. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (case 04-20280; the petition is at the end of this package). The figures in its schedules and the surrounding circumstances should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber (section II, supra) and his attorney, James Weidman, Esq., were about to submit its repayment plan to the court for approval when Dr. Richard Cordero, a creditor, objected in a five page analysis of the figures in the schedules. Even so, the Trustee and his attorney vouched in open court for the petition's good faith. Yet, consider its salient figures and circumstances:
    a) The DeLanos incurred scores of thousands of dollars in credit card debt,
    b) at the average interest rate of 16% or the delinquent interest rate of over 23%,
    c) carried it for over 10 years,
    d) during which they were late in their payment at least 232 times documented by Equifax,
    e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F,
    f) owe also a mortgage of $77,084,

g) have near the end of their work life an equity in their house of only $21,415,
h) declared earnings in 2001 of $91,229, in 2002 of $91,655, and in 2003 of $108,586,
i) yet claim that after a lifetime of work their tangible personal property is only $3,445,
j) and two cars worth $6,500,
k) claim as exempt $59,000 in a retirement account,
l) claim another $96,111.07 as a 401-k exemption,
m) make a $10,000 loan to their son and declare it uncollectible,
n) but offer to repay only 22 cents on the dollar without interest for just 3 years,
o) refused for months to provide a single credit card statement covering any length of time 'because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies',
    i. however, the DeLanos must still receive every month the monthly credit card statement from each of the issuers of the 18 credit cards and as recently as January 2004, must have consulted such statements to provide in Schedule F the numbers of their accounts with them and their addresses;
    ii. when on June 14, 2004, they provided some in an attempt to avoid the Trustee's motion for dismissal for "unreasonable delay", they provided only 8 statements, which are incomplete and are, not the latest of May and June 2004, but rather of between July and October 2003,
p) pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is a 15 year bank officer!, or rather more precisely, a loan bank officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life, and who is still employed in that capacity by a major bank, namely, Manufacturers and Traders Trust Bank. He had to know better!

29. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his "experience in banking", from which he should have learned his obligation to keep financial documents for a certain number of years, pretend that he does not have them to back up his petition? Those are self-evident questions that have a

direct bearing on the petition's good faith. Did Trustee Reiber and Attorney Weidman ever ask them? How did they ascertain the timeline of debt accumulation and its nature if they did not check those credit card statements before readying the petition for submission to the court?

30. Until the DeLanos provide tax returns going back far enough to support their petition, let's assume arguendo that when Mr. DeLano lost his job at a financial institution and took a lower paying job at another in 1989, the combine income of his and his wife, a Xerox technician, was $50,000. Last year, 15 years later, it was over $108,000. Let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and a home equity of merely $21,415!, and this does not begin to take into account what they already owned before 1989, let alone all their credit card borrowing. Where did the money go? Or where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?
31. Did the Trustee and his Attorney ever get the hint that the figures in the petition and the surrounding circumstances made no sense or were they too busy with their other 3,908 cases and the in-take of new ones to ask any questions and request any supporting documents? How many other cases did they also accept under the motto "don't ask, don't check, just cash in"? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?
32. For his part, Trustee Reiber is being allowed by the Assistant U.S. Trustee and the Trustee for Region 2 to hold on to the DeLanos' case despite Dr. Cordero's request for his replacement. Only because Dr. Cordero has asserted his right to be furnished with financial information about the DeLanos (para. 7, supra) has Trustee Reiber belatedly requested some documents. Yet, not to replace him but rather to allow him to be the one to "investigate" the DeLanos now, disregards the Trustee's obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, who approved it for submission to the court, thereby rendering himself liable as his principal and casting doubt on his own proper handling of his other thousands of cases.
33. Indeed, if an egregious case as the DeLano's passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could

trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from the assistant and regional U.S. trustees. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

34. What were they all thinking!? Whatever it was, from their perspective it is evident that the best self-protection is not to set in motion an investigative process that can escape their control and end up crushing them. This proves the old-axiom that a person, just as an institution, cannot investigate himself zealously, objectively, and reassuringly. A third independent party, unfamiliar with the case and unrelated to its players, must be entrusted with and carry out the investigation and then tender its uncompromising report to all those with an interest in the case and in the integrity of the courts and the U.S. Trustee Program. That third independent party must be a federal law enforcement agency with subpoena power to compel production of documents and the authority to obtain search warrants, manpower to conduct interviews and depositions, and the expertise and means to engage in forensic accounting and hunt for concealed assets or evidence of bribes. Dr. Cordero cannot do that. Are you up to the task?

June 26, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

Table comparing claims as of June 26, 2004, on David and Mary Ann DeLano in

1. their bankruptcy petition no. 04-20280 WBNY of January 26, 2004: columns 2, 15 (pages 92 et seq., infra) [C:1431-1468]
2. incomplete Equifax credit reports of April 26 and May 8, 2004: columns 3, 16-19 (pages 28-38, infra) [C:1469-1479]
3. Claims Register of the bankruptcy court as of June 23, 2004: columns 4, 20-21 (pages 39-45, infra) [C:1481-1487]
4. a few and incomplete credit card statements of account as of between July and October 2003: col. 13-14 (p 48-55, infra) [C:1491-98]

Prepared and annotated by Dr. Richard Cordero, creditor.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
1.	**petition[1]**	**Equifax[2]**	**claims reg[3] ister**	**creditors matrix**	**Creditor (creditor in Equifax report)**	**Address (address in Equifax report)**	**City**	**State**	**Zip Code**	**Phone in Equifax**	**Account Number**	**Owed in credit card statemnts[4]**	**statement date**	**Owed in petition 26 Janry4**	**Owed in Equifax**	**balance as of**	**past due**	**last pay – ment/ activity**	**Owed in claims register 23June4**	**date of claim**
2.	1.			7.	AT&T Universal	P.O. Box 8217	South Hackensack	NJ	07606-8217		5398-8090-0311-9990	0.0		1912.63	0.0				0.0	
3.	2.	D 1 (3)		8.	Bank of America	P.O. Box 53132 (P.O. Box 52326	Phoenix	AZ	85072-3132 (85072-2326	[(800) 242-5122]	4024-0807-6136-1712	0.0		3296.83	3335	Mar 04[5]	308	Oct 03	0.0	
4.			1.	11.	Bank of America N.A.	PO Box 2278	Norfolk	VA	23501-2278			0.0		0.0	0.0				3335.08	Feb 9 04
5.	3.	D 4 (5)		9.	Bank One Cardmember Services (FirstUSA Na)	P.O. Box 15153 (P.O.Box 8650)	Wilmington	DE	19886-5153 (19899-8650)		4266-8699-5018-4134	9846.80	Oct 14, 03	9846.80	10425	Apr 04	1629	Sep 03[6]	0.0	
6.	4.			9.	Bank One Cardmember Services	P.O. Box 15153	Wilmington	DE	19886-5153		4712-0207-0151-3292	5130.80	Sep 17, 03	5130.80	0.0				0.0	
7.	5.			9.	Bank One Cardmember Services	P.O. Box 15153	Wilmington	DE	19886-5153		4262-519-982-211[7]	9876.49	Aug 13, 03	9876.49	0.0				0.0	
8.			10.	10.	Bank One Delaware, NA fka First USA, c/o Weinstein, Treiger &Riley,P.S.	2101 4th Av, Ste 900	Seattle	WA	98121			0.0		0.0	0.0				10,203.24	Mar 15 04

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
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9.			14.	10.	Bank One Delaware, NA fka First USA, c/o Weinstein, Treiger &Riley,P.S.	2101 4th Av, Ste 900	Seattle	WA	98121			0.0		0.0	0.0				5,317.97	Mar 15 04
10.	6.			12.	Capital One	P.O. Box 85147	Richmond	VA	23276		4388-6413-4765-8994	0.0		449.35	0.0				0.0	
11.	7.			12.	Capital One	P.O. Box 85147	Richmond	VA	23276		4862-3621-5719-3502	0.0		460.26	0.0				0.0	
12.		M 1 (4)			(Capital One)	(P.O. Box 85520 Internal Zip 12030-016)	(Richmond)	(VA)	(23285-5520)		4862-3622-6671-	0.0		0.0	0.0	May 04		Feb 04[8]	0.0	
13.			8.	13.	Capital One Auto Finance	P.O. Box 260848	Plano	TX	75026			0.0		0.0	0.0				10,753.28	Mar 8 04
14.	20.			14.	Capital One Auto Finance[9]	PO Box 93016	Long Beach	CA	90809-3016		5687 652	0.0		10285	0.0				0.0	
15.				1.	Capital One Auto Finance Dept, c/o The Ramsey Law Firm PC	PO Box 201347	Arlington	TX	76006			0.0		0.0	0.0				0.0	
16.		M 2 (4)			Cbusasears						3480 0743 0	0.0		0.0	0.0	May 04		Oct 03[10]	0.0	
17.	8.	M 3 (4)			Chase (Chase Na)	PO Box 1010 (1000 Duffy Ave)	Hicksville	NY	11802 (11801-3639)	(800) 327-2282)	4102-0082-4002-1537	10909.01	Sep 11 03	10909.01	11651	Apr 04	1392	Nov 03[11]	0.0	
18.				15.	Chase,CardMember Services	PO Box 15650	Wilmington	DL	19886-5650			0.0		0.0	0.0				0.0	

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
1.	**petition[1]**	**Equifax[2]**	**claims reg[3] ister**	**creditors matrix**	**Creditor (creditor in Equifax report)**	**Address (address in Equifax report)**	**City**	**State**	**Zip Code**	**Phone in Equi fax**	**Account Number**	**Owed in credit card sta-temnts[4]**	**statement date**	**Owed in petition 26 Janry4**	**Owed in Equi fax**	**balance as of**	**past due**	**last pay – ment/ activity**	**Owed in claims register 23June4**	**date of claim**
19.			4.	16.	Chase Manhattan Bank USA, NA by eCast Settlement Corp, as agent	P.O. Box 35480	Newark	NJ	07193-5480			0.0		0.0	0.0				11,616.06	Feb 27 04
20.			2.	17.	Citi Cards	P.O. Box 3671	Urbandale	IA	50323			0.0		0.0	0.0				3,970.30	Feb. 17 04
21.	9.			19.	Citi Cards	P.O. Box 8116	South Hackensack	NJ	07606-8116		5457-1500-2197-7384	0.0		2127.08	0.0				0.0	
22.	10.			18.	Citi Cards	P.O. Box 8115	South Hackensack,	NJ	07606-8115		5466-5360-6017-7176	0.0		4043.94	0.0				0.0	
23.				20.	Citibank USA	45 Con-gress St.	Salem	MA	01970			0.0		0.0	0.0				0.0	
24.					Cordero, Dr…: see Dr. below															
25.			3.		Discover Bank Discover Financial Services	PO Box 8003	Hilliard	OH	43026			0.0		0.0	0.0				5,755.97	Feb 19, 04
26.	11.	D 2 (5) M 4 (4)		22.	Discover Card (Discover Financial Services)	P.O. Box 15251	Wilmington	DE	19886-5251		6011-0020-4000-6645	5219.03	Aug 16, 03	5219.03	0.0 0.0	Feb 04 Feb 04		Oct 03 Oct 03[12]	0.0	
27.	12.		19.	23.	Dr. Richard Cordero	59 Crescent Street	Brooklyn	NY	11208					0.0					14,000.0	May 19, 04[13]
28.			18.	5. & 39.	eCast Settlement Corp, assignee of Associates National Bank	P.O. Box 35480	Newark	NJ	07193-5480			0.0		0.0	0.0				2,227.57	Apr 16 04

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
1.	**petition[1]**	**Equifax[2]**	**claims reg[3] ister**	**creditors matrix**	**Creditor (creditor in Equifax report)**	**Address (address in Equifax report)**	**City**	**State**	**Zip Code**	**Phone in Equi fax**	**Account Number**	**Owed in credit card sta-temnts[4]**	**statement date**	**Owed in petition 26 Janry4**	**Owed in Equi fax**	**balance as of**	**past due**	**last pay – ment/ activity**	**Owed in claims register 23June4**	**date of claim**
29.		D 3 (5)			First Premier						4610-0780-0310-[14]	0.0		0.0	6.0	Apr 04	0.0	Mar 04	0.0	
30.			15.	2. & 24.	Fleet Bank (RI) N.A.& its assigns, by eCast Settlement Corp, agent	P.O. Box 35480	Newark	NJ	07193-5480			0.0		0.0	0.0				2,137.64	Mar 18 04
31.	13.	M 5 (5)		25.	Fleet Credit Card Service (FleetNat'lBk)	P.O. Box 15368	Wilmington	DE	19886-5368		5487-8900-2018-8012	0.0		2126.92	2184	Apr 04	297	Oct 03[15]	0.0	
32.				3.	Genesee Regional Bank, fka Lyndon Guaranty Bank c/o Gullace & Weld LLP	500 First Federal Plaza	Rochester	NY	14614			0.0		0.0	0.0				0.0	
33.	21.			26.	Genesee[16] Regional Bank	3670 Mt Read Blvd	Rochester	NY	14616			0.0		77084.49	0.0				0.0	
34.			9.	27.	Genesee Regional Bank fka Lyndon Guaranty Bank	3380 Monroe Avenue	Rochester	NY	14618			0.0		0.0	0.0				76,300.71	Mar 12 04
35.		M 6 (5)			(GMAC)						052-1504-1-	0.0		0.0	0.0	Mar 99		Feb 99[17]	0.0	
36.		M 7 (5)			(GMAC)						052-3036-0-	0.0		0.0	0.0	Feb 97		Feb 97	0.0	
37.			5.	28.	HSBC Bank USA	PO Box 4215	Buffalo	NY	14273-4215			0.0		0.0	0.0				9,447.80	Feb 23 04

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
1.	**petition[1]**	**Equifax[2]**	**claims reg[3] ister**	**creditors matrix**	**Creditor (creditor in Equifax report)**	**Address (address in Equifax report)**	**City**	**State**	**Zip Code**	**Phone in Equifax**	**Account Number**	**Owed in credit card sta-temnts[4]**	**statement date**	**Owed in petition 26 Janry4**	**Owed in Equifax**	**balance as of**	**past due**	**last pay – ment/ activity**	**Owed in claims register 23June4**	**date of claim**
38.	14.			29.	HSBC Master Card/Visa HSBC Bank USA	Suite 0627	Buffalo	NY	14270-0627		5215-3125-0126-4385	9065.01	Sep 8, 03	9065.01	0.0				0.0	
39.	15.	D 5 (7)		31.	MBNA America	P.O. Box 15137	Wilmington	DE	19886-5137		4313-0228-5801-9530	6422.47	July 03	6422.47	7304	Apr 04	930	Oct 03[18]	0.0	
40.	16.	D 6 (7)		31.	MBNA America	P.O. Box 15137 (P.O. Box 15026)	Wilmington	DE	19886-5137 (19850-5026)	[(800) 421-2110]	5329-0315-0992-1928	18498.21	Sep 9, 03	18498.21	0.0			Nov 03	0.0	
41.		M 8 (6)		30.	(M.B.N.A. Amer)	(P.O. Box 15026)	(Wilmington)	(DE)	(19850-5026)	[(800) 421-2110]	4313-0229-9975-	0.0		0.0	0.0	Apr 04		Oct 03[19]	0.0	
42.	17.	D 7 (7)		30.	MBNA America (MBNA AmericaCheckmate)	P.O. Box 15102 (P.O. Box 15026)	Wilmington	DE	19886-5102 (19850-5026)	[(800) 421-2110]	749-90063-031-903[20]	0.0		3823.74	0.0			Nov 03	0.0	
43.			7.	4.	MBNA America Bank NA, by eCast Settlement Corp	PO Box 35480	Newark	NJ	07193-5480			0.0		0.0	0.0				6,812.31	Mar 5 04
44.			11.	32.	MBNA America Bank NA eCast Settlement Corp	PO Box 35480	Newark,	NJ	07193-5480			0.0		0.0	0.0				3,931.23	Mar 15 04
45.			12.	33.	MBNA America Bank, N.A. by eCast Settlement Corp, its agent	PO Box 35480	Newark	NJ	07193-5480			0.0		0.0	0.0				19,272.56	Mar 15 04

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
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46.			13.	33.	MBNA America Bank, N.A. by eCast Settlement Corp, its agent	PO Box 35480	Newark	NJ	07193-5480			0.0		0.0	0.0				5,565.16	Mar 15 04
47.		M 9 (6)			(Manufacturers & Traders Trust)						738920	0.0		0.0	0.0	May 99		Apr 99[21]	0.0	
48.		M 10 (6)			(ONONDAGA Bank/Overdraft)						1958-8202-02-	0.0		0.0	0.0	Apr 98		Feb 98[22]	0.0	
49.		M 11 (6)			(Primus Automotive)						626-	0.0		0.0	0.0	May 99		Apr 99[23]	0.0	
50.	18.	D 8 (7)		34.	Sears Card Payment Center (Sherman Acquisition LP-Sears)	P.O. Box 182149 (9700Bissonnet St, Ste 2000 PO Box 740281	Columbus (Houston)	OH (TX)	43218-2149 (77274-0281)		34-80074-3-0593 0[24]	0.0		3554.34	3857		3857	Dec 03[25]	0.0	
51.			16.	35.	Sherman Acquisition LP, Resurgent Capital Services	PO Box 10587	Greenville	SC	29603-0587			0.0		0.0	0.0				4,170.45	Apr 15 04
52.			17.	35.	Sherman Acquisition LP, Resurgent Capital Services	PO Box 10587	Greenville	SC	29603-0587										1991.0	Apr 15 04
53.	19.				Wells Fargo Financial	P.O. Box 98784	Las Vegas	NV	89193-8784		1772-0544	0.0		1330.00	0.0				0.0	
54.			6.	38.	Wells Fargo Financial New York, Inc.	4137 121st Street	Urbandale	IA	50323			0.0		0.0	0.0				980.22	Feb 24 04

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.
1.	petition[1]	Equifax[2]	claims register[3]	creditors matrix	Creditor (creditor in Equifax report)	Address (address in Equifax report)	City	State	Zip Code	Phone in Equifax	Account Number	Owed in credit card statemnts[4]	statement date	Owed in petition 26 Janry4	Owed in Equifax	balance as of	past due	last pay – ment/ activity	Owed in claims register 23June4	date of claim
55.	21		19									74,967.82		185,462.40[26]	13,351			[27]	197,788.55[28]	

[1] The bankruptcy petition of David and Mary Ann DeLano is dated January 26, 2004, (the Notice to Creditors was filed on February 6, 2004), in the U.S. Bankruptcy Court for the Western District of New York and bears docket no. 04-20280 (pages 92 et seq., infra). The petition and all other documents filed by parties or developed by the court since its filing can be accessed through that court's website at http://www.nywb.uscourts.gov by clicking on the Pacer icon to open the webpage of Pacer, the official court electronic document filing system that allows electronic retrieval of documents, and entering the case number. Registration with Pacer is required to retrieve documents for a fee.

The numbers in column 2 begin with the 19 unsecured nonpriority claims listed in Schedule F of the petition. Then there are added the two accounts concerning secured claims appearing in Schedule D, which are numbered in the column as 20 and 21, but are out of sequence because the controlling criterion is the alphabetical order of the creditors in column 6.

[2] The contents in this column's cells are to be read thus: D1(3) = Equifax report for **D**avid DeLano of account 1 on page 3 of 14 of the report (28, infra); M1(4) = Equifax report for **M**ary DeLano of account 1 on page 4 of 12 of the report (35, infra). The accounts with an outstanding balance on the Equifax report have been numbered just to facilitate reference to them.

The Equifax credit reports submitted by the DeLanos' attorney, Christopher Werner, Esq., with his letter of June 14, 2004, to Trustee George Reiber, are incomplete. The one for David DeLano of April 26, 2004, confirmation # 4117002205, begins on page 3 of 14 and continues with pages 5, 7, 9, 11, 13 of 14 (28-33, infra). The one for Mary Ann DeLano of May 8, 2004, confirmation # 4129001647, begins on page 3 of 12 and continues consecutively until page 7 of 12 (34-38, infra).

There is no excuse for either the DeLanos or Att. Werner submitting incomplete reports. Nor are they justified in not submitting reports by the other credit reporting bureaus, namely, TransUnion and Experian, as requested by Dr. Cordero in paragraph 80(b)(3) of his Memorandum of last March 30 to Att. Werner and Trustee Reiber (accessible through Pacer, docket no. 04-20280, entry 25),

among others. For his part, if Trustee Reiber were intent on investigating efficiently the DeLanos' financial condition to determine the good faith of their bankruptcy petition, as requested by Dr. Cordero (62.IV, infra), he should have insisted that the DeLanos and Att. Werner submit credit reports of each of the three bureaus. They all must know that none of those reports is exhaustive or up to date as to each account; rather, they are complementary.

Mr. DeLano too must indisputably know that, for amazing as it may appear, he has been a bank officer for 15 years! What is more, he presently works at Manufacturers & Traders Trust as a *loan* bank officer! As such, he assesses loan applicants' creditworthiness and financial responsibility based on their credit history and current level of indebtedness relative to their income. To do that, credit reports by a third party are indispensable. Mr. DeLano also worked as a bank officer at First National Bank. As to Att. Werner, see footnote 4.

[3] Column 4 contains the list developed by the court of creditors that filed their claims by the deadline of June 7, 2004 (39, infra). The amount of the claim and date of filing are found in columns 20 and 21. By contrast, column 5 refers to the list as of June 23, of mailing labels that keeps growing with more names and addresses of, above all, financial institutions; so it is a creditors matrix (46, infra). However, some accounts, such as those in rows 18, 23, and 32, are only on that creditors matrix of column 5 (46, infra), but neither in the bankruptcy petition, the Equifax reports, nor the credit card statements of account, all submitted by the DeLanos, nor in the claims register (39, infra). Who are those creditors, how did they learn about this case, and what is their interest in it? In any event, the register and the matrix can be accessed through Pacer (footnote 1, supra).

[4] These are copies of only a few and incomplete statements of credit card account of the DeLanos (48-55, infra). They were submitted by Att. Werner, an officer of the court, who engages his professional responsibility when he submits incomplete documents in response to repeated requests for financial information about his clients. He was specifically requested by Trustee Reiber in his letter of April 20, 2004, to provide "For each of the credit cards indicated above [with indebtedness greater than $5,000]...copies of the monthly statements for the three years prior to the filing of the bankruptcy petition" (¶2 at 11, supra). What is more, Dr. Cordero requested in ¶80(b)(1) and (2) of his March 30 Memorandum (accessible through Pacer, docket no. 04-20280, entry 25) as well as in his letter to Att. Werner of May 23 (76, infra), that his clients provide statements for all their credit cards since their indebtedness began, as the DeLanos allege in Schedule F of their petition, through "1990 and prior credit card purchases".

Yet, almost two months later, Att. Werner submits to only Trustee Reiber, thus failing to serve Dr. Cordero too, one single and

incomplete credit card statement for each of only 8 cards, though in Schedule F there are 18 listed. Each of those statements is older than 8 months, the earliest one being for July 2003 from MBNA (48, infra) and the latest is as of October 14, 2003 from Bank One (55, infra). How could Att. Werner no realize how suspicious it is that he submits statements almost a year old but not those between then and the present? Yet, he represented to the court in his statement of April 16, 2004, that his clients "have maintained the minimum payments on those obligations for more than ten (10) years" (¶6 at 64-65, infra). If so, they have received monthly statements for each month during that period and certainly for each month since those statements to date.

More importantly, the credit card statements that Mr. Werner does submit are incomplete because they do not contain the entries stating from whom the DeLanos obtained goods and services on the credit of those cards. Att. Werner must be aware that those entries are the statements' most compromising portion because Dr. Cordero pointed it out in heading III. and ¶¶16 and 17 of his Objection to Confirmation of March 4, 2004 (61, infra). There Att. Werner must have noted that the analysis of those statements will allow drawing the timeline of the DeLanos' debt accumulation of $98,092.91 on 18 credit cards; it would also allow determining the nature of the assets that the DeLanos purchased and must now declare to determine their assets and eventually make available for repayment if liquidation is in the creditors' best interest.

Worse yet, the nature of the credit card purchases would make it possible to assess whether Att. Werner, "after an inquiry reasonable under the circumstances", as required of him under Federal Rule of Bankruptcy Procedure Rule 9011, responsibly and truthfully submitted as counsel for the DeLanos a petition in which they claim that their household personal property (Schedule B) is, after a lifetime of work, only *$2,910!* and two cars worth a total of $6,500, plus $535.50 in cash on hand and in the bank. Nevertheless, as discussed below, in the past few years the DeLanos have earned or borrowed over *half a million dollars!* (footnote 21, infra) Did Att. Werner help in preparing and submitting a good faith petition?

[5] On this account alone, Mr. DeLano has been late making payment 16 times since September 1997 (28, infra). In fact, in 7 of the 11 accounts reported in the 6 of 14 pages of his Equifax report that he cared to send through Att. Werner to Trustee Reiber (28-33, infra), he was 157 times late! For her part, Mrs. DeLano has been late 75 times in 6 of the 17 accounts reported in the 5 of 12 pages that she cared to submit (34-38, infra). They have been late at least 232 times and that is without counting the accounts on the pages of the Equifax report that they failed to send. This too belies Att. Werner's representation in his statement to the court of April 16, 2004, that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" (¶6 at 64-65, infra).

[6] In Schedule F of the bankruptcy petition of January 26, 2004 (92 et seq., infra), this account was reported as having an outstanding balance of $9,846.80, while at the time of the last payment in September 2003, the real outstanding balance was $10,425 (29, infra), an increase in indebtedness of $578.20. The pages that the DeLanos and Att. Werner cared to submit reveal that underreporting happened in other instances, which are listed in the table in the footnote to row 51.

[7] This number, so found in Scheduled F of the petition (92 et seq., infra), does not correspond to the format of a credit card account number consisting of four quadruplets. Either this is not a credit card account number, although the creditor, Bank One, issues them, or the number in the petition is wrong and three of 16 digits are missing.

[8] This account was not reported in the bankruptcy petition of January 26, 2004, although Equifax reports "Account Involved in Chapter 13 Debt Adjustment" (35, infra). How much was the balance paid off in February 2004, and where did the money come from? How many other accounts went unreported? Also unreported are M2(4) in row 16 and M8(6) in row 41 (footnote to row 41).

[9] See Schedule D of the petition (92 et seq., infra).

[10] The number of this account does not match that of any other account reported on the January 26 bankruptcy petition. Yet Equifax reports that as of January 2004, this account was 30-59 days past due and in February 2004 it was 60-89 days past due (35, infra). How much was owed but not reported? How much is still owed since the date of the last payment is October 2003? Also unreported are M1(4) in row 12 and M8(6) in row 41 (footnote to row 41).

[11] In Schedule F of the bankruptcy petition of January 26, 2004, this account was reported as having an outstanding balance of $10,909.01, while at the time of the last payment in November 2003, the real outstanding balance was $11,651 (35, infra), an increase in indebtedness of $741.99. This means that the Delanos increased their indebtedness to this card issuer by $741.99. What was the DeLanos' real indebtedness when they submitted their petition and what is it now? See the other instances of debt underreporting in the table in the footnote to row 51.

[12] Why did the DeLanos' attorney, Mr. Werner, submit with his letter of June 14, 2004 (14, supra), to Trustee Reiber a statement of account as old as of August 16, 2003 (50, infra), since the DeLanos' must have received a statement of account in January 2004, reporting that in December 2003, this account was already 60-89 days past due? How much do they actually owe on this account?

[13] Incremented by the capitalized fees paid since 1993 plus punitive and other damages (see Dr. Cordero's third-party complaint of

November 21, 2002, in Pfuntner v. Gordon et al, docket no. 02-2230 WBNY)

[14] Neither the name of this creditor nor the number of this account appears anywhere else. Hence, it is justified to ask whether the DeLanos have other credit sources that they have not reported and from whom they keep borrowing although they have already filed a bankruptcy petition and, consequently, know that they cannot repay even what they owed at that time, let alone any addition to it.

[15] In the Schedule F of the bankruptcy petition of January 26, 2004 (92 et seq., infra), this account was reported as having an outstanding balance of $2,126.92, while at the time of the last payment in October 2003, the real outstanding balance was $2,184 (36, infra), an increase in indebtedness of $57.08. See the other instances of debt underreporting in the table in the footnote to row 51.

[16] See Schedule D of the petition (92 et seq., infra).

[17] The two GMAC accounts, at least one of which Equifax describes as "Auto", were open in July 1995 and February 1993, and reached high credits of $10,326 and $10,793, respectively (36, infra). Yet they were paid off within four years or less. It appears that when the DeLanos do not want to risk repossession, they have the money to pay and, Equifax notes, "Pays as agreed...Account Paid/Zero Balance". By contrast, since repossession of items smaller than a car and charged to a credit card is less likely, they allow their repayment to creditors to be frequently past due for many months. Cf. M11(6) in row 49.

[18] In Schedule F of the bankruptcy petition dated January 26, 2004 (92 et seq., infra), this account was reported as having an outstanding balance of $6422.47, while at the time of the last payment in October 2003, the real outstanding balance was $7,304 (30, infra), an increase in indebtedness of $881.53. See other instances of debt underreporting in the table in the footnote to row 51.

[19] This account was not reported in the January 26 bankruptcy petition, yet Equifax reports that in January, this account was already 30-59 days past due and that "Current Status-Account Included in Bankruptcy" (37, infra) Why was this account not reported and how much is owed on it? What is the real indebtedness of the DeLanos? The unreported accounts are the following:

Accounts unreported in the petition but appearing in Equifax	account	M1(4)	M2(4)	M8(6)
	in row	12	16	41
	page, infra	35	35	37

[20] So in Schedule F of the petition. If this is supposed o be a regular credit card number, it is missing 2 of the 16 digits.

[21] The accounts with Manufacturers & Traders Trust (MT&T) and ONONDAGA Bank each had a high credit of $59,000; both were opened in March 1988; and both were paid in little over 10 years, either with money earned or by transfers of balance to credit cards (30, infra). Equifax notes for each of them that "Current status-Pays as agreed". Given that so many other accounts have been past due for so many months (footnote 5, supra), this money must have gone into something sufficiently important for the DeLanos not to risk losing it by failing to pay "as agreed". Therefore, where did $118,000 go or in which asset(s) is it?

Note that in Schedule A. Real Property (92 et seq., infra), of their bankruptcy petition, the DeLanos declare that the current market value of their residential property at 1262 Shoecraft Road in Webster is $98,500, as per appraisal of November 23, 2003, and the amount of the secured claim is $77,084.49, which leaves them with equity of only $21,415.51. Likewise, in Schedule B. Personal Property, they declare that their personal property, aside from their 401-k and retirement accounts totaling $155,011.07, is only $9,945.50, which includes $535.50 in cash on hand and in the bank, and two cars worth $6,500. This leaves them with household goods worth only $2,910! How come?, for in the last three years they declared their earnings thus:

2001- $91,229 adjusted gross income on the 1040 form (56, infra) [D:186-188]

2002- 91,859 on the 1040 form (57, infra), but $91,655 in the petition's Statement of Financial Affairs [D:47]

2003- +<u>108,586</u> in the Statement of Financial Affairs, but only $97,648 on the 1040 form (58, infra). Why do these numbers not match? $291,674

Add to the $291,674.00 earned in the last three years alone since 2001

the 98,092.91 that they have obtained by charging 18 credit cards, as declared so far in their Schedule F as well as the

+<u>118,000.00</u> obtained through the MT&T and ONONDAGA loans paid off over five years ago by May 1999 and the question bursts out: $507,766.91 Where did a cool half a million dollars go or where is it?! In the nest for an approaching golden

retirement? Why did Trustee Reiber not detect that something is wrong here?

How could Trustee Reiber not realize that the numbers in the DeLanos' petition just do not add up? Far from it, he was ready to submit the DeLanos' petition on March 8, 2004, to the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge in Rochester, for confirmation of the repay-ment plan. That plan (at the end of these documents) proposes to pay unsecured creditors, owed $98,092.91, only 22 cents on the dollar over three years with no interest accruing, which on credit cards is on average 16%, unless it is over 23% if the account is past due. How many of Trustee Reiber's other 3,909 *open* cases –as per Pacer at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1-; (2.B; cf. 4.C, supra)- are as questionable as this one? Why do Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Region 2 Trustee Deirdre A. Martini refuse to investigate what is going on in this case, let alone the other thousands of cases of Trustee Reiber?

Yet, there is ample reason to investigate him and even to replace him. For one thing, Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors in the DeLano case, held last March 8 in Rochester; cf. 28 CFR §58.6. Moreover, his attorney, James Weidman, Esq., who presided over it, prevented the only creditor who attended the meeting, namely, Dr. Cordero, from exercising his legal right to examine the DeLanos, shutting Dr. Cordero up after he had asked of Mr. DeLano only two questions. Instead, Att. Weidman asked Dr. Cordero at least three times whether he had any evidence that the DeLanos had committed fraud and to state his evidence that they had committed fraud. Did Mr. Weidman feel it dangerous to allow Dr. Cordero to ask the DeLanos under oath questions about their petition without first finding out how much Dr. Cordero knew about any fraud committed in this case?

To make these events all the more disturbing, when Dr. Cordero complained in open court about both Trustee Gordon and Att. Weidman for their unlawful conduct, Judge Ninfo supported them in spite of Dr. Cordero invoking his right to examine the debtors under 28 U.S.C. §§341 and 343. What is going on here!? It is reasonable to affirm that there are sufficient suspicious circumstance to warrant an official investigation.

[22] See footnote 21, supra.

[23] This account was opened in February 1997and reached a high credit of $6,719, yet it was paid off by April 1999 (37, infra). It appears that when the DeLanos do not want to risk repossession, they have the money to pay and, Equifax notes, "Pays as agreed…Account Paid/Zero Balance". Since repossession of items smaller than a car and charged to a credit card is less likely, they

allow their repayment to credit card issuers to be frequently past due for many months (footnote 5, supra). Cf. M6(5) and M7(5) in rows 35 and 36, respectively.

[24] So in the petition. The fact that this is a store card may explain that its number has a format different from that of credit cards.

[25] In Schedule F of the bankruptcy petition dated January 26, 2004 (92 et seq., infra), this account was reported as having an outstanding balance of $3,554.34, while at the time of the last activity in December 2003, the real outstanding balance was $3,857, an increase in indebtedness of $302.66 (30, infra). See the other instances of debt underreporting in the table in the footnote to row 51.

[26] In accord with the total liabilities declared in the Summary of Schedules in the DeLanos' January 26 bankruptcy petition (92 et seq., infra).

[27] By the time the DeLanos dated their petition on January 26, 2004, they had made their last payment on these accounts and their balance was higher than what they reported it to be. There is a pattern of underreporting their indebtedness. Consequently, what was and is their real indebtedness and who are the creditors?

Debt underreporting in bankruptcy petition compared with Equifax report			Increase in indebtedness
account	in row	page infra	
D4(5)	5	29	$578.20
M3(4)	17	35	741.99
M5(5)	31	36	57.08
D5(7)	39	30	881.53
D8(7)	50	30	302.66
			$2561.46

[28] In accord with the total claims in the Claims Register of the Bankruptcy Court as of June 23, 2004 (45, infra).

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Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):	Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
DAVID G DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580 AKA: Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	January 27, 2004	XXX-XX-3894 XXX-XX-0517

Individual debtors must provide picture identfication and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):	Bankruptcy Trustee (name and address):
CHRISTOPHER K WERNER, ESQ BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM
Location: U.S. Trustees Office, 6080 U.S. Courthouse, 100 State Street, Rochester, NY 14614

FEB - 6 2004
BANKRUPTCY COURT
ROCHESTER, NY

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004
For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM
Location: U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:	Website: http://www.nywb.uscourts.gov
U.S. Bankruptcy Court 100 State St. Rochester, NY 14614	Clerk of the Bankruptcy Court: PAUL R. WARREN DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

020304.0027.63.00111358.001 0420280.Court.A. 146

EXPLANATIONS

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specificied amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.

---Refer To Other Side For Important Deadlines and Notices---

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court		U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee		George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor		DAVID C DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint		MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001	CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005	AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021	DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014	CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023	HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004	GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026	MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019	DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022	FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008	BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012	CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020	DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

AFFA

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY T. Martinez

BCM - Indicates notice served via Certified Mail

AFFA

(Official Form 1) (12/03)

FORM B1

United States Bankruptcy Court
Western District of New York

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): DeLano, David G.	Name of Joint Debtor (Spouse) (Last, First, Middle): DeLano, Mary Ann
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517
Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580
County of Residence or of the Principal Place of Business: Monroe	County of Residence or of the Principal Place of Business: Monroe
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

■ Individual(s)
☐ Corporation
☐ Partnership
☐ Other_____
☐ Railroad
☐ Stockbroker
☐ Commodity Broker
☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

☐ Chapter 7
☐ Chapter 9
☐ Chapter 11
☐ Chapter 12
■ Chapter 13
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

■ Consumer/Non-Business
☐ Business

Chapter 11 Small Business (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

■ Full Filing Fee attached
☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

■ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
☐	■	☐	☐	☐	☐

Estimated Assets

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Estimated Debts

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s): **FORM B1**, Page 2
DeLano, David G.
DeLano, Mary Ann

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed:	Case Number:	Date Filed:
- None -		

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:	Case Number:	Date Filed:
- None -		
District:	**Relationship:**	**Judge:**

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David G. DeLano
Signature of Debtor David G. DeLano

X /s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

Signature of Attorney

X /s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)

Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)

Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name

2400 Chase Square
Rochester, NY 14604
Address

585-232-5300
Telephone Number

January 26, 2004
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X /s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.
■ No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C.§ 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court
Western District of New York

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

Chapter 13

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	98,500.00		
B - Personal Property	Yes	4	164,956.57		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		87,369.49	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	4		98,092.91	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			4,886.50
J - Current Expenditures of Individual Debtor(s)	Yes	1			2,946.50
Total Number of Sheets of ALL Schedules		16			
		Total Assets	263,456.57		
			Total Liabilities	185,462.40	

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	Fee Simple	J	98,500.00	77,084.49

Sub-Total >	98,500.00	(Total of this page)
Total >	98,500.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1.	Cash on hand		misc cash on hand	J	35.00
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		M & T Checking account	J	300.00
			M & T Savings	W	200.00
			M & T Bank Checking	W	0.50
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.		Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	J	2,000.00
			computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill,	J	350.00
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		misc books, misc wall decorations, family photos, family bible	J	100.00
6.	Wearing apparel.		misc wearing apparel	J	50.00
7.	Furs and jewelry.		wedding rings, wrist watches	J	100.00
			misc costume jewelry, string of pearls	W	200.00
			Sub-Total > (Total of this page)		3,335.50

3 continuation sheets attached to the Schedule of Personal Property

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
8.	Firearms and sports, photographic, and other hobby equipment.		camera - 35mm snapshot cameras ((2) purchased for $19.95 each new	J	10.00
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			
11.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	W	59,000.00
			401-k (net of outstanding loan $9,642.56)	H	96,111.07
12.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13.	Interests in partnerships or joint ventures. Itemize.	X			
14.	Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15.	Accounts receivable.		Debt due from son ($10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress	J	Unknown
16.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17.	Other liquidated debts owing debtor including tax refunds. Give particulars.		2003 tax liability expected	J	0.00
18.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			

Sub-Total > (Total of this page) 155,121.07

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1993 Chevrolet Cavalier 70,000 miles	W	1,000.00
		1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)	H	5,500.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			

Sub-Total > (Total of this page) 6,500.00

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total > 0.00
(Total of this page)

Total > 164,956.57

Sheet 3 of 3 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
[Check one box]

☐ 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.

■ 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Real Property			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
Household Goods and Furnishings			
Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	NYCPLR § 5205(a)(5)	2,000.00	2,000.00
Books, Pictures and Other Art Objects; Collectibles			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
Wearing Apparel			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
Furs and Jewelry			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	Debtor & Creditor Law § 282(2)(e)	59,000.00	59,000.00
401-k (net of outstanding loan $9,642.56)	Debtor & Creditor Law § 282(2)(e)	96,111.07	96,111.07
Automobiles, Trucks, Trailers, and Other Vehicles			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

0 continuation sheets attached to Schedule of Property Claimed as Exempt

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Form B6D
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
Account No. 5687652 Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	2001 auto lien 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition) Value $ 5,500.00				10,285.00	4,785.00
Account No. Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	fist mortgage 1262 Shoecraft Road, Webster (value per appraisal 11/23/03) Value $ 98,500.00				77,084.49	0.00
Account No. Value $								
Account No. Value $								

0 continuation sheets attached

Subtotal (Total of this page) 87,369.49

Total (Report on Summary of Schedules) 87,369.49

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Form B6E
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

■ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, which ever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to $2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

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Form B6F
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5398-8090-0311-9990 AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217		H	1990 and prior Credit card purchases				1,912.63
Account No. 4024-0807-6136-1712 Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132		H	1990 and prior Credit card purchases				3,296.83
Account No. 4266-8699-5018-4134 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 prior Credit card purchases				9,846.80
Account No. 4712-0207-0151-3292 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				5,130.80
						Subtotal (Total of this page)	20,187.06

3 continuation sheets attached

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Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4262 519 982 211 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				9,876.49
Account No. 4388-6413-4765-8994 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001- 8/03 Credit card purchases				449.35
Account No. 4862-3621-5719-3502 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001 - 8/03 Credit card purchases				460.26
Account No. 4102-0082-4002-1537 Chase P.O. Box 1010 Hicksville, NY 11802		W	1990 and prior Credit card purchases				10,909.01
Account No. 5457-1500-2197-7384 Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116		W	1990 and prior Credit card purchases				2,127.08

Sheet no. 1 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 23,822.19

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Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5466-5360-6017-7176 Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115		H	1990 and prior Credit card purchases				4,043.94
Account No. 6011-0020-4000-6645 Discover Card P.O. Box 15251 Wilmington, DE 19886-5251		J	1990 and prior Credit card purchases				5,219.03
Account No. Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515		H	2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.		X	X	Unknown
Account No. 5487-8900-2018-8012 Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368		W	1990 and prior Credit card purchases				2,126.92
Account No. 5215-3125-0126-4385 HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627		H	1990 and prior Credit card purchases				9,065.01
Sheet no. 2 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	20,454.90

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Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4313-0228-5801-9530 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		W	1990 and prior Credit card purchases				6,422.47
Account No. 5329-0315-0992-1928 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		H	1990 and prior Credit card purchases				18,498.21
Account No. 749 90063 031 903 MBNA America P.O. Box 15102 Wilmington, DE 19886-5102		H	1990 and prior Credit card purchases				3,823.74
Account No. 34 80074 30593 0 Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149		H	1990 - 10/99 Credit card purchases				3,554.34
Account No. 17720544 Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784		H	8/03 Credit card purchases				1,330.00

Sheet no. 3 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 33,628.76

Total (Report on Summary of Schedules) 98,092.91

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In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

■ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

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In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

SCHEDULE H. CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

■ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

0 continuation sheets attached to Schedule of Codebtors

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Form B6I
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP	AGE
Married	None.	

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Loan officer	
Name of Employer	M & T Bank	unemployed - Xerox
How long employed		
Address of Employer	PO Box 427 Buffalo, NY 14240	

INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	$ 5,760.00	$ 1,741.00
Estimated monthly overtime	$ 0.00	$ 0.00
SUBTOTAL	$ 5,760.00	$ 1,741.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ 1,440.00	$ 435.25
b. Insurance	$ 414.95	$ 0.00
c. Union dues	$ 0.00	$ 0.00
d. Other (Specify) Retirement Loan (to 10/05)	$ 324.30	$ 0.00
	$ 0.00	$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	$ 2,179.25	$ 435.25
TOTAL NET MONTHLY TAKE HOME PAY	$ 3,580.75	$ 1,305.75
Regular income from operation of business or profession or farm (attach detailed statement)	$ 0.00	$ 0.00
Income from real property	$ 0.00	$ 0.00
Interest and dividends	$ 0.00	$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	$ 0.00	$ 0.00
Social security or other government assistance (Specify) _____	$ 0.00	$ 0.00
_____	$ 0.00	$ 0.00
Pension or retirement income	$ 0.00	$ 0.00
Other monthly income (Specify) _____	$ 0.00	$ 0.00
_____	$ 0.00	$ 0.00
TOTAL MONTHLY INCOME	$ 3,580.75	$ 1,305.75
TOTAL COMBINED MONTHLY INCOME $ 4,886.50	(Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by $1,129/month.

Retirement Loan was made to son, who was to re-pay @$200/mon. but has been unable to do so as employed at $10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ 1,167.00
Are real estate taxes included? Yes X No	
Is property insurance included? Yes No X	
Utilities: Electricity and heating fuel	$ 168.00
Water and sewer	$ 30.00
Telephone	$ 40.00
Other Cell Phone $62 (req. for work); cable $55; Internet $23.95	$ 140.95
Home maintenance (repairs and upkeep)	$ 50.00
Food	$ 430.00
Clothing	$ 60.00
Laundry and dry cleaning	$ 5.00
Medical and dental expenses	$ 120.00
Transportation (not including car payments)	$ 295.00
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 107.50
Charitable contributions	$ 50.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	$ 0.00
Life	$ 0.00
Health	$ 0.00
Auto	$ 110.00
Other	$ 0.00
Taxes (not deducted from wages or included in home mortgage payments)	
(Specify)	$ 0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)	
Auto	$ 0.00
Other reserve for auto	$ 50.00
Other Parking	$ 58.05
Other	$ 0.00
Alimony, maintenance, and support paid to others	$ 0.00
Payments for support of additional dependents not living at your home	$ 0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
Other family gifts - Christmas/Birthdays	$ 20.00
Other Haircuts and personal hygine	$ 45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ 2,946.50

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$ 4,886.50
B. Total projected monthly expenses	$ 2,946.50
C. Excess income (A minus B)	$ 1,940.00
D. Total amount to be paid into plan each Monthly (interval)	$ 1,940.00

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets *[total shown on summary page plus 1]*, and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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Form 7
(12/03)

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

---

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
$91,655.00	2002 joint income
$108,586.00	2003 Income (H) $67,118; (W) $41,468

2. Income other than from employment or operation of business

None ■ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

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3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	monthly mortgage $1,167/mon with taxes and insurance	$5,000.00	$77,082.49
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016	monthly auto payment $348/mon	$1,044.00	$10,000.00

None ■ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano	(As against debtor) damages for inability of Cordero to recover property held in storage	US Bankruptcy Court, Western District of NY	pending

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

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6. Assignments and receiverships

None ■ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ■ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ■ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

8. Losses

None ■ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher K. Werner 2400 Chase Square Rochester, NY 14604	Nov - Dec 2003	$1,350 plus filing fee

10. Other transfers

None ■ List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

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11. Closed financial accounts

None ■ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
M & T Bank Webster Branch	debtors	Personal papers	

13. Setoffs

None ■ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ■ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

15. Prior address of debtor

None ■ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

16. Spouses and Former Spouses

None ■ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

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17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ■ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18 . Nature, location and name of business

None ■ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

None ■ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS

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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None ■ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED

None ■ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ■ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS

None ■ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED

20. Inventories

None ■ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ■ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None ■ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ■ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

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22 . Former partners, officers, directors and shareholders

None ■ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ■ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None ■ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

None ■ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

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United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$	1,350.00
Prior to the filing of this statement I have received	$	1,350.00
Balance Due	$	0.00

2. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

4. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
   a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
   c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d. [Other provisions as needed]
      Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
   Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.
Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

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United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

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AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

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

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

Blank

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

CHAPTER 13 PLAN

1. Payments to the Trustee: The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of $1,940.00 per month for 5 months, then $635.00 per month for 25 months, then $960.00 per month for 6 months.
   Total of plan payments: $31,335.00
2. Plan Length: This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
   a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
   b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
   c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

   a. Administrative Expenses
      (1) Trustee's Fee: 10.00%
      (2) Attorney's Fee (unpaid portion): NONE
      (3) Filing Fee (unpaid portion): NONE

   b. Priority Claims under 11 U.S.C. § 507

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

   c. Secured Claims
      (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

Name	Proposed Amount of Allowed Secured Claim	Monthly Payment (If fixed)	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00	Prorata	6.00%

      (2) Secured Debts Which Will Extend Beyond the Length of the Plan

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
-NONE-			

   d. Unsecured Claims
      (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

      (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than $10.00 it may be paid in full.

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5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

Creditor	Amount of Default to be Cured	Interest Rate (If specified)
-NONE-		

6. The Debtor shall make regular payments directly to the following creditors:

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
Genesee Regional Bank	77,084.49	0.00	0.00%

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

Name	Amount of Claim	Description of Property
-NONE-		

11. Title to the Debtor's property shall revest in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

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Equifax report of 4/26/4 for **David** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber C:1469

EQUIFAX

CREDIT FILE : April 26, 2004

Confirmation # 4117002205

Personal Identification Information *(This section includes your name, current and previous addresses, and any other identifying information reported by your creditors.)*

Name On File: David Gene Delano
Social Security # 077-32-3894 Date of Birth: September 1, 1941
Current Address: 1262 Shoecraft Rd, Webster, NY 14580
Previous Address(es): 35 State St, Rochester, NY 14614
Last Reported Employment: TW CB TU 01;
Previous Employment(s): Central Trust Roche;
VICE President; First National Bank; Rocheste NY; Since 06/1978; Verified 02/1964

Please address all future correspondence to:

www.investigate.equifax.com
Equifax Information Services LLC
PO Box 740256
Atlanta, GA 30374

Phone: (800) 378-2732
M - F 9:00am to 5:00pm in your time zone.

In order to speak with a Customer Service Representative regarding the specific information contained in this credit file, you must call **WITHIN 60 DAYS** *of the date of this credit file* **AND** *have a copy of this credit file along with the confirmation number.*

Credit Account Information
*(For your security, the last 4 digits of account number(s) have been replaced by *. (This section includes open and closed accounts reported by credit grantors)*

Account Column Title Descriptions:

Account Number - The Account number reported by credit grantor	Amount Past Due - The Amount Past Due as of the Date Reported
Date Acct. Opened - The Date that the credit grantor opened the account	Date of Last Paymnt - The Date of Last Payment
High Credit - The Highest Amount Charged	Actual Pay Amt - The Actual Amount of Last Payment
Credit Limit - The Highest Amount Permitted	Sched Pay Amt - The Requested Amount of Last Payment
Terms Duration - The Number of Installments or Payments	Date of Last Actvty - The Date of the Last Account Activity
Terms Frequency - The Scheduled Time Between Payments	Date Maj Delq Rptd - The Date the 1st Major Delinquency Was Reported
Months Reviewed - The Number of Months Reviewed	Charge Off Amt - The Amount Charged Off by Creditor
Activity Description - The Most Recent Account Activity	Deferred Pay Date - The 1st Payment Due Date for Deferred Loans
Creditor Class - The Type of Company Reporting The Account	Balloon Pay Amt - The Amount of Final(Balloon) Payment
Date Reported - The Month and Year of the Last Account Update	Balloon Pay Date - The Date of Final(Balloon) Payment
Balance Amount - The Total Amount Owed as of the Date Reported	Date Closed - The Date the Account was Closed

Account History Status Code Descriptions			
	1 : 30-59 Days Past Due	5 : 150-179 Days Past Due	J : Voluntary Surrender
	2 : 60-89 Days Past Due	6 : 180 or More Days Past Due	K : Repossession
	3 : 90-119 Days Past Due	G : Collection Account	L : Charge Off
	4 : 120-149 Days Past Due	H : Foreclosure	

1

Bank of America PO Box 52325 Phoenix AZ 85072-2325 (800) 242-5722

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Classification
402408076136*	10/1983	$3,458	$2,500			99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
03/2004	$3,335	$308	10/2003		$73	11/2003						

Current Status - Over 120 Days Past Due ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Closed By Credit Grantor ;

Account History with Status Codes	02/2004	01/2004	12/2003	10/2003	06/2002	03/2002	05/2000	09/1999	07/1999	06/1999	02/1998	01/1998	12/1997	11/1997	10/1997	09/1997
	3	2	1	1	1	1	1	1	1	1	1	2	1	1	2	1

(Continued On Next Page)

C:1470 Equifax report of 4/26/4 for **David** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber

Citibank S.D./USA

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
541759200042*	03/1994	$5,100				65		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
09/1999	$0				$241	08/1999						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Transferred or Sold ; Credit Card ;

Account History with Status Codes	09/1998	11/1997
	1	1

Crdt First

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
54828*	03/2003		$0					

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
03/2003	$0											

Current Status - Pays As Agreed ; Type of Account - Revolving ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Amount In High Credit Column is Credit Limit ; Charge ;

2 **Discover Financial Services**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
601100204000*	12/1988	$5,755			Monthly	99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
02/2004	$0		10/2003	$112		09/2003	02/2004					

Type of Loan - Credit Card ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Closed At Consumers Request ;

Account History with Status Codes	12/2003	11/2003	11/2001	09/2001	10/2000	07/1999	11/1998	08/1998	07/1998	01/1998	10/1997	08/1997
	2	1	1	1	1	1	1	1	1	1	1	1

3 **First Premier**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
461007800310*	12/1999	$716	$1,200		Monthly	52		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$6		03/2004	$6	$6	04/2004						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account;

4 **First USA Na PO Box 8650 Wilmington DE 19899-8650**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
426686995018*	09/1990		$8,000		Monthly			

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$10,425	$1,629	09/2003	$197	$208	10/2003	04/2004	$10,425				

Current Status - Charge Off ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account;

Account History with Status Codes	03/2004	02/2004	01/2004	12/2003	11/2003	03/2003	02/2003	06/2002	11/2001	09/2001	07/2001	06/2001	03/2001	01/2001	12/2000	11/2000	09/2000	11/1999	09/1999	04/1999	03/1999
	4	4	3	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	3	3

	02/1999	01/1999	12/1998	11/1998	10/1998	09/1998	06/1998	05/1998	04/1998	03/1998	02/1998	01/1998	11/1997	08/1997
	2	2	1	1	2	1	2	1	1	1	1	1	1	1

(Continued On Next Page)

Kaufmann's

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
25243*	09/1985	$928			Monthly	6		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$0		05/1999			05/1999						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;

M.B.N.A Amer

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
431302285801*	01/1994	$7,304	$4,700			99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$7,304	$930	10/2003		$200	10/2003	04/2004					

Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Authorized User;

Account History with Status Codes	03/2004	02/2004	01/2004	10/2003	05/2003	12/2002	06/2002	05/2002	03/2002	01/2002	11/2001	10/2001	07/2001	05/2001	04/2001	12/2000	11/2000	10/2000	08/2000	06/2000	02/2000
	3	2	1	1	1	1	2	1	1	1	1	1	1	1	1	3	2	1	1	1	1
	12/1999	09/1999	06/1999	02/1999	10/1998	08/1998	03/1998	09/1997													
	1	1	1	1	1	1	1	1													

MBNA America PO Box 15026 Wilmington DE 19850-5026 (800) 421-2110

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
532903150992*	05/1984					99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004						11/2003	02/2004					

Current Status - Account Included In Bankruptcy ; Type of Loan - Credit Card ; Whose Account - Individual Account;

Account History with Status Codes	03/2004	02/2004	01/2004	08/2002	12/2001	11/2001	10/2001	09/2001	08/2001	07/2001	05/2001	01/2001	12/2000	11/2000	10/2000	09/2000	08/2000	07/2000	06/2000	01/2000	12/1999
	3	2	1	1	2	1	1	1	1	1	1	2	2	1	1	1	1	1	1	1	1
	11/1999	10/1999	09/1999	08/1999	07/1999	06/1999	05/1999	01/1999	12/1998	11/1998	10/1998	09/1998	08/1998	07/1998	06/1998	02/1998	01/1998	12/1997	11/1997	10/1997	09/1997
	1	1	1	1	1	1	1	2	1	1	2	1	1	1	1	1	1	1	1	2	1
	08/1997																				
	1																				

MBNA America Checkmate PO Box 15026 Wilmington DE 19850-5026 (800) 421-2110

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
7499006303*	11/1989					99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004						11/2003	02/2004					

Current Status - Account Included In Bankruptcy ; Type of Loan - Check Credit/Line Of Credit ; Whose Account - Individual Account;

Account History with Status Codes	03/2004	02/2004	01/2004	03/2002	01/2002	07/2001	05/2001	02/2001	11/2000	08/2000	05/2000	02/2000	09/1999	08/1999	06/1999	12/1998	09/1998	04/1998	12/1997	09/1997
	3	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

Sherman Acquisition lp 9700 Bissonnet St Ste 2000 PO Box 241281 Houston TX 77224-1281

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
SEARS -348007430*		$3,857						Financial

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
03/2004	$3,857	$3,857				12/2003	03/2004					

Current Status - Included In Wage Earner Plan ; Type of Loan - Factoring Compant Account ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Involved in Chapter 13 Debt Adjustment ; Account Involved in Chapter 13 Debt Adjustment ;

(Continued On Next Page)

Equifax report of 4/26/4 for **David** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber C:1471

Company Information	Inquiry Date(s)
PRM-Indymac Home Lending	10/2003 08/2003 06/2003
PRM-Capital One Auto Finance	10/2003 10/2003
PRM-Direct Lending Source Inc	08/2003
PRM-Offersdirect	07/2003
PRM-Mutual of OMAHA	05/2003

C:1472 Equifax report of 4/26/4 for **David** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber

**** End of Credit File ****

- **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.
- **Access to your file is limited.** A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.
- **Your consent is required for reports that are provided to employers, or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.
- **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.
- **You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT
CRAs, creditors and others not listed below	Federal Trade Commission - CRC 600 Pennsylvania Avenue, NW Washington, DC 20580 877-FTC-HELP
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street - Suite 3450 Houston, TX 77010 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance and Consumer Affairs Washington, DC 20429 877-275-3342 (800-ASK-FDIC)
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051
Identity Theft	Identity Theft Data Clearinghouse 600 Pennsylvania Avenue, NW Washington, DC 20580 877-ID-THEFT

EQUIFAX

RESEARCH REQUEST FORM

Upon completion, please return this document to the following address:

Equifax Information Services LLC
PO Box 740256
Atlanta, GA 30374

Or, if you prefer, you may initiate an investigation request via the internet at:

www.investigate.equifax.com

Confirmation Number: 4117002205

Intentionally making any false statement to a consumer reporting agency for the purpose of having it placed on a consumer report is punishable by law in some states.

If your identifying information differs from the information listed on this form, please fill in the correct information in the space provided below each item.

Please provide a photocopy of your driver's license, social security card, or a recent utility bill that reflects the correct information.

Name: David Gene Delano

SS#: 077-32-3894
DOB: September 1, 1941

Current Address: 1262 Shoecraft Rd, Webster, NY 14580

Previous Address(es): 35 State St, Rochester, NY 14614

Employment:

Daytime Phone Number: Evening Phone Number:

List other names which you have used for credit in the past. _____

Credit Account Information

Company Name _____ Account Number _____

Reason for investigation: ☐ Not Mine ☐ Paid in Full ☐ Current/Previous Payment Status Incorrect ☐ Account Closed

☐ Other (Please explain) _____

Company Name _____ Account Number _____

Reason for investigation: ☐ Not Mine ☐ Paid in Full ☐ Current/Previous Payment Status Incorrect ☐ Account Closed

☐ Other (Please explain) _____

Company Name _____ Account Number _____

Reason for investigation: ☐ Not Mine ☐ Paid in Full ☐ Current/Previous Payment Status Incorrect ☐ Account Closed

☐ Other (Please explain) _____

Company Name _____ Account Number _____

Reason for investigation: ☐ Not Mine ☐ Paid in Full ☐ Current/Previous Payment Status Incorrect ☐ Account Closed

☐ Other (Please explain) _____

Company Name _____ Account Number _____

Reason for investigation: ☐ Not Mine ☐ Paid in Full ☐ Current/Previous Payment Status Incorrect ☐ Account Closed

☐ Other (Please explain) _____

Company Name _____ Account Number _____

Reason for investigation: ☐ Not Mine ☐ Paid in Full ☐ Current/Previous Payment Status Incorrect ☐ Account Closed

☐ Other (Please explain) _____

C:1474 Equifax report of 4/26/4 for **David** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber

EQUIFAX

CREDIT FILE : May 8, 2004

Confirmation # 4129001647

Personal Identification Information (This section includes your name, current and previous addresses, and any other identifying information reported by your creditors.)

Name On File: Mary Ann Delano
Social Security # 091-36-0517 Date of Birth: September 21, 1944
Current Address: 1262 Shoecraft Rd, Webster, NY 14580
Last Reported Employment: Product Specialist; Xerox;

Please address all future correspondence to:

www.investigate.equifax.com
Equifax Information Services LLC
PO Box 740256
Atlanta, GA 30374

Phone: (800) 290-8749
M - F 9:00am to 5:00pm in your time zone.

In order to speak with a Customer Service Representative regarding the specific information contained in this credit file, you must call **WITHIN 60 DAYS** of the date of this credit file **AND** have a copy of this credit file along with the confirmation number.

Credit Account Information

*(For your security, the last 4 digits of account number(s) have been replaced by *) (This section includes open and closed accounts reported by credit grantors)*

Account Column Title Descriptions:

Account Number - The Account number reported by credit grantor
Date Acct. Opened - The Date that the credit grantor opened the account
High Credit - The Highest Amount Charged
Credit Limit - The Highest Amount Permitted
Terms Duration - The Number of Installments or Payments
Terms Frequency - The Scheduled Time Between Payments
Months Reviewed - The Number of Months Reviewed
Activity Description - The Most Recent Account Activity
Creditor Class - The Type of Company Reporting The Account
Date Reported - The Month and Year of the Last Account Update
Balance Amount - The Total Amount Owed as of the Date Reported

Amount Past Due - The Amount Past Due as of the Date Reported
Date of Last Paymnt - The Date of Last Payment
Actual Pay Amt - The Actual Amount of Last Payment
Sched Pay Amt - The Requested Amount of Last Payment
Date of Last Actvty - The Date of the Last Account Activity
Date Maj Delq Rptd - The Date the 1st Major Delinquency Was Reported
Charge Off Amt - The Amount Charged Off by Creditor
Deferred Pay Date - The 1st Payment Due Date for Deferred Loans
Balloon Pay Amt - The Amount of Final(Balloon) Payment
Balloon Pay Date - The Date of Final(Balloon) Payment
Date Closed - The Date the Account was Closed

Account History Status Code Descriptions			
	1 : 30-59 Days Past Due	5 : 150-179 Days Past Due	J : Voluntary Surrender
	2 : 60-89 Days Past Due	6 : 180 or More Days Past Due	K : Repossession
	3 : 90-119 Days Past Due	G : Collection Account	L : Charge Off
	4 : 120-149 Days Past Due	H : Forclosure	

Assoc/Citibank SD

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
541931041019*	06/1992	$2,500				67		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
07/1998	$0					04/1995						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;

(Continued On Next Page)

Equifax report of 4/26/4 for **Mary Ann** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber C:1475

1 **Capital One ... PO Box 85520 Internal Zip 12030-0116 Richmond VA 23285-5520**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Classification
486236226671*	11/2002	$32				18		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004	$0		02/2004			02/2004	03/2004					

Current Status - Included In Wage Earner Plan ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Involved in Chapter 13 Debt Adjustment ;

2 **Cbussaears**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Classification
348007430*	08/1982		$3,140			78		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004	$0		10/2003			12/2003						

Current Status - 60 - 89 Days Past Due ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Authorized User;

Account History with Status Codes	02/2004	01/2004	11/1997	10/1997
	2	1	1	1

3 **Chase Na ... 100 Duffy Ave Hicksville NY 11801-3639 (800) 327-2282**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Classification
410200824002*	06/1983	$11,651	$7,600		Monthly	99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$11,651	$1,392	11/2003	$450	$233	12/2003	02/2004					

Current Status - Included In Wage Earner Plan ; Type of Loan - Credit Card ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Involved in Chapter 13 Debt Adjustment ; Account Involved in Chapter 13 Debt Adjustment ;

Account History with Status Codes	03/2004	02/2004	01/2004	12/2003	04/2003	12/2000	07/1999	06/1999	05/1999	04/1999	03/1999	02/1999	01/1999	09/1998	07/1998	06/1998	05/1998	11/1997	09/1997
	4	3	2	1	1	1	1	1	1	1	1	1	1	1	2	1	1	1	1

4 **Discover Financial Services**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Classification
601100204000*	12/1988	$5,755			Monthly	99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$0		10/2003	$112		09/2003	04/2004					

Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Closed At Consumers Request ;

Account History with Status Codes	12/2003	11/2003	11/2001	09/2001	10/2000	07/1999	11/1998	08/1998	07/1998	01/1998	10/1997
	2	1	1	1	1	1	1	1	1	1	1

FCNB Preferred Charge

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Classification
800491*	05/1994	$400				27		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
09/1996	$0					11/1995						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Whose Account - Individual Account;

(Continued On Next Page)

C:1476 Equifax report of 4/26/4 for Mary Ann DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber

5 **Fleet National Bank**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
548789002018*	02/1993		$4,200		Monthly			

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$2,184	$297	10/2003	$172	$47	12/2003	04/2004	$2,184				

Current Status - Charge Off ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account;

Account History with Status Codes	02/2004	01/2004	10/2001	04/1999	02/1999	12/1998	12/1997	09/1997
	2	1	1	1	1	1	1	2

3 **GMAC**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
052-1504-1*	07/1995	$10,326				44		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
03/1999	$0				$191	02/1999						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ; Auto ;

4 **GMAC**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
052-3036-0*	02/1993	$10,793				47		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
02/1997	$0				$224	02/1997						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Maker; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;

JC Penney / Monogram Credit

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
-080246*	10/1980	$569	$200		Monthly	80		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004	$57		04/2004	$41	$15	05/2004						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;

Account History with Status Codes	07/1998	01/1998	10/1997	09/1997
	1	1	2	1

JC Penney / Monogram Credit

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
-010699*	10/1980							

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004						05/2004						

Current Status - Card Is Lost Or Stolen ; Type of Loan - Charge Account ;

Kaufmann's

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
25243*	09/1985	$928			Monthly	99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$0		05/1999			05/1999						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;

(Continued On Next Page)

Equifax report of 4/26/4 for Mary Ann DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber C:1477

8 **M.B.N.A Amer... PO Box 15026 Wilmington DE 19850-5026 (800) 421-2110**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
431302299975*	01/1994					99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004						10/2003	02/2004					

Current Status - Account Included In Bankruptcy ; Type of Loan - Credit Card ; Whose Account - Individual Account;

Account History with Status Codes	03/2004	02/2004	01/2004	10/2003	05/2003	12/2002	06/2002	05/2002	03/2002	01/2002	11/2001	10/2001	07/2001	05/2001	04/2001	12/2000	11/2000	10/2000	08/2000	06/2000	02/2000
	3	2	1	1	1	1	2	1	1	1	1	1	1	1	1	3	2	1	1	1	1
	12/1999	09/1999	06/1999	02/1999	10/1998	08/1998	03/1998	09/1997													
	1	1	1	1	1	1	1	1													

9 **Manufacturers & Traders Trust**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
738920*	03/1988	$59,000				10		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/1999	$0				$723	04/1999						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;

10 **ONONDAGA Bank/Overdraft**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
195882002*	03/1988	$59,000				15		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/1998	$0				$733	02/1998						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Transferred or Sold ;

11 **Primus Automotive**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
626*	02/1997	$6,719		48 Months		27		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/1999	$0					04/1999						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ; Auto ;

The Bon Ton

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mnths Revd	Activity Description	Creditor Clasification
8601*	12/1995	$280	$500			99		

Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	$0		02/1997			02/1997						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;

Inquiries that display to companies (may impact your credit score)

This section lists companies that requested your credit file. Credit grantors may view these requests when evaluating your credit worthiness.

Company Information	Inquiry Date(s)
Genesee Regional Bank	09/2003 06/2003
The Credit Bureau::3301 ONTARIO NATIONA	08/2002

(Continued On Next Page)

C:1478 Equifax report of 4/26/4 for Mary Ann DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber

Inquiries that do not display to companies (do not impact your credit score)

(This section includes inquiries which display only to you and are not considered when evaluating your credit worthiness. Examples of this inquiry type include a pre-approved offer of credit, insurance, or periodic account review by an existing creditor.)

Company Information - Prefix Descriptions:

PRM - Inquiries with this prefix indicate that only your name and address were given to a credit grantor so they can provide you a firm offer of credit or insurance. (PRM inquiries remain for twelve months)

AM or AR - Inquiries with these prefixes indicate a periodic review of your credit history by one of your creditors. (AM and AR inquiries remain for twelve months)

Equifax or EFX - Inquiries with these prefixes indicate Equifax's activity in response to your contact with us for a copy of your credit file or a research request.

ND - Inquiries with this prefix are general inquiries that do not display to credit grantors. (ND inquiries remain for twelve months)

Company Information	Inquiry Date(s)										
Equifax	05/2004										
AR-Assoc/Citibank SD	04/2004	02/2004	01/2004	12/2003	11/2003	10/2003	09/2003	08/2003	07/2003	07/2003	06/2003
PRM-At&T Wireless	03/2004	01/2004									
PRM-First Premier Bank Promo	02/2004										
AR-Capital One	02/2004	01/2004	12/2003	11/2003	10/2003	09/2003	08/2003	07/2003	07/2003	05/2003	
PRM-At&T Wireless Services	02/2004	06/2003									
AR-MBNA	12/2003	05/2003									
PRM-Evergreen Acceptance Corp.	10/2003										
PRM-Direct Lending Source Inc	10/2003	09/2003									
PRM-DM Services, Inc.	09/2003	07/2003									
PRM-Household Bank	05/2003										
PRM-Assoc Fin Ser Cons Div Promo	05/2003										

**** End of Credit File ****

Equifax report of 4/26/4 for **Mary Ann** DeLano, who produced it incompletely on 6/16/4 to Trustee Reiber C:1479

Blank

Western District of New York
Claims Register

2-04-20280-JCN David G. DeLano and Mary Ann DeLano

Judge John C. Ninfo, II

Debtor Name: DELANO,DAVID G.

Claim No: 1	*Creditor Name:* Bank of America N.A. PO Box 2278 Norfolk, VA 23501-2278	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 02/09/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$3335.08	
Total	**$3335.08**	
Description:		
Remarks:		

Claim No: 2	*Creditor Name:* Citi Cards P.O. Box 3671 Urbandale, IA 50323	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 02/17/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$3970.30	
Total	**$3970.30**	
Description:		
Remarks:		

Claim No: 3	*Creditor Name:* Discover Bank Discover Financial Services PO Box 8003 Hilliard, OH 43026	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 02/19/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**

Unknown	$5755.97	
Total	**$5755.97**	
Description:		
Remarks:		

Claim No: 4	*Creditor Name:* Chase Manhattan Bank USA, NA by eCast Settlement Corporation, as agent P.O. Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 02/27/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$11616.06	
Total	**$11616.06**	
Description:		
Remarks:		

Claim No: 5	*Creditor Name:* HSBC Bank USA PO Box 4215 Buffalo, NY 14273-4215	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 02/23/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$9447.80	
Total	**$9447.80**	
Description:		
Remarks:		

Claim No: 6	*Creditor Name:* Wells Fargo Financial New York, Inc. 4137 121st Street Urbandale, IA 50323	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 02/24/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$980.22	

Total	**$980.22**	
Description:		
Remarks:		

Claim No: 7	*Creditor Name:* MBNA America Bank NA eCast Settlement Corporation PO Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/05/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$6812.31	
Total	**$6812.31**	
Description:		
Remarks:		

Claim No: 8	*Creditor Name:* Capital One Auto Finance P.O. Box 260848 Plano, TX 75026	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/08/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$10753.28	
Total	**$10753.28**	
Description:		
Remarks:		

Claim No: 9	*Creditor Name:* Genesee Regional Bank f/k/a Lyndon Guarant y Bank 3380 Monroe Avenue Rochester, NY 14618	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/12/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$76300.71	
Total	**$76300.71**	

Description:	
Remarks:	

Claim No: 10	*Creditor Name:* Bank One Delaware, NA fka First USA c/o Weinstein, Treiger & Riley, P.S. 2101 4th Avenue, Suite 900 Seattle, WA 98121	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$10203.24	
Total	**$10203.24**	
Description:		
Remarks:		

Claim No: 11	*Creditor Name:* MBNA America Bank, N.A. by eCast Settlement Corporation, its agent PO Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$3931.23	
Total	**$3931.23**	
Description:		
Remarks:		

Claim No: 12	*Creditor Name:* MBNA America Bank, N.A. by eCast Settlement Corporation, its agent PO Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$19272.56	
Total	**$19272.56**	
Description:		

Remarks:

Claim No: 13	*Creditor Name:* MBNA America Bank, N.A. by eCast Settlement Corporation, its agent PO Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$5565.16	
Total	**$5565.16**	
Description:		
Remarks:		

Claim No: 14	*Creditor Name:* Bank One Delaware, NA fka First USA c/o Weinstein, Treiger & Riley, P.S. 2101 4th Avenue, Suite 900 Seattle, WA 98121	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$5317.97	
Total	**$5317.97**	
Description:		
Remarks:		

Claim No: 15	*Creditor Name:* Fleet Bank (RI) N.A. and its assigns by eCast Settlement Corporation, agent P.O. Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 03/18/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$2137.64	
Total	**$2137.64**	
Description:		
Remarks:		

Claim No: 16	*Creditor Name:* Sherman Acquisition LP Resurgent Capital Services PO Box 10587 Greenville, SC 29603-0587	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 04/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$4170.45	
Total	**$4170.45**	
Description:		
Remarks:		

Claim No: 17	*Creditor Name:* Sherman Acquisition LP Resurgent Capital Services PO Box 10587 Greenville, SC 29603-0587	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 04/15/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$1991.00	
Total	**$1991.00**	
Description:		
Remarks:		

Claim No: 18	*Creditor Name:* eCast Settlement Corporation, assignee of Associates National Bank P.O. Box 35480 Newark, NJ 07193-5480	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 04/16/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*
Class	**Amount Claimed**	**Amount Allowed**
Unknown	$2227.57	
Total	**$2227.57**	
Description:		
Remarks:		

Claim No: 19	*Creditor Name:* Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515	*Last Date to File Claims:* 06/07/2004 *Last Date to File (Govt):* *Filing Status:* *Docket Status:* *Late:* N
Claim Date: 05/19/2004	*Amends Claim No:* *Amended By Claim No:*	*Duplicates Claim No:* *Duplicated By Claim No:*

Class	Amount Claimed	Amount Allowed
Unknown	$14000.00	
Total	**$14000.00**	

Description:

Remarks: incremented by the capitalized fees paid since 1993, plus

Claims Register Summary

Case Name: David G. DeLano and Mary Ann DeLano
Case Number: 2-2004-20280-JCN
Chapter: 13
Date Filed: 01/27/2004
Total Number Of Claims: 19

	Total Amount Claimed	Total Amount Allowed
Unsecured		
Secured		
Priority		
Unknown	$197788.55	
Administrative		
Total	**$197788.55**	

PACER Service Center

Transaction Receipt

06/23/2004 09:45:27

PACER Login:		**Client Code:**	
Description:	SearchClaims	**Case Number:**	2-04-20280-JCN
Billable Pages:	2	**Cost:**	0.14

2-04-20280-JCN David G. DeLano and Mary Ann DeLano
Case type: bk **Chapter:** 13 **Asset:** Yes **Vol:** v **Judge:** John C. Ninfo II
Date filed: 01/27/2004 **Date of last filing:** 06/21/2004

Creditors Matrix

1.	**AT&T Universal** P.O. Box 8217 South Hackensack, NJ 07606-8217	(cr)
2.	**Bank Of America** P.O. Box 53132 Phoenix, AZ 85072-3132	(cr)
3.	**Bank One** Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153	(cr)
4.	**Bank One Delaware, NA** fka First USA c/o Weinstein, Treiger & Riley, P.S. 2101 4th Avenue, Suite 900 Seattle, WA 98121	(cr)
5.	**Bank of America N.A.** PO Box 2278 Norfolk, VA 23501-2278	(cr)
6.	**Capital One** P.O. Box 85147 Richmond, VA 23276	(cr)
7.	**Capital One Auto Finance** P.O. Box 260848 Plano, TX 75026	(cr)
8.	**Capitol One Auto Finance** PO Box 93016 Long Beach, CA 90809-3016	(cr)
9.	**Chase** Card Member Services PO Box 15650 Wilmington, Delaware 19886-5650	(cr)
10.	**Chase Manhattan Bank USA, NA by** eCast Settlement Corporation, as agent P.O. Box 35480 Newark, NJ 07193-5480	(cr)
11.	**Citi Cards** P.O. Box 8116 South Hackensack, NJ 07606-8116	(cr)
12.	**Citi Cards** P.O. Box 8115 South Hackensack, NJ 07606-8115	(cr)
13.	**Citi Cards** P.O. Box 3671 Urbandale, IA 50323	(cr)
14.	**Citibank USA** 45 Congress Street Salem, MA 01970	(cr)
15.	**Discover Bank** Discover Financial Services PO Box 8003 Hilliard, OH 43026	(cr)
16.	**Discover Card** P.O. Box 15251 Wilmington, DE 19886-5251	(cr)
17.	**Dr. Richard Cordero** 59 Crescent Street Brooklyn, NY 11208-1515	(cr)
18.	**Fleet Bank (RI) N.A. and its assigns** by eCast Settlement Corporation, agent P.O. Box 35480 Newark, NJ 07193-5480	(cr)

19.	**Fleet Credit Card Service** P.O. Box 15368 Wilmington, DE 19886-5368	(cr)
20.	**Genesee Regional Bank** 3670 Mt Read Blvd Rochester, NY 14616	(cr)
21.	**Genesee Regional Bank f/k/a Lyndon Guarant y Bank** 3380 Monroe Avenue Rochester, NY 14618	(cr)
22.	**HSBC Bank USA** PO Box 4215 Buffalo, NY 14273-4215	(cr)
23.	**HSBC MasterCard/Visa** HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627	(cr)
24.	**MBNA America** P.O. Box 15102 Wilmington, DE 19886-5102	(cr)
25.	**MBNA America** P.O. Box 15137 Wilmington, DE 19886-5137	(cr)
26.	**MBNA America Bank NA** eCast Settlement Corporation PO Box 35480 Newark, NJ 07193-5480	(cr)
27.	**MBNA America Bank, N.A. by** eCast Settlement Corporation, its agent PO Box 35480 Newark, NJ 07193-5480	(cr)
28.	**Sears Card** Payment Center P.O. Box 182149 Columbus, OH 43218-2149	(cr)
29.	**Sherman Acquisition LP** Resurgent Capital Services PO Box 10587 Greenville, SC 29603-0587	(cr)
30.	**Wells Fargo Financial** P.O. Box 98784 Las Vegas, NV 89193-8784	(cr)
31.	**Wells Fargo Financial New York, Inc.** 4137 121st Street Urbandale, IA 50323	(cr)
32.	**eCast Settlement Corporation, assignee of** Associates National Bank P.O. Box 35480 Newark, NJ 07193-5480	(cr)

PACER Service Center

Transaction Receipt

06/23/2004 08:49:29

PACER Login:		**Client Code:**	
Description:	Creditor List	**Case Number:**	2-04-20280-JCN
Billable Pages:	1	**Cost:**	0.07

Blank

www.mbnanetaccess.com

ACCOUNT NUMBER	
4313 0228 5801 9530	
PAYMENT DUE DATE	NEW BALANCE TOTAL
08/12/03	$6,422.47
TOTAL MINIMUM PAYMENT DUE	AMOUNT ENCLOSED
$176.00	

DETACH TOP PORTION AND RETURN WITH PAYMENT

Make check payable to:

MBNA AMERICA
P.O. BOX 15137
WILMINGTON, DE 19886-5137

For account information call 1-800-626-2556
Print change of address or new telephone number below

Address

City State Zip

( ) ( )
Home phone Work phone

X

MARY ANN DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-895462

12. 00642247000176000004313022858019530

Credit card statements of account as of 7-10/3 produced incompletely by DeLanos to Tr. Reiber on 6/14/4 C:1491

New Balance	Payment Due Date	Past Due Amount	Minimum Payment
$9,876.49	09/07/03	$197.00	$2,270.49

Amount Enclosed $.

Make your check payable to Bank One
New address or e-mail? Print on back.

2. (2/11) 2.

4266869950184134002270490098764 99

CARDMEMBER SERVICE
P.O. BOX 15153
WILMINGTON DE 19886-5153

DAVID G DELANO
~~1262 SHOECRAFT RD~~
WEBSTER NY 14580-8954

4559413

:5000160 28: 20599 50 184 134 7"

BANK ONE.

Statement Date:	07/15/03 - 08/13/03
Payment Due Date:	09/07/03
Minimum Payment Due:	$2,270.49

CUSTOMER SERVICE
In U.S. 1-800-945-2006
Español 1-888-446-3308
TDD 1-800-955-8060
Outside U.S. call collect
1-302-594-8200

ACCOUNT INQUIRIES
P.O Box 8650
Wilmington, DE 19899-8650

PAYMENT ADDRESS
P.O. Box 15153
Wilmington, DE 19886-5153

VISIT US AT:
www.cardmemberservices.com

VISA ACCOUNT SUMMARY

Previous Balance	$9,893.32
Payments, Credits	- $194.00
Purchases, Cash, Debits	+ $50.00
Finance Charges	+ $127.17
New Balance	$9,876.49

Account Number:	4262 519 982 211
Total Credit Line	$8,000
Available Credit	$0
Cash Access Line	$8,000
Available for Cash	$0

TRANSACTIONS

Trans Date	Reference Number	Merchant Name or Transaction Description	Amount Credit	Amount Debit
07/15	74266836428NX0X9Y	PAYMENT - THANK YOU	$194.00	
08/13		OVERLIMIT FEE		25.00
08/13		LATE FEE		25.00
08/13		*FINANCE CHARGE*		127.17

IF YOU'VE SIMPLY OVERLOOKED YOUR PAYMENT,
PLEASE SEND IT NOW.

AN OVERLIMIT FEE WAS ASSESSED WHEN YOUR ACCOUNT BALANCE
EXCEEDED THE ESTABLISHED CREDIT LIMIT ON 08/13/03.

FINANCE CHARGES

PERIODIC RATE(S) AND APR(S) MAY VARY

Category	Daily Periodic Rate 30 days in cycle	Corresponding APR	Average Daily Balance	Finance Charge Due To Periodic Rate	Transaction Fees	FINANCE CHARGES
Purchases	.04343%	15.85%	$4,262.45	$55.53	-	$55.53
Cash advances	.04343%	15.85%	$5,498.19	$71.64	-	$71.64
Total finance charges						$127.17

Effective Annual Percentage Rate (APR): 15.85%

Grace Period Type: B *(Please see back of statement for the Grace Period explanation.)*

The Corresponding APR is the rate of interest you pay when you carry a balance on purchases or cash advances. The Effective APR represents your total finance charges - including transaction fees such as cash advance and balance transfer fees - expressed as a percentage.

IMPORTANT NEWS

MAKING ELECTRONIC PAYMENTS ON YOUR CREDIT CARD ACCOUNT IS FASTER AND EASIER THAN EVER! JUST CALL OUR DEDICATED PAYMENT LINE AT 800-436-7958 OR LOGON TO WWW.CARDMEMBERSERVICES.COM. PAYMENTS ARE POSTED TO YOUR ACCOUNT WITHIN ONE BUSINESS DAY AND THERE ARE NO FEES FOR THESE PAYMENT SERVICES.

C:1492 Credit card **statements of account** as of 7-10/3 produced incompletely by DeLanos on 6/14/4 to Tr. Reiber

DISCOVER CARD

payment due date
September 15, 2003
minimum payment due
$109.00

new balance
$5,219.03

account number **6011 0020 4000 6645**
enter amount enclosed below
$

Please make check payable to Discover Card. You are overlimit. Pay the sum of the monthly minimum payment plus the overlimit amount of $2,219.03.

16 SDCNRB03 0086915
DAVID G DELANO
MARY A DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-8954

Simplify and Save! Use your Discover® Card to pay off high-rate balances today. You can save money and consolidate your debt into one convenient payment. Call 1-800-353-0942 to see if a special Balance Transfer offer is available for you.

PO BOX 15251
WILMINGTON DE 19886-5251

Address or telephone change? Please print change in the space above, or go to Discovercard.com.

00000601100204000664505219030010900000109000

Discover Card Account Summary

account number	6011 0020 4000 6645
payment due date	September 15, 2003
minimum payment due	$109.00
credit limit	$3,000.00
credit available	$0.00
cash credit limit	$1,500.00
cash credit available	$0.00

New York residents may contact the New York State Banking Department to obtain comparative listing information of credit cards, fees and grace periods. Call 1-800-518-8866.

Closing Date: August 16, 2003 page 1 of 2

previous balance		$5,207.33
payments and credits	-	109.00
purchases	+	29.00
cash advances	+	0.00
balance transfers	+	0.00
FINANCE CHARGES	+	91.70
new balance	=	$5,219.03

You may be able to avoid Periodic Finance Charges, see the reverse side for details.

SPECIAL BALANCE TRANSFER RATES! Save money and simplify your life by consolidating your debt. Call 1-800-767-7339 today to see if an offer is available for you!

For TDD (Telecommunications Device for the Deaf) assistance, please call 1-800-347-7449.
The Discover® Classic Card is issued by Discover Bank, Member FDIC.

Finance Charges accrued on the previous day's daily balance; transactions made that day, fees charged that day and Periodic balance of the transaction category on that day. In calculating the daily balance for the billing period, we consider the "previous day's daily balance" to have been 0 on the first day of the billing period.

Old balances are excluded from the balance of the purchase and cash advance transaction categories. Special rate balance transfers and balance transfer transaction Fee Finance Charges are included in the daily balance transfer transaction category. Balance transfers that were subject to an initial special rate that has been terminated due to a late payment are also included in the category until the initial special rate otherwise would have expired. In calculating the daily balance of the balance transfer transaction category on the first day of the billing period, we subtract the unpaid balance of those Balance Transfer Transaction Fee Finance Charges and balance transfers that become purchase rate balance transfers on that day and we add that unpaid balance to the balance of the purchase transaction category.

All fees charged to your Account are added to the purchase transaction category with the exception of Cash Advance Transaction Fee Finance Charges which are added to the cash advance transaction category and Balance Transfer Transaction Fee Finance Charges which are added to the balance transfer transaction category. If a transaction made in a previous billing period is itemized on this statement, we consider the transaction date to be the first day of the current billing period when we calculate your Periodic Finance Charges.

HSBC

MasterCard/Visa Monthly Statement

Make Checks Payable to:

HSBC BANK USA
SUITE 0627
BUFFALO NY 14270-0627

Changing your address? Print new address to the right.

DAVID G DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-8954

50348

0501264385 24

Payment Information:

Account Number	5215 3125 0126 4385
New Balance	$9,065.01
Payment Due Date	OCTOBER 3, 2003
Minimum Payment	$169.02
AMOUNT ENCLOSED	$

MasterCard/Visa Monthly Statement

Balance Summary:

Previous Balance		$9,056.64
Payments and Other Credits		$160.65
Purchases/Loans/Other Charges		$0.00
Service Charge or Interest	$169.02	
Transaction Fees Loans Only	$0.00	
Total FINANCE CHARGE		$169.02
Late Payment Fees		$0.00
New Balance		$9,065.01

YOU MAY AVOID ADDITIONAL FINANCE CHARGES ON PURCHASES IF YOU PAY $2,111.65 BY THE PAYMENT DUE DATE.

Account Summary:

Account Number	5215 3125 0126 4385
Credit Line	$10,500.00
Total Balance in Use	$9,065.01
Available Credit	$0.00
Days in Billing Cycle	32
Billing Date	SEPTEMBER 8, 2003
Payment Due Date	OCTOBER 3, 2003
Amount Past Due	
Minimum Due	$169.02
Minimum Payment Terms	60

Your Transactions at a Glance:

Trans Date	*Post Date*	*Card Brand*	*Reference Number*	*Description of Transactions*		*Amount*
08/28	08/28	M	85215317HG28ML1L8M	PAYMENT THANK YOU 0003695690	-	160.65
09/08	09/08		*FINANCE CHARGE*	PURCHASES $35.52 CASH ADVANCE $133.50	+	169.02

Finance Charge Rates Summary:

Fixed Rate Account	Periodic Rate	Average Daily Balance	Corresponding Annual Percentage Rate	Annual Percentage Rate
Purchases	1.825 Monthly	$1,946.48	21.90	21.90
Loans	.06000 Daily	$6,953.36	21.90	21.90

Important Information:

YOUR ACCOUNT IS CURRENTLY CLOSED.

Call or Write

800-975-4722
800-975-HSBC
Outside U.S./Canada: 716-841-7212

HSBC BANK USA
P.O. BOX 9
BUFFALO, NY 14240

HSBC BANK US
SUITE 0627

NEW YORK RESIDENTS MAY CONTACT THE NEW YORK STATE BANKING DEPARTMENT TO OBTAIN A COMPARATIVE LISTING OF CREDIT CARD RATES, FEES AND GRACE PERIODS. NEW YORK STATE BANKING DEPARTMENT

C:1494 Credit card **statements of account** as of 7-10/3 produced incompletely by DeLanos on 6/14/4 to Tr. Reiber

MBNA AMERICA

www.mbnanetaccess.com

CARDHOLDER SINCE 1984

ACCOUNT NUMBER 5329 0315 0992 1928

PAYMENT DUE DATE	NEW BALANCE TOTAL
10/07/03	$18,498.21
TOTAL MINIMUM PAYMENT DUE	**AMOUNT ENCLOSED**
$508.00	

DETACH TOP PORTION AND RETURN WITH PAYMENT

Make check payable to:

MBNA AMERICA
P.O. BOX 15137
WILMINGTON, DE 19886-5137

B

DAVID DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-895462

For account information call 1-800-626-2556
Print change of address or new telephone number below

Address

City State Zip

( ) ( )
Home phone Work phone

08 018498210005080000053290315099219 28

Account Number	Credit Line	Cash or Credit Available	Days in Billing Cycle	Closing Date	Total Minimum Payment Due	Payment Due Date
5329 0315 0992 1928	$15,000.00		33	09/09/03	$508.00	10/07/03

Posting Date	Transaction Date	Reference Number	Card Type	Category	Transactions	Charges	Credits (CR)
					SEPTEMBER 2003 STATEMENT		

PAYMENTS AND CREDITS

08/28		5532	MC	PAYMENT - THANK YOU	509.00 CR
				TOTAL FOR BILLING CYCLE FROM 08/08/2003 THROUGH 09/09/2003	$0.00 $509.00 CR

YOUR BALANCE EXCEEDS APPROVED CREDIT LIMITS.

IMPORTANT NEWS

AN IMPORTANT AMENDMENT TO YOUR ACCOUNT TERMS IS ENCLOSED.

USE MBNA MORTGAGE PRODUCTS TO ACHIEVE YOUR FINANCIAL GOALS. CALL 1-877-688-6713.

PAY YOUR BILL QUICKLY WITH PAY-BY-PHONE SERVICE. CALL 1-866-297-9258 TO USE THIS AUTOMATED SERVICE. PAYMENT POSTS THE SAME OR NEXT BUSINESS DAY.

DON'T WORRY ABOUT ECONOMIC UNCERTAINTIES! HELP PROTECT YOUR ACCOUNT. ENROLL IN OPTIONAL CREDIT PROTECTION! CONTACT US: 1-800-840-8504 OR WWW.MBNAPROTECT.COM.

SUMMARY OF TRANSACTIONS

Previous Balance	(-) Payments and Credits	(+) Cash Advances	(+) Purchases and Adjustments	(+) Periodic Rate FINANCE CHARGES	(+) Transaction Fee FINANCE CHARGES	(=) New Balance Total
$18,537.57	$509.00	$0.00	$0.00	$469.64	$0.00	$18,498.21

TOTAL MINIMUM PAYMENT DUE

Past Due Amount	$0.00
Current Payment	$508.00
Total Minimum Payment Due	$508.00

FINANCE CHARGE SCHEDULE

Category	Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charge
Cash Advances			
A. BALANCE TRANSFERS, CHECKS	0.076657% DLY	27.98%	$877.04
B. ATM, BANK	0.076657% DLY	27.98%	$0.00
C. PURCHASES	0.076657% DLY	27.98%	$17,688.25

FOR THIS BILLING PERIOD:
ANNUAL PERCENTAGE RATE 27.98%
(Includes Periodic Rate and Transaction Fee Finance Charges.)

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY

- For Customer Satisfaction and up to the minute automated information including balance, available credit, payments received, payments due, due date, payment address information, or to request duplicate statements, call 1-800-626-25
- For TDD (Telecommunication Device for the Deaf) assistance, call 1-800-346-3176.
- Mail payments to: MBNA AMERICA, P.O. BOX 15137, WILMINGTON, DE 19886-5137.
- Billing rights are preserved only by written inquiry. Mail billing inquiries, using form on the back, and other inquiries to: MBNA AMERICA, P.O. BOX 15026, WILMINGTON, DE 19850-5026

3381 023 3QP 1112 0200 00

5329 0315 0992 1928 PAGE 1 OF 1

Credit card **statements of account** as of 7-10/3 produced incompletely by DeLanos on 6/14/4 to Tr. Reiber C:1495

PAYMENT DUE DATE 10/06/03 | NEW BALANCE $10,909.01 | MINIMUM DUE $218.00

Facsimile

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER NY 14580-8954

1784

Copy

CHASE

Chase Visa®
ACCOUNT NUMBER: 4102 0082 4002 1537

NEW BALANCE	PAYMENT DUE DATE	TOTAL CREDIT LINE	TOTAL AVAILABLE CREDIT	STATEMENT CLOSING DATE
$10,909.01	10/06/03	$7,600	$0	09/11/03

Here is your Account Summary:

	TOTAL
Previous Balance	$10,851.99
(-) Payments, Credits	229.00
(+) Purchases, Cash, Debits	70.00
(+) FINANCE CHARGES	286.02
(=) New Balance	10,909.01
Minimum Due	218.00
Over Line - Pay Immediately	3,309.01
Minimum Payment Due	$218.00

Here are your Charges and Credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
09/11	09/11	VXJ0	PAYMENT - THANK YOU	229.00	
09/11	09/11		OVERLIMIT FEE		35.00
			LATE CHARGE - MIN PYMT NOT RECD BY DATE		35.00
			Total of your credits and charges	229.00	70.00

YOU ARE OVER YOUR CREDIT LIMIT. PLEASE SEND PAYMENT TO AVOID LOSING YOUR CREDIT PRIVILEGES. IF YOU'VE ALREADY PAID-THANK YOU.

Here's how we determined your Finance Charge*:

Days in Billing Cycle: 30

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC / MIN. FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Cash	0.06573%	$6,240.94	$123.06	$123.06	23.99%	23.99%
Purchases	0.06573%	$4,714.48	$92.96	$92.96	23.99%	23.99%

* Please see reverse side for balance computation method and other important information.

Questions about your account? Credit Card lost or stolen? Call a Chase Representative, toll-free, at 1-800-235-3343 or write P.O. BOX 1010, HICKSVILLE, NY 11802-0000.
Para Servicio al Cliente en Español: 1-800-545-0464.

C:1496 Credit card **statements of account** as of 7-10/3 produced incompletely by DeLanos on 6/14/4 to Tr. Reiber

BANK ONE.

New Balance	Payment Due Date	Past Due Amount	Minimum Payment
$5,130.80	10/12/03	$103.00	$2,535.80

Amount Enclosed $.

Make your check payable to Bank One
New address or e-mail? Print on back.

3292

4712020701513292002535800051308O5

CARDMEMBER SERVICE
P.O. BOX 15153
WILMINGTON DE 19886-5153

DAVID DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-8954

3059711

1:5000160281:1060701513292 1#

BANK ONE.

Statement Date: 08/19/03 - 09/17/03
Payment Due Date: 10/12/03
Minimum Payment Due: $2,535.80

CUSTOMER SERVICE
In U.S. 1-800-945-2006
Español 1-888-446-3308
TDD 1-800-955-8060
Outside U.S. call collect
1-302-594-8200

ACCOUNT INQUIRIES
P.O. Box 8650
Wilmington, DE 19899-8650

PAYMENT ADDRESS
P.O. Box 15153
Wilmington, DE 19886-5153

VISIT US AT:
www.cardmemberservices.com

VISA ACCOUNT SUMMARY

Previous Balance	$5,195.72
Payments, Credits	- $201.00
Purchases, Cash, Debits	+ $40.00
Finance Charges	+ $96.08
New Balance	$5,130.80

Account Number: 4712 0207 0151 3292

Total Credit Line	$2,800
Available Credit	$0
Cash Access Line	$2,800
Available for Cash	$0

TRANSACTIONS

Trans Date	Reference Number	Merchant Name or Transaction Description	Amount Credit	Amount Debit
08/22	74712027A28NXB3R5	PAYMENT - THANK YOU	$201.00	
09/17		OVERLIMIT FEE		20.00
09/17		LATE FEE		20.00
09/17		*FINANCE CHARGE*		96.08

IF YOU'VE SIMPLY OVERLOOKED YOUR PAYMENT,
PLEASE SEND IT NOW.

AN OVERLIMIT FEE WAS ASSESSED WHEN YOUR ACCOUNT BALANCE
EXCEEDED THE ESTABLISHED CREDIT LIMIT ON 09/17/03.

FINANCE CHARGES

PERIODIC RATE(S) AND APR(S) MAY VARY

Category	Monthly Periodic Rate 30 days in cycle	Corresponding APR	Average Daily Balance	Finance Charge Due To Periodic Rate	Transaction Fees	FINANCE CHARGES
Purchases	1.916%	22.99%	$2,652.90	$50.83	-	$50.83
Cash advances	1.916%	22.99%	$2,361.91	$45.25	-	$45.25
Total finance charges						$96.08

Effective Annual Percentage Rate (APR): 22.99%

Grace Period Type: B *(Please see back of statement for the Grace Period explanation.)*

The Corresponding APR is the rate of interest you pay when you carry a balance on purchases or cash advances.
The Effective APR represents your total finance charges - including transaction fees such as cash advance and balance transfer fees - expressed as a percentage.

Credit card **statements of account** as of 7-10/3 produced incompletely by DeLanos to Tr. Reiber on 6/14/4 C:1497

Statement for account number: 4266 8699 5018 4134

BANK ONE.

New Balance	Payment Due Date	Past Due Amount	Minimum Payment
$9,846.80	11/08/03	$197.00	$2,239.80

Amount Enclosed $.

Make your check payable to Bank One
New address or e-mail? Print on back.

4134

42668699501841340022398000984680 7

CARDMEMBER SERVICE
P.O. BOX 15153
WILMINGTON DE 19886-5153

DAVID G DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-8954

4081562

:5000160281:20599501841347#

BANK ONE.

Statement Date: 09/13/03 - 10/14/03
Payment Due Date: 11/08/03
Minimum Payment Due: $2,239.80

CUSTOMER SERVICE
In U.S. 1-800-945-2006
Español 1-888-446-3308
TDD 1-800-955-8060
Outside U.S. call collect
1-302-594-8200

VISA ACCOUNT SUMMARY

Previous Balance	$9,857.18	Account Number:	4266 8699 5018 4134
Payments, Credits	-$197.00	Total Credit Line	$8,000
Purchases, Cash, Debits	+ $50.00	Available Credit	$0
Finance Charges	+ $136.62	Cash Access Line	$8,000
New Balance	$9,846.80	Available for Cash	$0

ACCOUNT INQUIRIES
P.O. Box 8650
Wilmington, DE 19899-8650

PAYMENT ADDRESS
P.O. Box 15153
Wilmington, DE 19886-5153

VISIT US AT:
www.cardmemberservices.com

TRANSACTIONS

Trans Date	Reference Number	Merchant Name or Transaction Description	Amount Credit	Amount Debit
09/28	74266838F015MEGVV	PAYMENT - THANK YOU	$197.00	
10/14		OVERLIMIT FEE		25.00
10/14		LATE FEE		25.00
10/14		*FINANCE CHARGE*		136.62

IF YOU'VE SIMPLY OVERLOOKED YOUR PAYMENT, PLEASE SEND IT NOW.

OUR ACCOUNT NUMBER SYSTEM HAS CHANGED! SEE YOUR NEW NUMBER ABOVE.

AN OVERLIMIT FEE WAS ASSESSED WHEN YOUR ACCOUNT BALANCE EXCEEDED THE ESTABLISHED CREDIT LIMIT ON 10/14/03.

FINANCE CHARGES

PERIODIC RATE(S) AND APR(S) MAY VAR

Category	Daily Periodic Rate 32 days in cycle	Corresponding APR	Average Daily Balance	Finance Charge Due To Periodic Rate	Transaction Fees	FINANC CHARGE
Purchases	.04348%	15.87%	$4,291.09	$59.70		$59.
Cash advances	.04348%	15.87%	$5,527.77	$76.92		$76.
Total finance charges						$136.

Effective Annual Percentage Rate (APR): 15.87%

Grace Period Type: B *(Please see back of statement for the Grace Period explanation.)*

The Corresponding APR is the rate of interest you pay when you carry a balance on purchases or cash advances. The Effective APR represents your total finance charges - including transaction fees such as cash advance and balance transfe fees - expressed as a percentage.

IMPORTANT NEWS

Form **1040** Department of the Treasury — Internal Revenue Service
U.S. Individual Income Tax Return 2001

(99) IRS use only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2001, or other tax year beginning , 2001, ending , 20 — OMB No. 1545-0074

Label (See instructions.)

Your First Name	MI	Last Name	Your Social Security Number
David	G	DeLano	077-32-3894
If a Joint Return, Spouse's First Name	MI	Last Name	Spouse's Social Security Number
Mary Ann		DeLano	091-36-0517

Use the IRS label. Otherwise, please print or type.

Home Address (number and street). If You Have a P.O. Box, See Instructions. — Apartment No.: 1262 Shoecraft Rd

City, Town or Post Office. If You Have a Foreign Address, See Instructions. — State: NY — ZIP Code: 14580

Important! You must enter your social security number(s) above.

Presidential Election Campaign (See instructions.)

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want $3 to go to this fund? ..... ▶ You: ☐ Yes ☒ No — Spouse: ☐ Yes ☒ No

Filing Status

Check only one box.

1 ☐ Single
2 ☒ Married filing joint return (even if only one had income)
3 ☐ Married filing separate return. Enter spouse's SSN above & full name here .... ▶
4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ▶
5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶). (See instructions.)

Exemptions

6a ☒ **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a ..... — No. of boxes checked on 6a and 6b 2

b ☒ **Spouse** ..... — No. of your children on 6c who:

c **Dependents:**

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see instrs)

If more than six dependents, see instructions.

- lived with you .....
- did not live with you due to divorce or separation (see instrs) ...
- Dependents on 6c not entered above .

d Total number of exemptions claimed ..... — Add numbers entered on lines above ▶ 2

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

ROLLOVER

Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	90,790.
8a	**Taxable** interest. Attach Schedule B if required	8a	427.
b	**Tax-exempt** interest. **Do not** include on line 8a (8b)		
9	Ordinary dividends. Attach Schedule B if required	9	12.
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	Total IRA distributions (15a) b Taxable amount (see instrs)	15b	
16a	Total pensions & annuities (16a 3,257.) b Taxable amount (see instrs)	16b	0.
17	*Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E*	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits (20a) b Taxable amount (see instrs)	20b	
21	*Other income*	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶	22	91,229.

Adjusted Gross Income

23	IRA deduction (see instructions)	23	
24	Student loan interest deduction (see instructions)	24	
25	Archer MSA deduction. Attach Form 8853	25	
26	Moving expenses. Attach Form 3903	26	
27	One-half of self-employment tax. Attach Schedule SE	27	
28	Self-employed health insurance deduction (see instructions)	28	
29	Self-employed SEP, SIMPLE, and qualified plans	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN ▶	31a	
32	Add lines 23 through 31a	32	
33	Subtract line 32 from line 22. This is your **adjusted gross income** ▶	33	91,229.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions. Form **1040** (2001)

FDIA0112 10/08/01

Form **1040** Department of the Treasury — Internal Revenue Service **U.S. Individual Income Tax Return 2002** (99) IRS use only — Do not write or staple in this space.

OMB No. 1545-0074

For the year Jan 1 - Dec 31, 2002, or other tax year beginning , 2002, ending , 20

Label (See instructions.)

Your first name	MI	Last name	Your social security number
David	G	DeLano	077-32-3894
If a joint return, spouse's first name	MI	Last name	Spouse's social security number
Mary Ann		DeLano	091-36-0517

Use the IRS label. Otherwise, please print or type.

Home address (number and street). If you have a P.O.box, see instructions. Apartment no.

1262 Shoecraft Road

City, town or post office. If you have a foreign address, see instructions. State ZIP code

Webster NY 14580

Important! You **must** enter your social security number(s) above.

Presidential Election Campaign (See instructions.)

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want $3 to go to this fund? ... You: [ ] Yes [X] No Spouse: [ ] Yes [X] No

Filing Status Check only one box.

1 [ ] Single
2 [X] Married filing jointly (even if only one had income)
3 [ ] Married filing separately. Enter spouse's SSN above & full name here . . ►
4 [ ] Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here . ►
5 [ ] Qualifying widow(er) with dependent child (year spouse died . . . ►). (See instructions.)

Exemptions

6a [X] **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a ... No. of boxes checked on 6a and 6b 2

b [X] *Spouse* ...

c **Dependents:**

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see instrs)
			[ ]
			[ ]
			[ ]
			[ ]

No. of children on 6c who:
- lived with you .....
- did not live with you due to divorce or separation (see instrs) ...

Dependents on 6c not entered above .

If more than five dependents, see instructions.

Add numbers on lines above .... ► 2

d *Total number of exemptions claimed* ... 2

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	91,655.
8a	**Taxable** interest. Attach Schedule B if required	8a	204.
b	**Tax-exempt** interest. **Do not** include on line 8a (8b)		
9	Ordinary dividends. Attach Schedule B if required	9	
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	*Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here* ► [ ]	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions (15a) b Taxable amount (see instrs)	15b	
16a	*Pensions and annuities* (16a) b Taxable amount (see instrs)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. *Attach Schedule E*	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits (20a) b Taxable amount (see instrs)	20b	
21	Other income	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ►	22	91,859.

Adjusted Gross Income

23	Educator expenses (see instructions)	23	
24	*IRA deduction (see instructions)*	24	
25	Student loan interest deduction (see instructions)	25	
26	Tuition and fees deduction (see instructions)	26	
27	*Archer MSA deduction.* Attach Form 8853	27	
28	Moving expenses. Attach Form 3903	28	
29	One-half of self-employment tax. Attach Schedule SE	29	
30	Self-employed health insurance deduction (see instructions)	30	
31	Self-employed SEP, SIMPLE, and *qualified plans*	31	
32	Penalty on early withdrawal of savings	32	
33a	Alimony paid b Recipient's SSN ►	33a	
34	Add lines 23 through 33a	34	
35	Subtract line 34 from line 22. This is your **adjusted gross income** ►	35	91,859.

Form **1040** Department of the Treasury — Internal Revenue Service
U.S. Individual Income Tax Return 2003

(99) IRS Use Only — Do not write or staple in this space.

For the year Jan 1 - Dec 31, 2003, or other tax year beginning , 2003, ending , 20 — OMB No. 1545-0074

Label (See instructions.)

Your first name	MI	Last name	Your social security number
David	G	DeLano	077-32-3894
If a joint return, spouse's first name	MI	Last name	Spouse's social security number
Mary Ann		DeLano	091-36-0517

Use the IRS label. Otherwise, please print or type.

Home address (number and street). If you have a P.O. box, see instructions. — Apartment no.
1262 Shoecraft Road

City, town or post office. If you have a foreign address, see instructions. — State — ZIP code
Webster — NY — 14580

Important! You **must** enter your social security number(s) above.

Presidential Election Campaign (See instructions.)

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want $3 to go to this fund? ► — You: ☐ Yes ☒ No — Spouse: ☐ Yes ☒ No

Filing Status

Check only one box.

1 ☐ Single
2 ☒ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above & full name here . . ►
4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here . ►
5 ☐ Qualifying widow(er) with dependent child. (See instructions.)

Exemptions

6a ☒ **Yourself.** If your parent (or someone else) can claim you as a dependent on his or her tax return, **do not** check box 6a
b ☒ **Spouse**

No. of boxes checked on 6a and 6b 2

c **Dependents:**

(1) First name / Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qualifying child for child tax credit (see instrs)
			☐
			☐
			☐
			☐
			☐

If more than five dependents, see instructions.

No. of children on 6c who:
- lived with you . . . . .
- did not live with you due to divorce or separation (see instrs) . . .

Dependents on 6c not entered above .

Add numbers on lines above . . . . ► 2

d Total number of exemptions claimed 2

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

ROLLOVER

Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	96,821.
8a	**Taxable** interest. Attach Schedule B if required	8a	17.
b	**Tax-exempt** interest. **Do not** include on line 8a (8b)		
9a	Ordinary dividends. Attach Schedule B if required	9a	
b	Qualfd divs (see instrs) (9b)		
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13a	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here ► ☐	13a	
b	If box on 13a is checked, enter post-May 5 capital gain distributions (13b)		
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions (15a)	b Taxable amount (see instrs)	15b
16a	Pensions and annuities (16a) 519.	b Taxable amount (see instrs)	16b 0.
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	810.
20a	Social security benefits (20a)	b Taxable amount (see instrs)	20b
21	Other income	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ►	22	97,648.

Adjusted Gross Income

23	Educator expenses (see instructions)	23	
24	IRA deduction (see instructions)	24	
25	Student loan interest deduction (see instructions)	25	
26	Tuition and fees deduction (see instructions)	26	
27	Moving expenses. Attach Form 3903	27	
28	One-half of self-employment tax. Attach Schedule SE	28	
29	Self-employed health insurance deduction (see instrs)	29	
30	Self-employed SEP, SIMPLE, and qualified plans	30	
31	Penalty on early withdrawal of savings	31	
32a	Alimony paid b Recipient's SSN ►	32a	
33	Add lines 23 through 32a	33	
34	Subtract line 33 from line 22. This is your **adjusted gross income** ►	34	97,648.

Blank

[C:1502-1508 reserved]

Useful addresses for investigating
the judicial wrongdoing and bankruptcy fraud scheme

1.	George M. **Reiber**, Esq. Chapter **13 Trustee** [in DeLanos' case… South Winton Court […no. 04-20280] 3136 S. Winton Road, Suite 206 Rochester, NY 14623 tel. (585) 427-7225 fax (585) 427-7804
2.	David G. and Mary Ann **DeLano** [Debtors] 1262 Shoecraft Road Webster, NY 14580
3.	Christopher K. **Werner**, Esq. [DeLanos's … Boylan, Brown, Code, […attorney] Vigdor & Wilson, LLP 2400 Chase Square Rochester, NY 14604 tel. (585) 232-5300 fax (585) 232-3528
4.	Kathleen Dunivin **Schmitt**, Esq. **Assistant** U.S. Trustee Federal Office Building, Room 6090 100 State Street, Room 6090 Rochester, New York 14614 tel. (585) 263-5812 fax (585) 263-5862
5.	Ms. Deirdre A. **Martini** **U.S. Trustee** for Region 2 Office of the United States Trustee 55 Whitehall Street, 21st Floor New York, NY 10004 tel. (212) 510-0500 fax (212) 668-2255
6.	Hon. Judge John C. **Ninfo**, II Bankruptcy **Judge** United States Bankruptcy Court 1400 United States Courthouse 100 State Street Rochester, NY 14614 tel. (585) 613-4200
7.	Hon. David **Larimer** U.S. District **Judge** United States District Court 2120 U.S. Courthouse 100 State Street Rochester, NY 14614-1387 tel. (585) 263-6263
8.	Kenneth W. **Gordon**, Esq. Chapter **7 Trustee** [in the Premier Van Lines Gordon & Schaal, LLP [case **01-20692**] 100 Meridian Centre Blvd., Suite 120 Rochester, New York 14618 tel. (585) 244-1070 fax (585) 244-1085
9.	Mr. David **Palmer** 1829 Middle Road [Debtor in Premier Van Rush, NY 14543 [Lines case **01-20692**]
10.	The Hon. John M. **Walker**, Jr. Chief **Judge** The Hon. Dennis **Jacobs** [next eligible chief judge] Ms. Roseann **MacKechnie** Clerk of Court Mr. Fernando **Galindo** Chief Deputy Clerk Court of Appeals for the Second Circuit Thurgood Marshall United States Courthouse 40 Foley Square, Room 1802 New York, NY 10007 tel. (212) 857-8500
11.	Justice Stephen **Breyer** Ms. Cathy Arbur (202)479-3050 Public Information Office **Supreme Court** of the United States 1 First Street, N.E. Washington, D.C. 20543 tel. (202)479-3000
12.	

13.	Mr. Leonidas Ralph Mecham Director William Burchall, Esq. General Counsel Jeffrey **Barr**, Esq. Deputy General Counsel **Administrative Office** of the U.S. Courts Office of the General Counsel One Columbus Circle, NE, Suite 7-290 Washington, DC 20544 tel. (202) 502-1100 fax (202) 502-1033
14.	Ms. Wendy Janis United States Judicial Conference (202)502-2400
15.	

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 13, 2004

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

Dear Dr. Cordero:

After a careful review of the materials submitted by you with regard to the U.S. Bankruptcy Court and the District Court for the Western District of New York, please be advised that it has been determined that the materials do not state a basis for a federal criminal investigation by this Office.

Very truly yours,

DAVID N. KELLEY
United States Attorney

By: Janice Sandt
Janice Sandt
Legal Assistant

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

August 5, 2004

Bradley E. Tyler
Attorney in Charge
United States Attorney Office
U.S. Courthouse
100 State Street
Rochester, NY 14614

Dear Mr. Bradley:

Enclosed please find a referral of an investigation to our Office by Dr. Richard Cordero. We have declined to open an investigation into this matter. I have spoken to Dr. Cordero and he requested that I forward the materials to your office for consideration, since some of the underlying conduct took place in your district.

Very truly yours,

KAREN PATTON SEYMOUR
Chief, Criminal Division

cc: Dr. Richard Cordero
(w/out enclosures)

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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August 14, 2004

Bradley E. Tyler, Esq.
U.S. Attorney in Charge [tel. (585)263-6760; fax (585)263-6226]
620 Federal Building
100 State Street
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call last Wednesday, when we briefly talked about the files that I prepared for your colleague David N. Kelley, U.S. Attorney for the Southern District of New York, and that his Chief of the Criminal Division, Karen Patton Seymour, Esq., forwarded to you. They concern a judicial misconduct and bankruptcy fraud scheme, which has shown further evidence of its existence and depth through an ongoing case in the Bankruptcy Court in your building, namely, David and Mary Ann DeLano, Chapter 13, docket no. 04-20280.

As mentioned, I have prepared a paper in the form of a motion (1-19, infra) that describes the latest developments of a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing involving judicial officers, trustees, and the local parties. The motion demonstrates how these participants have undermined the integrity of the judicial and bankruptcy systems and why this matter deserves that a file be opened and treated with high priority.

The motion's Table of Contents serves as an executive summary. Its first paragraph lets you know of two important hearings in the Court right there where you are:

1. The one next Monday, August 23, at 3:30 p.m., will reconsider Trustee George Reiber's motion to dismiss the case (21, infra) due to the Debtors' unreasonable delay in producing documents as well as my statement in opposition (23, infra), which requests his removal on account of his conflict of interests between his duty to investigate this case and his self-preservation instinct of not uncovering documents that can incriminate him in bankruptcy fraud.

2. The other hearing is set for Wednesday, August 25, at 11:30 a.m. It was noticed by the Debtors' attorney, who seeks to disallow my claim (43, infra) in order to eliminate me from the case, for I am the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud, particularly concealment of assets. I will oppose him and again ask that the Hon. John C. Ninfo, II, issue the proposed order for the Debtors to produce certain documents (34, infra), which the Judge knew I had requested so that he had me fax the order to him only to refuse to issue it by citing the "expressed concerns" of the Debtor's attorney (39, infra), who nevertheless had earlier failed to preserve any objection to the order.

I trust that this overview will enable you to realize the importance of those two hearings for the parties and the future of this case. Hence, I respectfully urge you to attend them or have the attorney reviewing my files do so. Attending those hearings will also give you an opportunity to witness the interaction between the local parties and Judge Ninfo in their courtroom while I am absent appearing by phone from New York City. Therefore, I look forward to hearing from you as soon as you have decided whether to open a file in this matter and to attend the hearings.

Sincerely,

Dr. Richard Cordero

TABLE OF EXHIBITS

accompanying the letter sent on August 14, 2004
to Bradley E. Tyler, Esq., U.S. Attorney in Charge in Rochester, NY
to request the U.S. Attorney's Office to open an investigation of
a judicial wrongdoing and bankruptcy fraud scheme
by
Dr. Richard Cordero

1. **Dr. Richard Cordero's motion of August 14, 2004, for docketing and issue of proposed order, transfer, referral, examination, and other relief .....1 [D:♣231]**
   a. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 .....16 [D:217]
   b. **Proposed order** for docketing and issue of order, transfer, referral, examination, and other relief .....17 [D:246]
   c. Dr. Cordero's **telephone bill** showing faxes to Judge Ninfo's fax machine at no. (585)613-4229 on July 20 and 22, 2004 .....19 [D:248]

Background documents

2. Trustee George **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition "for unreasonable delay" in submitting documents, noticed for July 19, 2004.....21 [D:164]
3. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition .....23 [D:193]
   a. Relief: contents of document production order requested to issue.....29 [D:199¶31]
4. Dr. **Cordero**'s letter of **July 19**, 2004, faxed **to** Judge **Ninfo** .....33 [D:207]
   a. **Proposed order** for production of documents by the DeLanos and their attorney, Christopher Werner, Esq., obtained by reformatting the requested order contained in Dr. Cordero's statement of July 9, 2004.....34 [D:208]
5. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, **objecting** to Dr. Cordero's **proposed order** because it "extends beyond the direction of the Court" .....39 [D:211]
6. Judge Ninfo's order of July 26, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" .....41 [D:220]
7. Att. **Werner**'s **notice** of hearing and order objecting to Dr. Cordero's **claim** and moving to **disallow** it, dated **July 19**, but filed on July 22, 2004 .....43 [D:218]

[♣D:=Designated items in the record for the appeal from Judge Ninfo's decision in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY; see items in D folder on CD.]

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August 17, 2004

Mr. Robert M. Silveri — faxed to (212)384-2999; tel. (212)384-2219
Acting Supervisory Special Agent, Squad C-4
FBI New York — [(212)637-2200; fax (212)637-2611]
26 Federal Plaza, 23rd. Floor
New York, NY 10278-0004

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Silveri,

Thank you for taking my phone call yesterday and agreeing to contact your Buffalo and Rochester colleagues to find out the status of the complaint about a judicial misconduct and bankruptcy fraud scheme that I brought to your office on June 30 and that you forwarded to them. They still have not contacted me. I hope that you received the motion that I faxed to you yesterday. It describes the latest developments in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing involving judicial officers, trustees, and the local parties.

The Table of Contents of that motion serves as an executive summary. For its part, the first paragraph of the Notice lets you know of two upcoming hearings in the U.S. Bankruptcy Court in Rochester (tel. (585)613-4200; courtroom (585)613-4281)):

1. The one next Monday, August 23, at 3:30 p.m., will reconsider Trustee George Reiber's motion to dismiss the case due to the Debtors' unreasonable delay in producing documents as well as my statement in opposition, which requests his removal on account of his conflict of interests between his duty to investigate this case and his self-preservation instinct of not uncovering documents that can incriminate him in bankruptcy fraud.

2. The other hearing is set down for Wednesday, August 25, at 11:30 a.m. It was noticed by the Debtors' attorney, who seeks to disallow my claim in order to eliminate me from the case, for I am the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud, particularly concealment of assets. I will oppose him and again ask that the Hon. John C. Ninfo, II, issue the order that I proposed last July 19 for the Debtors to produce certain documents that can reveal the whereabouts of their earnings of $291,470 in just the last three years, not to mention what they earned previously.

I trust that this overview will enable you to realize the importance of those two hearings for the parties and the future of this case. Hence, I respectfully ask that you urge your colleagues to send an agent to them. Attending those hearings will give them an opportunity not only to learn how these issues are handled, but also to witness the interaction between the local parties and Judge Ninfo in the courtroom in my absence, for I will be appearing by phone from New York City. Kindly call me today to let me know where we stand. Since the end of last June enough time has gone by for them to have made up their minds as to what they intend to do with a high priority complaint about wrongdoing that undermines the integrity of both the judicial and the bankruptcy systems.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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August 23, 2004

Mr. Robert M. Silveri
Acting Supervisory Special Agent, Squad C-4
FBI New York
26 Federal Plaza, 23rd. Floor
New York, NY 10278-0004

faxed to (212)384-2999;
tel. (212)384-2219 9
(212)637-2200; fax (212)637-2611

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Silveri,

Thank you for returning my phone call. Here is my reply to the motion of the Debtor's attorney, Christopher Werner, Esq., to disallow my claim, which would have the effect of dismissing me from the case.

Att. Werner knew even before signing and filing the DeLanos' bankruptcy petition of January 26, 2004, what the nature of my claim was, namely, the claim that I brought against Mr. DeLano in my complaint against him of November 21, ***2002*** in the case Pfuntner v. Gordon et al, docket no. 02-2230 in the same Bankruptcy Court of the Western District. If Att. Werner believed in good faith that he had valid legal grounds to disallow my claim, which he took the initiative to list in the petition, he had to submit them to the Court and to me as soon as possible for the sake of judicial economy and out of fairness to me, but he failed to do so.

Far from it, Att. Werner deemed me a creditor with the right to examine the DeLanos, to the point that he provided Chapter 13 Trustee George Reiber with dates for such examination. Att. Werner had reason to know that I would be the only creditor to attend and examine the DeLanos given that I was the only creditor out of 21 who showed up at the meeting of creditors of last March 8. He also considered me a creditor entitled to disclosure of financial documents of the DeLanos and thus, produced documents to me. By Att. Werner not moving to disallow my claim, but instead treating me for months like a creditor, he revealed that he did not believe that he had a legally cognizable objection to the validity of my claim.

I have been the only creditor who insists on obtaining documents from the DeLanos. But my posture changed qualitatively when in my reply of July 9 in opposition to the Trustee's motion to dismiss, I requested the Hon. John C. Ninfo, II, the presiding bankruptcy judge, that he order the DeLanos to submit bank as well as debit account statements, titles to ownership interest in specific types of property, and documents evidencing the money transfer and use concerning the loan to the DeLanos' son. I justified my request by indicating that the DeLanos must account for the $291,470 that they earned in the last 3 years alone while they claimed that at the time of filing their petition they only had $535.50 in hand and on bank accounts and only $2,910 worth of household goods after a lifetime of work! What is more, I stated that until that money is not accounted for, there is reasonable suspicion of concealment of assets. That is an element of bankruptcy fraud. Att. Werner must have panicked, for on July 19 he filed his motion to disallow my claim, a thinly veiled subterfuge to eliminate the one creditor that by now they know will keep pushing for production of documents that they must keep undisclosed. His motion will be heard on Wednesday, August 25 at 11:30. Your colleagues should receive this update.

Sincerely,

Dr. Richard Cordero

C:1516 Dr. Cordero's letter of 8/23/4 to FBI Agent Silveri explaining the DeLanos' motion to disallow his claim

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no: 04-20280

Reply in Opposition
to Debtors' Objection to Claim
and Motion to Disallow it

Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

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V. The DeLanos' objection is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 plan and that is relentlessly insisting on their production of financial documents that can show the bad faith of their petition **1522**

VI. The DeLanos already objected to Dr. Cordero's creditor status and claim in their statement to the Court on April 16, to which Dr. Cordero timely replied on April 25, and the DeLanos did not pursue the issue, whereby they are now barred by laches from raising it again two months later **1524**

VII. The debtors cannot overcome the legal presumption of validity that FRBkrP 3001(f) attaches to Dr. Cordero's proof of claim by merely repeating an abbreviated version of their April 16 objection, which was merely an allegation devoid of any legal support **1526**

VIII. Relief requested **1527**

****

1. By their attorney, Christopher Werner, Esq., the Debtors object as follows to Dr. Cordero's claim:

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

I. The DeLanos were so aware of Dr. Cordero's legal claim against them that they and their attorney themselves included it in the original bankruptcy petition

2. To begin with, it escapes Att. Werner's attention the inconsistency of affirming in the first sentence that Dr. Cordero provides "no legal basis" for "any obligation" of the Debtors to him, only to follow it up in the next sentence with the statement that the basis of the claim is "a pending Adversary Proceeding". That Adversary Proceeding, pending in the U.S. Bankruptcy Court in Rochester, docket no. 02-2230, is a lawsuit with opposing claims at law. Regardless of how those claims will be finally decided, the Adversary Proceeding does provide the legal basis for Dr. Cordero's claim!
3. Likewise, it escapes Att. Werner's recollection that it was he and the Debtors who in the very first document in the instant case, that is, the bankruptcy petition that they signed last January 26, 2004, listed Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". Therefore, it is disingenuous to insinuate that Dr. Cordero only "apparently asserts a claim" given that they were the first to recognize the DeLanos' potential liability to him and were the first to state so in the petition before Dr. Cordero could even suspect, let alone know, that they would file for bankruptcy.
4. In the same vein, it escapes Att. Werner's candor when he states that Dr. Cordero provided "no legal basis" and only "apparently asserts a claim" despite the fact that Dr. Cordero served him with a copy of his proof of claim with an attached copy of his November 21, 2002 pleading in the Adversary Proceeding containing his claim against Mr. DeLano. Consequently, Att.

Werner knows full well not only the legal nature of Dr. Cordero's claim against Mr. DeLano, but also its precise substance.

5. Moreover, it escapes Att. Werner's capacity to spot legally significant facts that the Adversary Proceeding is Pfuntner v. Gordon et al, docket no. 02-2230, which is only derivatively related to the case that he cited in his above-quoted Objection, namely, "Premier Van Lines (01-20692)". It is to be hoped that Att. Werner's mistaken reference to only the Premier case is only a reflection on his lack of accuracy when raising an allegation against another party, rather than an intentional effort to mislead the Court and other parties by drawing their attention to a case where Mr. DeLano is not a named party.
6. In addition, it escapes Att. Werner's knowledge of first year law school Torts that a person is not insulated from "individual liability" just because he alleges that he "acted only as employee" of his employer. Debtor David DeLano is a named third-party defendant in that Adversary Proceeding just as M&T Bank is a named defendant as well as a cross-defendant therein. They can be jointly and severally liable because or in spite of their employer-employee relationship.

II. The Debtors cannot contest a bankruptcy claim on grounds that they may not be liable in another case

7. As a matter of law and common sense, Mr. DeLano's liability in another pending case, that is, the Adversary Proceeding Pfuntner v. Gordon et al., is not a matter that can be denied in this case as the basis to object to a creditor's claim against them. This is all the more so given that in his responsive pleading to Dr. Cordero's third-party claim against him in that other case Mr. DeLano did not even deny his liability in that case on the grounds now asserted for the first time in this case that "David DeLano acted only as employee and has no individual liability". It is not in the instant case where Att. Werner can announce the defense theory of Mr. DeLano's to claims in another case. What kind of lawyering is this on the part of Att. Werner, who is not even Mr. DeLano's attorney of record in the other case?!
8. Moreover, the Court in this case has no jurisdiction to decide the legal question whether Mr. DeLano is liable in another case. Not only has the trial in that other case not begun, but also no motion in that case has been raised, let alone heard, contesting Mr. DeLano's liability, whether on the ground now asserted here or on any other ground. That other case is so much in its 'infancy' that discovery has not even started! But even if a motion had been raised, the issue

whether Mr. DeLano is liable as an employee or in his personal capacity is one of fact that cannot be decided on the pleadings on the mere assertion that Mr. DeLano was M&T Bank's employee at the time. Consequently, even if the Court in the instant case were to arrogate to itself power to pick out an issue of fact from another case and decide it in isolation, it has absolutely nothing to go by except a specific, 31-page complaint with exhibits and a general 2-page denial in that other case.

9. Mr. DeLano's liability in another case is a matter to be decided by the court in that case through litigation in the context of all the parties, issues, and facts of the other case. As long as a decision in that case has not been reached and it has become final after exhaustion of all avenues of appeal, the claim against Mr. DeLano in that other case is viable. Hence, the claim in the other case provides a legally valid basis for a claim in the instant case.
10. Indeed, a claim can be asserted by a creditor regardless of whether it is reduced to judgment, whether the claim is liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. United States v. Connery, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).
11. Hence, the Debtors' objection to Dr. Cordero's claim because they dispute his claim in another case falls due to its own lack of legal basis and the court's lack of jurisdiction.

III. The Debtor's attorney cannot possibly have a good basis belief in that he has standing to assert that a third party, namely, M&T Bank, in another case is not liable to a creditor in this case

12. Att. Werner claimed at the hearing on July 19, 2004, that 'he has been in this business for 28 years', presumably meaning that he has been practicing law for that length of time. If so, he should know better than to pretend that the legally ridiculous allegation that "Further, no liability exists as against M&T Bank", a third-party in another case that has neither a claim nor standing in this case, provides grounds for the Debtors' objection to the claim of a creditor, Dr. Cordero, in the instant case.
13. Nor does Att. Werner have any standing to make such an allegation, for he is not M&T Bank's attorney in that other case. Therefore, he has no standing to represent M&T's legal position in that case, let alone in this case.
14. It should be noted that it is bad lawyering for Att. Werner to assert on behalf of the Debtors that M&T is not liable at all to Dr. Cordero in the other case, that is, the Adversary Proceeding

Pfuntner v. Gordon et al, docket no. 02-2230. That only means that Mr. DeLano does not hold M&T liable for his acts as its employee. By contrast, Mr. DeLano's denial of liability to Dr. Cordero carries no wait until finally established in the Adversary Proceeding. What an unintended 'unthought of' consequence if M&T Bank were to argue successfully that Mr. DeLano is estopped from arguing respondeat superior in that Proceeding as a way to shift liability from him to his employer. Would Att. Werner be liable to Mr. DeLano for malpractice for hanging him up out there to bear alone the liability that he may be found to have to Dr. Cordero by a court with jurisdiction?

15. But even if Att. Werner were the attorney for M&T Bank, his biased opinion on his client's lack of liability is absolutely irrelevant to the issue whether Dr. Cordero has a valid claim against a different client of Att. Werner in different case. Att. Werner's opinion on any party or issue whatsoever is not evidence of anything. Since the facts in the other case have not even been the subject of discovery yet, let alone found by a court with jurisdiction, much less been given anything even remotely sounding like collateral estoppel effect, not to mention anything about res judicata for issues, Att. Werner cannot rely on any facts in that case to argue anything in this case. He is left with nothing but that: an opinion, his biased opinion expressed at the wrong time in the wrong context for the wrong purpose.
16. Indeed, Att. Werner's purpose of defending the DeLanos by disallowing Dr. Cordero's claim in this case is not advanced a bit by his allegation that "Further, no liability exists as against M&T Bank". Even if M&T were found not to be liable to Dr. Cordero in the other case, such finding would not preclude the finding that Debtor David DeLano was personally liable to Dr. Cordero. This is so because in law the fact that an employer is not vicariously liable to a third party by application of the doctrine of respondeat superior, is not incompatible with the fact that his employee may be personally liable by application, among others, of the doctrine of ultra vires due to the employee having acted on a folly of his own outside the scope of his employment. The only thing accomplished by that ridiculous allegation is the undermining of Att. Werner's credibility as a lawyer, for he failed to do his legal research homework before coming to court to advocate his client's interests.

IV. A creditor may assert a claim against only one of two debtors jointly filing a bankruptcy petition

17. Att. Werner also alleges in his objection to Dr. Cordero's claim that "No basis for claim

against Debtor Mary Ann DeLano, is set forth, whatsoever". What an absolutely meaningless allegation! Who ever said that creditors lose their claims against a debtor if the latter and his spouse file a joint petition for bankruptcy? Whose head ever conceived of the idea that a bankruptcy system, let alone a national economy, could be predicated on the principle that debtors can escape their financial responsibility to those holding claims against them by the simple subterfuge of filing for bankruptcy jointly with their spouses?

18. Assuming that Att. Werner understands the concept of consistency, would he dare argue in court that Mr. DeLano is not liable to either AT&T Universal, Bank of America, Bank One, or Capital One, etc., because these creditors, whom the Debtors listed in Schedule F of their petition, hold claims against Mr. DeLano alone, but not against Mrs. DeLano?
19. Look! There, in the petition! It instructs the debtors to:

> If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H". "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

20. The DeLanos and Att. Werner even marked their claims with either H, W, or J. As revealed by their own acts, they knew that the fact that a creditor holds a claim against one but not the other of the debtors was of absolutely no consequence. Yet, they went ahead and asserted the bogus objection to Dr. Cordero's claim by stating that he has "no basis for claim against Debtor Mary Ann DeLano". They knowingly raised a spurious objection. They acted in bad faith!
21. Att. Werner has cited not a single case or Bankruptcy Code section or Rule to object to Dr. Cordero's claim. He does not have even a legally cogent argument, only his opinion, one so perfunctorily cobbled together that it would have shocked his professors of Torts and Civil Procedure in his first year of law school to the point of denying him a passing grade. Thus, what could possibly have possessed Att. Werner to think that those utterly untenable allegations would pass muster with the chief judge of a federal bankruptcy court? Desperation.

V. The DeLanos' objection is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 plan and that is relentlessly insisting on their production of financial documents that can show the bad faith of their petition

22. For well over a year before filing their petition on January 26, the DeLanos have known the

exact nature of Dr. Cordero's claim against Mr. DeLano, contained in his complaint of November 21, 2002, in another case. So much so that they and Att. Werner took the initiative to include it in their petition opening this case. They even marked it as unliquidated and disputed. From that moment on they could have filed an objection to that claim because they already knew all the factual and legal elements supporting their dispute. Since then those elements have neither been strengthened nor added to. So what has changed? Only their level of desperation.

23. Their first manifestation of desperation took place at the meeting of creditors on March 8. As Mr. DeLano, a bank loan officer for 15 years must have expected, none of the 18 credit card issuers that they listed in Schedule F showed up. Far from taking advantage of consolidating and refinancing his and his wife's debt with a loan at a lower rate secured by property, Mr. DeLano took care to split their debt among so many unsecured nonpriority creditors so as not to give any of them a stake high enough to make it cost-effective to pursue their claims in bankruptcy court.
24. But something happened that was most unnerving: Dr. Cordero showed up in person, having traveled all the way from New York City to Rochester, and not only did he hand out written objections to confirmation, but also wanted to examine the DeLanos under oath! Swift to realize the danger was the Trustee's attorney, James Weidman, Esq., who was unlawfully presiding over the meeting, which the Trustee had the duty to conduct himself as provided under C.F.R. §58.6(a)(10). Att. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud; rather, he was interested in establishing the good faith of the bankruptcy petition, an issue that is properly raised as to any petition. (cf. 11 U.S.C. §1325(a)(3))
25. The exchange alerted Att. Werner to danger. He contested on that very occasion that Dr. Cordero had a claim against the DeLanos and thus, his status as creditor. Dr. Cordero stated grounds supporting such status. Att. Werner relented. Dr. Cordero went ahead to ask questions of the DeLanos. However, in rapid succession, Att. Weidman asked Dr. Cordero more times to state his evidence of fraud. Dr. Cordero had even to insist that Mr. Weidman take notice that he was not alleging fraud. With that answer, Dr. Cordero failed to reveal how much he had already found out about the DeLanos, their petition, and their financial affairs. Att. Weidman panicked and put an end to the meeting after Dr. Cordero had asked only two questions of the DeLanos!

26. Later on in the courtroom before the Hon. John C. Ninfo, II, Trustee Reiber and Att. Weidman stated that the DeLanos' petition had been filed in good faith. Thus, Dr. Cordero impugned their capacity to conduct an impartial investigation of the DeLanos without any bias toward finding of good faith filing, the only one that can exonerate them of any charge of having approved, whether negligently or knowingly, a meritless petition filed in bad faith. Consequently, Dr. Cordero called for the replacement of the Trustee and the exclusion from the case of Att. Weidman.
27. All this gave notice to the DeLanos and Att. Werner that Dr. Cordero was serious about asserting his creditor status and claim. By then they had all the elements of law and fact concerning not only his claim, but also his determination to pursue it. If they had entertained a good faith belief that Dr. Cordero had no legal basis for asserting a claim against the DeLanos, they had to raise that objection timely on grounds of judicial economy and fairness. Nor did they do so after Dr. Cordero served Att. Werner with different papers in the course of the following months. Therefore, by their failure to raise that objection in a timely fashion, they created for Dr. Cordero a reliance interest in the reasonable assumption that they had given up any such objection and had accepted the legal validity of his claim. In reliance thereon, Dr. Cordero has invested his time, effort, and money pursuing his claim.
28. Therefore, more than four months later and only after Dr. Cordero's relentless request for financial documents threatens to prove that their petition was filed in bad faith, it is untimely for Att. Werner and the DeLanos to raise their objections to his claim…for the third time.

VI. The DeLanos already objected to Dr. Cordero's creditor status and claim in their Statement to the court on April 16, to which Dr. Cordero timely replied on April 25, and the DeLanos did not pursue the issue, whereby they are now barred by laches from raising it again two months later

29. On April 16, the DeLanos raised the already untimely objection that Dr. Cordero "is not a proper creditor in this matter". To this Dr. Cordero timely replied less than 10 days later thus:

    a) This is what the Bankruptcy Code has to say as to who is a proper "creditor":

        B.C. §101. Definitions

        (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…

[(15) "entity" includes person…]

In turn, it defines "claim" thus:

(5) "claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

b) The Code's definition of who is a creditor is more than broad enough to include Dr. Cordero and his pre-petition claim against Mr. DeLano.

30. Not only did Att. Werner fail to provide any legal argument for their April 16 contention that Dr. Cordero was not a proper creditor, but they did not even counter with an objection, let alone a legal argument, to Dr. Cordero's legal basis for asserting his creditor status, not within the following 10 days, not within the next 30 days, not in the next two months. Far from it, to their repetition of their objection devoid of any legal argument they add an abundance of legally ridiculous, spurious, and thoughtless allegations. Hence, now they are barred from raising the objection not only by untimeliness and laches, but also by bad faith.
31. Furthermore, at the hearing on July 19, 2004, Att. Werner brought up the subject of raising a motion to challenge Dr. Cordero's status as a creditor of the DeLanos. Judge Ninfo himself pointed out to Att. Werner that Mr. DeLano's liability in the Adversary Proceeding could not be decided in this case. Dr. Cordero too mentioned many of the issues discussed here. Yet, Att. Werner went ahead an raised the motion without taking into account any of those issues and without presenting any legal argument that one would expect of a lawyer, particularly one 'in this business for 28 years'. He could not have reasonably have thought that he was acting responsibly when he disregarded the legal difficulties of his position pointed out by the court itself as well as by the opposing party for the record at a hearing.
32. Does Att. Werner expect the court and Dr. Cordero to rehash the same issues at the August 25 hearing of his motion? By his conduct, he shows that he wants simply to have another go at it while sparing himself the effort, time, and money required to do legal research, think through the legal issues, and write down an argument worthy of a lawyer. But in the process, he has

irresponsibly caused Dr. Cordero, who holds himself to the standards of a professional, to invest a lot of effort, time, and money to research and write this response. Att. Werner will also cause the court to revisit the same issue, compounded by the ridiculous and spurious statements that Att. Werner has added in his motion. For such irresponsible conduct and the waste that he has already caused and will still cause shortly, Att. Werner will be asked to compensate Dr. Cordero and to bear sanctions imposed by the court.

VII. The Debtors cannot overcome the legal presumption of validity that Rule 3001(f) attaches to Dr. Cordero's proof of claim by merely repeating an abbreviated version of their April 16 objection, which was merely an allegation devoid of any legal support

33. Rule 3001(a) provides thus:

> (a) Proof of Claim
>
> A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

34. Dr. Cordero's proof of claim of May 15 not only conforms substantially to the appropriate form, but it was also contained in the official one provided to him with the notice of the meeting of creditors. Moreover, it was so formally correct, that it was filed by the clerk of court and entered in the register of claims.

35. FRBkrP Rule 3001(f) provides as follows:

> (f) Evidentiary effect
>
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

36. Dr. Cordero's claim is now legally entitled to the presumption of validity. As a result, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in the January 26 petition. It follows that by summarizing their April 16 objection, as to which they made no effort to support with law or precedent, and weakening it with the addition of legally ridiculous and spurious allegations made in bad faith, they cannot possibly overcome a claim now strengthened with prima facie evidence of validity as a result of the filing of Dr. Cordero's proof of claim.

VIII. Relief Requested

37. Therefore, Dr. Cordero respectfully request that the Court:

a) hold a hearing on the motion;

b) reject the motion to disallow his claim against the DeLanos;

c) award Dr. Cordero costs and any other proper and just relief.

August 17, 2004

Dr. Richard Cordero

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Dr. Richard Cordero
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no: 04-20280

Notice of Motion for Sanctions and compensation for violation of FRBkrP Rule 9011(b)

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, intends to seek under FRBkrP Rule 9011(c)(1)(A) and (2) sanctions to be imposed on, and compensation to be obtained from, Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, and his law firm of Boylan, Brown, Code, Vigdor & Wilson, LLP. for violation of subsection (b) thereof, as evidenced in the grounds adduced by Att. Werner in his motion of July 19, 2004, to object to Dr. Cordero's claim in this case and have it disallowed.

If as provided under 9011(c)(1)(A), Att. Werner does not timely withdraw or correct his motion to disallow Dr. Cordero's claim after service of the instant motion, Dr. Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on October 6, 2004, or as soon thereafter as he can be heard, for such sanctions and compensation. If the motion to disallow is withdrawn before its hearing next August 25 is held, Dr. Cordero asks that Att. Werner and his law firm jointly and severally compensate him in the nominal amount of $2,500, for some of the expenses and attorneys' fees incurred in conducting legal research and writing to oppose Att. Werner's motion; otherwise, Dr. Cordero will move on October 6, for any reasonable addition compensation.

Dated: August 20, 2004

Dr. Richard Cordero

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no: 04-20280

Brief in Support of the Motion for Sanctions and compensation for violation of FRBkrP Rule 9011(b)

Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

1. On July 19, Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, filed a motion to object to Dr. Cordero's claim in the Debtors' case and disallow it. He limited himself in his motion to stating the following grounds, which he did not support with any citation to law, rule, or case:

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

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A. If Att. Werner believed in good faith that he had valid legal grounds to disallow Dr. Cordero's claim, he had to submit them to the Court and Dr. Cordero as soon as possible for the sake of judicial economy and out of fairness to Dr. Cordero, but he failed to do so.....1533

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I. Att. Werner has rendered himself liable to sanctions and for compensation by presenting in order to disallow Dr. Cordero's claim frivolous arguments incapable of being supported by evidence in this case

2. At a hearing on July 19, 2004, which was noticed for a different matter, Att. Werner brought up the issue of objecting to Dr. Cordero's status as creditor to disallow his claim. He alleged that neither Mr. DeLano nor his employer, M&T Bank, are liable in another case to Dr. Cordero so that the latter's claim in this case based on liability to him in that other case is not valid. The Court pointed out, as did subsequently Dr Cordero, that Mr. DeLano's liability to Dr. Cordero in another case cannot be determined in this case.
3. As shown in the quote in ¶1 above, Att. Werner included the same allegations in his motion to disallow Dr. Cordero's claim. Such allegations concerning Mr. DeLano's liability to Dr.

Cordero in another case –whose correct name is not the one given by Att. Werner, but rather Adversary Proceeding *Pfuntner v. Gordon et al*, docket no. 02-2230– which is even at its pre-discovery stage as far as M&T and Mr. DeLano goes, and involves a third party, the Bank, that is not even a party to this case, cannot possibly be supported by any evidence in this case.

4. Consequently, by presenting such allegations in his motion to disallow, Att. Werner violated FRBkrP Rule 9011(b)(3), which provides thus:

> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

5. Att. Werner had a duty to review his position because an attorney operates under a "continuous obligation to make inquiries", so that an attorney that advocates a position that has become untenable is sanctionable; *Battles v. City of Ft. Myers*, 127 F.3d 1298, 1300 (11th Cir., 1997).
6. By failing to ameliorate, whether before or after filing, the weaknesses inherent in his position, Att. Werner violated FRBkrP Rule 9011(b)(2); cf. *Sprewell v. Golden State Warriors*, 231 F.3d 520, 530 (9th Cir., 2000). That rule provides as follows:

> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

7. Far from correcting or supporting such untenable allegations, Att. Werner further undermined his position by adding other legally ridiculous and spurious allegations, discussed by Dr. Cordero in his Reply of August 17 in opposition to Debtors' Objection to Claim and Motion to Disallow it, which is incorporated herein by reference,
8. Att. Werner's violation of Rule 9011 is all the more obvious because it is measured against a burden of proof that is heavier than the one that he had to bear when he signed and filed the DeLanos' petition back in January. Indeed, once Dr. Cordero executed his proof of claim last May 15 in substantial accordance with the Official Form, as required under FRBkrP Rule 3001(a) and filed it, his claim constitutes prima facie evidence of validity under subsection (f). As a result, the form for objecting to a claim sets out in capital letters that the objecting party must provide:

> DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(F)

9. Att. Werner's opinion as to who is liable in another case that is still at a pre-discovery stage is legally incapable of overcoming that presumption. Nor did Att. Werner make any attempt to argue why Dr. Cordero or his claim falls outside the scope of the applicable definitions of "creditor", "entity", and "claim" contained in 11 U.S.C. §101. His assertion in blatant disregard of existing law violates Rule 9011(b)(2).
10. By presenting his motion, Att. Werner certified that his arguments in it are either justified by existing law or are nonfrivolous arguments for modification of existing law. Nevertheless, the grounds adduced by Att. Werner 'have absolutely no chance of success under the existing precedent'. Hence, his motion to disallow based on such frivolous arguments violates Rule 9011; cf. In re Sargent, 136 F.3d 349, 352 (4th Cir, 1998), cert. denied, 525 U.S. 854, 119 S.Ct. 133, 142 L.Ed.2d 108 (1998).

II. Although Att. Werner knew even before signing and filing the DeLanos' petition what the nature of Dr. Cordero's claim was, he treated for months Dr. Cordero as a cre-ditor, thereby creating in him a reliance interest in that Att. Werner deemed the claim valid so that defeating that interest now by having the claim declared invalid renders Att. Werner liable to Dr. Cordero for compensation

A. If Att. Werner believed in good faith that he had valid legal grounds to disallow Dr. Cordero's claim, he had to submit them to the Court and Dr. Cordero as soon as possible for the sake of judicial economy and out of fairness to Dr. Cordero, but he failed to do so

11. Att. Werner was so aware of the grounds for disputing Dr. Cordero's claim, that he qualified his claim as "disputed" when he listed it in Schedule F of the DeLanos' Chapter 13 bankruptcy petition of January 26, 2004. However, that qualification does not give notice that the claim is invalid given that the Bankruptcy Code at 11 U.S.C. §101(5)(A) expressly includes a disputed claim among valid claims for bankruptcy purposes.
12. Convinced of the validity of his claim, Dr. Cordero engaged in legal research and writing to compose his written objections to the DeLanos' plan of debt repayment. Then he traveled from New York City to Rochester to attend the meeting of creditors held on March 8, 2004.
13. At that meeting, when Dr. Cordero tried to exercise his right to examine the DeLanos under oath, Att. Werner objected alleging that Dr. Cordero was not even a creditor. However, he did not state any legal basis in support of his allegation, just as he would fail to do later on in his motion to disallow. Dr. Cordero stated the legal basis for his claim, Att. Werner relented, and

Dr. Cordero asked his first question of the DeLanos.

14. On that occasion, Dr. Cordero handed out his written objections to the DeLanos' plan. Therein he requested that Trustee George Reiber investigate their financial affairs, obtain therefor certain financial documents from them, and inform him of the result of the investigation.
15. By producing such objections and undertaking that trip, Dr. Cordero gave Att. Werner clear evidence that he believed that he had a valid claim and was making a considerable investment of effort, time, and money to pursuit it. By not moving to disallow the claim, Att. Werner gave rise to the reasonable assumption that he had dropped his pro-forma objection to Dr. Cordero's claim, and thereby implicitly encouraged Dr. Cordero to continue making such investment.

B. By Att. Werner not moving to disallow and just making in passing frivolous statements about Dr. Cordero's status as creditor while dealing with other matters, he revealed that he did not believe that he had a legally cognizable objection to the validity of Dr. Cordero's claim

16. On March 29, Dr. Cordero filed with the court his Objection to a claim of exemption. Att. Werner did not counter with a motion to disallow, but rather with his "Debtors' Statement In Opposition To Cordero [Sic] Objection To Claim Of Exemptions" of April 16. Therein he stated that Dr. Cordero "is not a proper creditor in this matter". However, he failed to provide a single legal reference or argument of what a "creditor" is, or a "proper" as opposed to an 'improper creditor' is or how this "matter" made a difference in the properness of a creditor.
17. More than a month after Dr. Cordero had stated at the March 8 meeting the legal basis for his claim, and months after first learning from the DeLanos the nature of Dr. Cordero's claim, Att. Werner could still not come up with a single legal argument or citation to law, rule, or case supporting his objection to that claim. On the contrary, in that April 16 statement Att. Werner showed how devoid of legal support his objection was and how his failure to think through even basic legal notions revealed that his objection was merely pro-forma. He wrote thus:

> 12. Should Cordero wish to obtain such records, he is free to Subpoena them from the Bank should a proper proceeding be pending against the Debtors, after it is established that he is someone of proper standing with some substantial basis for process against the Debtors –none of which criteria are satisfied by Cordero.

18. To begin with, whatever "proper" means in Att. Werner's particular notion of "proper proceeding", the fact remains that a case *is* pending against Mr. DeLano: It is Adversary Proceeding

Pfuntner v. Gordon et al., which has not been finally decided so that it is still open. Moreover, Mr. DeLano by his attorneys in that proceeding never disputed the legal sufficiency of Dr. Cordero' claim against him and M&T Bank contained in his complaint of November 21, 2002. They never moved to dismiss on the pleadings, for example, on a motion based by reference on FRCivP Rule 12(b)(6). In addition, the fact that a defendant contests liability –as all do, otherwise there would be no controversy before the court– does not mean that the proceeding is 'improper'.

19. Att. Werner also shows ignorance of the difference between having standing to sue an entity in a case, and prevailing on the merits. Successfully contesting liability is not what determines whether a person can be sued as a defendant in a cause of action cognizable at law.
20. And what about establishing that a person "is someone of proper standing with some substantial basis for process against the Debtors"?, which upon translation most likely means whether a person has standing to bring a cause of action against the debtor? Where is that supposed to be established? Can Att. Werner be trying to say the nonsense that Dr. Cordero's standing to sue Mr. DeLano in another case be established in this case? Or is he saying that before he can maintain his claim against Debtor DeLano in this case, he must first establish his standing to sue Mr. DeLano in the other case? Who ever said that!? Where did Att. Werner get these things?, for he certainly did not cite any law, rule, or case. These points are so frivolous that by raising them Mr. Werner undermines his credibility as a lawyer and renders himself liable under Rule 9011 to sanctions and for compensation.
21. Indeed, Dr. Cordero had to invest further effort, time, and money to preserve his objection to Att. Werner's statements about his creditor status. In his reply of April 25, Dr. Cordero quoted and argued the definition under 11 U.S.C. §101 of what a creditor for purposes of the Bankruptcy Code is. After that 10 days went by, 30 days went by, months went by without Att. Werner presenting any legal support for his position or moving to disallow Dr. Cordero's claim. His conduct gave rise to the reasonable assumption that he had dropped his pro-forma objection to Dr. Cordero's claim. Dr. Cordero continued his efforts to have the DeLanos investigated.
22. Att. Werner did not even object when Dr. Cordero filed his proof of claim on May 15 and the clerk of court filed it on May 19. By failing to do so, the reasonable assumption that he had dropped his objection to Dr. Cordero's claim became a reasonable conclusion because the filing

of the claim entitled it to a legal presumption of validity that increased the burden of proof that Att. Werner had to bear to prove its invalidity. Yet, Att. Werner had been unable for months to bear the lesser, pre-filing burden of proof. He who cannot do the lesser cannot do the most.

C. Att. Werner deemed Dr. Cordero a creditor with the right to examined the DeLanos and provided Trustee Reiber with dates for such examination

23. Nor did Att. Werner object to Trustee Reiber's holding Dr. Cordero up as a creditor with the right to demand an investigation of the DeLanos' financial affairs. In a letter of March 12, 2004, Trustee Reiber wrote to Att. Werner thus:

> I have reviewed [Dr. Cordero's] written objections which were filed with the Court on or about March 8, 2004. I believe there are some points within those objections which it is proper for him to question the debtors about.

24. Att. Werner confirmed his acknowledgment that Dr. Cordero was a "proper creditor" by writing in his letter of June 14 to Trustee Reiber:

> We plan to appear for the scheduled June 21, 2004 §341 Meeting and Confirmation unless we are advised otherwise by your office.

25. Not only did Att. Werner fail to object to Dr. Cordero's right to ask questions of the DeLanos, but he even proposed dates when he would produce the DeLanos for such questioning! Such conduct is inconsistent with that of a competent lawyer who in good faith believes that a person is not a "proper creditor" with a valid claim against the lawyer's client, the debtor.

26. In this context, it is "proper" to notice that:
    a) the only creditor that showed up at the March 8 meeting of creditors was Dr. Cordero;
    b) the only creditor who objected to the confirmation of the DeLanos' repayment plan was Dr. Cordero;
    c) the only creditor who has ever expressed an interest in examining the DeLanos under oath is Dr. Cordero;
    d) the only creditor who caused Trustee Reiber to assert for the record in open court on March 8 that he deemed the DeLanos' petition to have been filed in good faith but that nevertheless he could not ask the court to confirm the plan because the filing of objections to it was Dr. Cordero;

e) therefore, the only creditor that Att. Werner could reasonably expect to show up at that "scheduled June 21, 2004 §341 Meeting" and examine the DeLanos was Dr. Cordero, a creditor, as attested to by Att. Werner's own conduct.

D. Att. Werner also considered Dr. Cordero a creditor entitled to disclosure of financial documents of the DeLanos and thus, produced documents to him

27. Moreover, Trustee Reiber considered that Dr. Cordero's standing as creditor was "proper" enough not only to ask questions of the DeLanos, but also to ask for documents of Att. Werner himself. In that same letter of March 12 sent to Mr. Werner, the Trustee wrote:

> It would also be helpful if Mr. Cordero could transmit to Mr. Werner a list of any documents which he may desire prior to the [adjourned §341] hearing.

28. As soon as Dr. Cordero received a copy of that letter, which the Trustee had failed to send to him and in which he entitled Dr. Cordero as a "proper creditor" to communicate directly with Att. Werner to ask for documents, Dr. Cordero wrote to Att. Werner on May 23, 2004, thus:

> I ask that you let me know whether you object to providing the Trustee or me any documents or, if only some, which. Please note that the DeLanos have a duty under B.C. §521(3) and (4) to cooperate with the trustee and provide him with information. If they refuse to provide any financial documents, then pursuant to B.C. §§1307(c) they risk a request of a party in interest or the U.S. trustee for conversion of their case to a case under Chapter 7.

29. Far from objecting to Dr. Cordero's claim and the right deriving therefrom to request documents, Att. Werner provided some of the requested documents to Trustee Reiber on June 14. Then he provided some more documents directly to Dr. Cordero on July 13, 20, and 28, and August 5 and 13. However this trickling production of documents is late, incomplete, and falls utterly short of what Dr. Cordero requested and even the Court ordered, it is nevertheless a fact that Att. Werner provided them to Dr. Cordero, thereby treating him as a "proper creditor" entitled to know the financial affairs of Att. Werner's clients, the DeLanos.

E. If Att. Werner is to be assessed by the standard of a reasonable man, his conduct created in Dr. Cordero a reliance interest and his defeat of it gives rise to a right to compensation in Dr. Cordero

30. If Att. Werner holds himself out as a reasonable person, then his conduct must be assessed by the standard of a reasonable person. He cannot conduct himself in a way that leads to a reasonable conclusion, while concealing all along that there was no reason for him to conduct himself in that way and that whenever it suited him, he would change course 180 degrees to conduct himself in the diametrically opposite direction…and that therefrom would flow no adverse consequences for him at all, but rather that the adverse consequences would be borne by the people that he led to such reasonable conclusion, such as Dr. Cordero. Such conduct is deceitful, unreasonable, and willfully irresponsible.
31. Therefore, applying the standard of a reasonable man to Att. Werner's conduct of treating Dr. Cordero as a creditor leads to the reasonable conclusion that Att. Werner created in Dr. Cordero a reliance interest, namely, that Att. Werner had dropped his threshold objection to Dr. Cordero's claim and that Dr. Cordero could proceed to invest the enormous amount of effort, time, and money that he, and that Att. Werner had reason to know that Dr. Cordero, has invested in opposing the confirmation of the DeLanos' plan of repayment and investigating whether their petition was filed in good faith.
32. If it were to be held that Dr. Cordero is not a "proper creditor", then it would follow that Att. Werner engaged in conduct that was deceitful, unreasonable, and irresponsible and that misled Dr. Cordero into further investing his effort, time, and money in uselessly and wastefully pursuing an invalid claim. Thereby Att. Werner rendered himself liable to Dr. Cordero.
33. If, on the other hand, it were to be held that Dr. Cordero is indeed a "proper creditor", then in moving now on frivolous grounds to have Dr. Cordero's claim disallowed Att. Werner has engaged in legally unjustifiable conduct motivated by bad faith that renders him liable to sanctions by the court and for compensation to Dr. Cordero.

III. Att. Werner's motion to disallow Dr. Cordero's claim is motivated, not by a nonfrivolous argument, but rather by self-interest in casting from the case Dr. Cordero, the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud in the DeLanos' petition

34. Since the complaint of November 21, 2002, that gave Mr. DeLano notice of Dr. Cordero's

claim against him, Mr. DeLano has known the nature of such claim. That knowledge is imputed to Att. Werner because under FRBkrP Rule 9011(b) he had the obligation to conduct:

> …an inquiry reasonable under the circumstances [before] presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper…

35. Att. Werner signed and filed the DeLanos' petition of January 26, 2004. By that time and at the initiative of the DeLanos' and with his approval, he had already listed in Schedule F Dr. Cordero's claim and marked it as "disputed". At that very point in time, he had all the elements of information that he needed to raise a motion to disallow the claim…except the one that would provide him the motive to do so.
36. By taking the initiative to list Dr. Cordero's claim and giving him notice of the DeLanos' bankruptcy, Att. Werner provided for the inclusion of that claim among the dischargeable debts if discharge was granted. By contrast, if he had not included Dr. Cordero's claim, then despite any discharge, Dr. Cordero could still have been entitled to pursue his claim against the DeLanos.
37. As he stated at the July 19 hearing, Att. Werner 'has been in this business for 28 years', and Mr. DeLano is an insider of the lending industry who has been a bank *loan* officer for 15 years. Hence, they both knew from experience that in all likelihood no creditor would show up at the meeting of creditors. And that is exactly what happened: out of 21 creditors, 20 did not show up. Yet, these are institutional creditors with the resources to pay for a representative to travel to the meeting. What is more, not even those institutional creditors that did not have to incur any appreciable travel expense because they are located right there in Rochester or Buffalo showed up! All the more likely then that a non-institutional, unsecured, non-priority creditor that lived hundreds of miles away in New York City, such as Dr. Cordero, would not travel either all the way to Rochester to attend the meeting.
38. Moreover, what would Dr. Cordero do if he attended the meeting? The petition was submitted to Trustee Reiber, who according to PACER has 3,909 open cases, and thus, hardly the time or the incentive to examine any petition carefully. In fact, Trustee Reiber had readied it for submission to the court for it to approve its plan of repayment. Given that none of the creditors had filed an objection to the plan, not even Dr. Cordero, there was every reason for Experienced Insiders Werner and DeLano to assume that the meeting of creditors would be nothing but a pre-confirmation chat between friendly people. So Att. Werner had no incentive

to file a motion to disallow Dr. Cordero's claim and thereby alert him more than the indispensable minimum to the petition and the DeLano's financial affairs.

39. But the unimaginable happened: Dr. Cordero showed up and filed and objection! However, the imaginable came to the rescue: Trustee Reiber, willing to violate his duty to preside personally over the meeting of creditors, had assigned his attorney, James Weidman, Esq., to preside over it. For his part, Att. Weidman was willing to violate the law by preventing Dr. Cordero from examining the DeLanos, thereby frustrating the only purpose under the law for holding that meeting! Then Trustee Reiber and Att. Weidman vouched in open court for the good faith of the DeLanos' petition. With such advocates for his position, Att. Werner did not have to have a worry in the world.
40. The subsequent events comforted Att. Werner in that assurance, for despite complaining to the Court in his April 16 letter about the so many "pages of single-space text" that Dr. Cordero wrote asking Trustee Reiber to investigate the DeLanos or to be removed,
    a) Trustee Reiber had not intention to investigate the DeLanos;
    b) had asked not for a single document from them;
    c) when he did ask for documents, his request was just another pro-forma exercise in its scope and nature since he asked for:
    d) just eight out of 18 credit cards listed in Schedule F,
    e) for only 3 years out of 15 put in play by the DeLanos, and
    f) did not include any bank account statements or titles of interest in property;
    g) when the Trustee received some documents from Att. Werner on June 14, he did not even notice that they:
    h) were incomplete due to missing pages;
    i) did not consist of the statements of accounts covering from the present to three years back, instead there was inexplicably only one single statement between eight and 11 months old for each of only eight credit cards; and
    j) they were not examined at all so that the 232 times that, according to even incomplete Equifax credit reports, the DeLanos had been late in paying their credit cards belied Att. Werner's key statement in his April 16 letter on behalf of the DeLanos' good faith that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years".
41. Best of all, such a trustee that would not notice the obvious, let alone investigate the suspicious,

would remain in his position given that both Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre A. Martini had rejected Dr. Cordero's request that he be replaced.

42. Att. Werner did not have a worry in the world…until Dr. Cordero pointed out to the Court in his Statement of July 9 that:

> 7. A closer check of those documents against the figures in the petition and the court-developed register of claims and creditors matrix points to debt underreporting, account unreporting, and unaccountability of assets in the petition. These grave defects call into question the good faith of the DeLanos' petition. They also support the reasonable inference that the DeLanos have been and are reluctant to submit more documents, let alone the complete set of requested documents, due to their awareness that more documents would only further deny such good faith and warrant an investigation into whether their petition was motivated by a fraudulent intent as part of a bankruptcy fraud scheme.

43. *The horror of it!* Dr. Cordero, who at the March 8 meeting had emphatically stated that he was not raising any charge that the DeLanos had committed fraud, was now pointing to evidence of a bankruptcy fraud scheme! Worse still, he requested the Court a detailed order directing the DeLanos to submit bank as well as debit account statements, titles to interest in specific types of property, and documents evidencing the money transfer and use concerning the loan to the son. Much worse still, he asked the Court to remove his advocate Trustee Reiber and

> 33. the court make a simultaneous referral of this case to the FBI for a concurrent investigation aimed at determining whether there has been fraud in connection with the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

44. And at the July 19 hearing the Court did not flatly reject that request, but rather adjourned it to another hearing on August 23…and for Att. Werner it was *PANIC TIME BIG TIME!*

45. That very same day Att. Werner moved the Court to disallow the claim of such threatening a creditor as Dr. Cordero and thereby remove him from the case. He did it by cobbling together the legally untenable, ridiculous, and spurious grounds quoted in ¶1 above and discussed in Dr. Cordero's Reply of August 17 to his motion to disallow, which Reply is already incorporated herein by reference.

46. In such unseemly irresponsible haste did Att. Werner scribble his perfunctory objection that in

his one single little rushed paragraph he challenged Dr. Cordero's claim by denying the liability of his client Mr. DeLano and his non-client M&T Bank to Dr. Cordero in "Premier Van Lines (01-20692)", a voluntary Chapter 11 bankruptcy petition in which neither of the three is a named party and liability among them is not an issue at all. Att. Werner got the Adversary Proceeding wrong!, which means that he did not check it with sufficient due diligence to know what he was talking about.

47. Why on earth Att. Werner, who 'has been in this business for 28 years', thought for a nanosecond that the 'grounds' that he so perfunctorily threw together in his motion could conceivably persuade the Court to disallow Dr. Cordero's claim is baffling, unless the explanation is only this: sheer Desperation!

48. After having for months treated Dr. Cordero as a "proper creditor", Att. Werner needed to have him declared 'improper' and cast out before Dr. Cordero could force the production of incriminating documents. Evidence of this is that Att. Werner and the DeLanos have disobeyed the Court's order of July 26 which required that:

> The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04.

49. As of the close of business on August 20, 2004, no such documents had been produced. The debtors prefer to violate a Court order rather than to produce documents that could incriminate them in bankruptcy fraud, particularly through concealment of assets. So much for their pretense that it is Dr. Cordero's claim that is 'improper': It is their petition!

50. Att. Werner's untimely motion, already barred by laches, had nothing to do with bona fide legal considerations, and everything to do with Att. Werner's protection of his clients and his own professional survival. The motion is a thinly veiled subterfuge to eliminate the one creditor that by now they know will keep pushing for production of documents that they must keep undisclosed. Att. Werner raised that motion in bad faith! In so doing, he violated FRBkrP Rule 9011(b)(1), which provides thus:

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

51. Consequently, Att. Werner's conduct warrants that this Court impose on him, jointly and severally with his law firm, sanctions as well as the obligation to compensate Dr. Cordero for

the detriment that Att. Werner has caused him through such conduct.

IV. Request for relief

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

a) take judicial notice that Rule 9011 can be invoked by a pro se litigant just as sanctions can be invoked against him; cf. *Moore v. Time, Inc.*, 180 F.3d 463, 463 (2d Cir.), cert. denied, 528 U.S. 932, 120 S.Ct. 331, 145 L.Ed.2d 258 (1999) FCRH 289 fn11; and *Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir., 1994). FCRH 290 fn17;

b) order that Att. Werner and Boylan, Brown, Code, Vigdor & Wilson, LLP. jointly and severally compensate Dr. Cordero based on the hourly rate of $250, which under the lodestar method to calculate attorney's fees is applicable in the Rochester market;

c) take judicial notice of the reasonableness of such fee given that the Court routinely awards fees to professional persons, including attorneys, under 11 U.S.C. §330, and given the "level and skill reasonably required to prepare the application", as provided under subsection (a)(6) thereof;

d) arrive at the compensation for work and expenses, including attorney's fees, as follows:

	Description of Work Done	# of pages @ 2hrs/pg and $250/pg	# of hours at $250/hr	Amount
1.	(a) legal research and writing involved in preparing the following documents			
2.	Dr. Cordero's reply of August 17, 2004, to Att. Werner's motion of July 19, 2004	9 pages		$4,500
3.	Dr. Cordero's application for sanctions and compensation of August 20, 2004	13		6,250
4.	(b) Dr. Cordero's preparation for and defense at the following hearings at the rate of $250 per hour:			0
5.	hearing on August 25, 2004, to argue Att. Werner's motion to dismiss Dr. Cordero's claim		3	750
6.	hearing on October 6, 2004, to argue this motion for sanctions and compensation		3	750
7.	**TOTAL**			$12,250

e) allow Dr. Cordero to present his arguments by phone at the upcoming hearing and not cut off the phone connection to him until after the Court has declared the hearing concluded; and not allow thereafter any other oral communication between any of the parties to this case and the Court until the next scheduled public event;

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, state under penalty of perjury, that I served the following above motion on the following parties:

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

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

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

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

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP
Agents for eCast Settlement & Associates National. Bank
P.O. Box 35480
Newark, NJ 07193-5480
tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin.
Dept. acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

August 20, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

U.S. Department of Justice

United States Attorney
Western District of New York

620 Federal Building
100 State Street
Rochester, New York 14614

(585) 263-6760
FAX(585) 263-6226

August 24, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 12208-1515

Dear Dr. Cordero:

We have reviewed the materials sent to us from the Southern District of New York regarding your allegations of bankruptcy fraud and judicial misconduct. Please be advised that we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so. Accordingly, we are returning your original documents to you with this letter.

Sincerely,

MICHAEL A. BATTLE
United States Attorney

By: RICHARD A. RESNICK
Assistant U.S. Attorney

RAR/kmp
Enclosure

US Att Resnick's letter of 8/24/4 returning to Dr. Cordero the files sent from US Att Off, NYC, to Rochester C:1545

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

August 31, 2004

Bradley E. Tyler, Esq.
Attorney in Charge
100 State St., 620 Federal Bldg.
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call today. I appreciate your agreement to examine the documents concerning the above captioned matter that were forwarded to you weeks ago by the Office of Mr. David N. Kelley, U.S. Attorney for the Southern District of New York.

You gave them to your assistant, Richard Resnik, Esq., to review. I called him last Tuesday, August 24. He told me then that he had not taken a look at them and could not do so at that time because he was busy preparing to go to Washington, D.C. the next day; that he would review them upon his return and thereafter we would discuss them on the phone. However, that same day he wrote me a letter dated August 24 where he stated that "we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so". Together with that letter he returned all the files, including the August 14 update that I had sent to you.

It is remarkable how Mr. Resnik made a sudden change of time management to review the 250 pages in the files submitted to you, including more than 30 pages of the bankruptcy petition with 10 schedules and a Statement of Financial Affairs, which upon analysis reveal their declarations and figures to be so incongruous as to render them suspicious; disposed of the matter right away; and even wrote me. I hope that when you examine them, you will allow yourself more time to consider that petition, other Debtors' documents, my analyses of them, and the account of their suspicious handling by bankruptcy and judicial officers that did not want to scrutinize them. Your investment of time in a deliberate examination of these documents is warranted by the stakes, namely, the integrity of the bankruptcy and the judicial systems.

In our conversation today you mentioned that Ms. Kathleen Dunivin Schmitt, the Assistant U.S. Trustee that has her office in your building, did not consider that there were grounds for an investigation of my complaint. I informed her of it since it stems from the DeLano bankruptcy petition, no. 04-20280 WBNY. It is to be hoped that in your conversation with her, an interested party, her views were not deemed deserving of implicit credibility and a substitute for an examination of the evidence, much less the justification for not going where the evidence would lead an objective observer who did not know her. Even if Ms. Schmitt were found not involved in the complained-about bankruptcy fraud scheme, her opinion that there is no need to investigate it or her trustee George Reiber, who has 3,909 *open* cases and failed to vet the DeLanos' petition, or his attorney James Weidman, Esq., who prevented me from examining the DeLanos at the meeting of creditors, might put her at fault. If your personal relation to her and trust in her word render my evidence just "speculations", as you put it, and cause your reluctance to examine it, not to mention investigate her, your objectivity might be compromised. If so, I respectfully request that you recuse yourself and support my referral to the Fraud Section of the U.S. Department of Justice, Criminal Division. I look forward to your statement one way or the other.

Sincerely,

Dr. Richard Cordero

Evidentiary Files

containing the bankruptcy petition of January 26, 2004
filed in the Bankruptcy Court, WBNY, by David and Mary Ann DeLano
and other financial documents produced by them
with the analyses of Dr. Richard Cordero
that reveal evidence of a judicial misconduct and bankruptcy fraud scheme

FORWARDED TO BRADLEY E. TYLER, ESQ.
U.S. ATTORNEY IN CHARGE OF THE U.S. ATTORNEY'S OFFICE IN ROCHESTER
BY DAVID N. KELLEY,
U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK,
RETURNED TO DR. CORDERO FROM THE ROCHESTER OFFICE
BY RICHARD RESNIK, ESQ., ON AUGUST 24, 2004
AND SENT BACK ON AUGUST 31, 2004
FOR REVIEW BY ATT. TYLER

by
Dr. Richard Cordero

1. Copy of letter of May 6, 2004, and file sent to David N. Kelley, U.S. Attorney for the Southern District of New York ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley with letter of same date to his Chief of the Bankruptcy Unit in Civil Matters, David Jones, Esq. ..... 128 pages
3. Letter of August 14, 2004, and file sent to Bradley E. Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester, ... 46 pages
   250 pages
4. Letter of August 31, 2004, in this file sent to U.S. Attorney Tyler with the following updates:
   a) Objection of July 19, 2004, by Christopher Werner, Esq., Attorney for the DeLanos, to Dr. Cordero's Claim, Notice of Hearing and Order ..... 1 [C:1548]
   b) Dr. Cordero's reply of August 17, 2004, to Debtors' objection to claim and motion to disallow it ..... 3 [C:1515]
   c) Dr. Cordero's application of August 20, 2004, for sanctions on and compensation from Att. Werner and his law firm for violation of FRBkrP Rule 9011(b) ..... 13 [C:1529]

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

David G. DeLano
Mary Ann DeLano

Chapter 13
Case No. 04-20280

OBJECTION TO CLAIM
NOTICE OF HEARING AND ORDER

Debtor(s)

NOTICE

NOTICE is hereby given of the objection by Debtors, by their attorney, Christopher K. Werner, Esq.
[Trustee, Debtor or other party]
to your claim in the Western District of New York. A hearing on the objection will be held at the United States Bankruptcy Court,
US Courthouse, 100 State Street, Rochester, NY 14614, ,
New York, on August 25, 20 04 at 11:30 A.M. only if a written request for a hearing is filed by the claimant as outlined below.

"PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM, YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTOR AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED."

IF YOU OPPOSE THE OBJECTION TO YOUR CLAIM, YOU MAY WANT TO ATTEMPT TO RESOLVE AND SETTLE THE CLAIM OBJECTION PRIOR TO FILING WRITTEN OPPOSITION AND AVOID THE NEED FOR AN ATTORNEY AND/OR A COURT APPEARANCE.

OBJECTION TO CLAIM

The objecting party objects to the following claim in this case:

Claimant's Name: Richard Cordero

Claim #: 19 Amount $ 14,000 + "increments"

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f) Claimant sets forth no legal basis or facts substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liabilty exists as against M & T Bank. No basis for claim against Debtor, Mary Ann Delano, is set forth, whatsoever.

Dated: July 19, 2004

Christopher K. Werner, Esq. Attorney for Debtors
Objecting Party
Address 2400 Chase Square

City/State/Zip Rochester, NY 14604

(PLEASE SEE REVERSE)

FILED
JUL 22 2004
BANKRUPTCY COURT
ROCHESTER, NY

This Notice and Objection are being sent to the Debtor, Debtor's Attorney, Chapter 7, 11, 12 or 13 Trustee, United States Trustee, Claimant, Claimant's Attorney (if known) or person designated as Power of Attorney, and any Creditors' Committee or Attorney for the Creditors' Committee.

(SAMPLE ORDER)

CASE NO. 04-20280

There having been no opposition to the herein objection to the claim of Richard Cordero in the amount of $ 14,000 and the Court having considered the objection and determined the sufficiency of the claim, it is hereby

ORDERED the claim is:

XXX DISALLOWED

_____ ALLOWED AS A TIMELY FILED CLAIM IN THE AMOUNT Of $_____

_____ ALLOWED AS A TARDILY FILED CLAIM IN THE AMOUNT OF $_____

_____ OTHER (Complete if applicable)

DATED: _____

_____
John C. Ninfo, II
Chief United States Bankruptcy Judge

(THIS SAMPLE ORDER WAS INTENTIONALLY DRAFTED TO PROVIDE THE MOST BASIC STRUCTURE FOR *ORDERS RESULTING FROM NOTICES OF OBJECTION TO CLAIMS(S). THE COURT RECOGNIZES THAT THERE* WILL BE A BROAD SPECTRUM OF ORDERS ADDRESSING CLAIMS WHICH WILL REFLECT VARYING COMPLEXITY.)

(Rev.01/10/02)

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

Att.: Ms. Carol

September 13 [refaxed on September 15], 2004

Mr. Peter Ahearn
Special Agent in Charge
FBI Buffalo
One FBI Plaza
Buffalo, New York 14202-2698

faxed to (716)843-5288; tel. (716) 856-7800

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Ahearn,

I understand that my bound files concerning evidence of a judicial misconduct and bankruptcy fraud scheme that I had sent to FBI Assistant Director in Charge Pasquale J. Damuro of the NY City Office were forwarded on jurisdictional grounds to your Office in early July with a cover letter from Supervisory Special Agent Robert Silveri (212) 637-2200). Unfortunately, I have not yet heard from you although Agent Silveri informed me that your Office had stated to him that I would be contacted by letter or phone to be informed of the action that you had decided to take in this matter.

Those files contain evidence pointing to a bankruptcy scheme that exceeds the test case through which it has come to manifest itself, namely, the Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano in the U.S Bankruptcy Court in Rochester, docket no. 04-20280. The petition as well as other financial documents that I received because I am a creditor of Mr. DeLano show very suspicious circumstances. Consider this summary of salient elements: Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…but declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work!, but they made a $10,000 loan to their son, undated and described as “uncollectible”.

Linked to the bankruptcy scheme is the judicial misconduct complaint, which arises from a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing involving judicial officers, trustees, court administrators, and local parties. The force driving this pattern of wrongdoing is the money generated by fraudulent bankruptcy petitions that are rubberstamped for confirmation rather than vetted. The pool of such petitions is huge: according to PACER (https://ecf.nywb.uscourts.gov/), 3,907 *open* cases that Trustee George Reiber has before Bankruptcy Judge John C. Ninfo, II, and the 3,382 that Trustee Kenneth Gordon likewise has.

The latest wrongful act in this pattern is that after the DeLano Debtors have treated me as a creditor for six months, they have now moved to disallow my claim, for I am the only non-institutional creditor and the only one that has submitted evidence of bankruptcy fraud, particularly concealment of assets, to Judge Ninfo. Far from the Judge requiring the DeLanos to account for at least that $291,470, he has allowed them to disobey with impunity his order of document production and has even suspended all proceedings in their case until the motion to disallow is determined next year! It is a foregone conclusion that my claim will be disallowed so that I am eliminated from the case and the DeLanos’ plan of debt repayment of 22¢ on the dollar can be approved. If I am eliminated and you do not investigate this scheme, who will protect the integrity of the bankruptcy system and the public at large, who ends up paying the cost of all fraud? Therefore, I respectfully request that you let me know the status of my complaint.

Sincerely,

Dr. Richard Cordero

C:1550 Dr. Cordero’s inquiry of 9/13&15/4 to FBI Ahearn, Buffalo, re FBI in NYC transmittal of his fraud evidence

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

September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

tel. (716)843-5700; fax to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler's decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and he motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

September 18, 2004

Appeal

to Michael Battle, Esq., U.S. Attorney for WDNY
from the decision taken by
Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office
not to open an investigation into the complaint about
a judicial misconduct and bankruptcy fraud scheme
and statement of
the questionable circumstances under which that decision was made
by

Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding *Pfuntner v. Chapter 7 Trustee Kenneth Gordon et al*., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.
2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero's "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.
3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero's

complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt's opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter's cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:
5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos' earnings before 2001.
6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is**

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

accommodating or has a workload of 3,909[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor's debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee's interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos'…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler's eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero's "allegations" without being able to state concretely what it is that he supposedly 'alleged'. That inability stems from his failure to review the files, as shown by these facts:
    a) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;
    b) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero's call and he could not have reviewed their 250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and
    c) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1
on April 2, 2004.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.
9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?
10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos

having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made your decision and that he would remain, that it was up to me to consult a lawyer and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, although such examination is the Meeting's sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.
12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini's strong determination to close this matter and of her shooting down Trustee Schmitt's agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss' decision and refer the matter to the FBI anyway. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins'.)
13. In this vein, if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt's reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

Dr. Cordero's complaint about Trustee Gordon's reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in *Pfuntner v. Trustee Gordon*, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler's suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.
15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy is predicated on the debtor's inability to pay his debts because his assets are not enough to meet his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earnings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.
16. Moreover, if Att. Tyler had reviewed Dr. Cordero's Objections, contained in the June 29 file, page 59, to the DeLanos' Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?
17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files**

before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero's files and instead rely only on Trustee Schmitt's assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero's complaint.
19. Therefore, Dr. Cordero respectfully requests that:
    a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;
    b) the investigation be conducted by officers who belong to neither the U.S. Attorney's nor the FBI's Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and
    c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on

September 18, 2004

Dr. Richard Cordero

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Dr. Richard Cordero
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Dr. Richard Cordero

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October 7, 2004

Ms. Jennie Bowman
Executive Assistant to the US Attorney
U.S. Attorney's Office for WDNY — faxed to (716)551-3051; tel. (716)843-5700
138 Delaware Center
Buffalo, NY 14202

Re: Resubmission to U.S. Att. Battle of appeal from Att. B. Tyler's decision

Dear Ms. Bowman,

Thank you for taking my call a few minutes ago. As agreed, I am faxing a copy of the letter that I sent to Michael Battle, Esq., U.S. Attorney for WDNY, last September 18. You indicated that you would pass it along to Duty Attorney Lynn Eilermann for review. I appreciate that and kindly request that you also bring to Att. Battle's attention the following:

1. My letter to Att. Battle was an appeal from a decision by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. It serves no purpose to send it back to Mr. Tyler for him to pass judgment on himself. See ¶18 of the Appeal.

2. My Appeal was accompanied by supporting and updating documents. They should be recovered from Att. Tyler and reviewed. If that cannot be done, let me know and I will send a copy.

3. In addition, there are four files in Att. Tyler's possession that contain supporting evidence of the complained-about judicial misconduct and bankruptcy fraud scheme. When I last spoke with Att. Tyler on September 15, I specifically requested that he forward those files to Att. Battle so that the latter may consider them in the context of my appeal. Indeed, I told Att. Tyler that I wanted to appeal his decision and asked who his supervisor was and he gave me Att. Battle's name and phone number. I also specifically asked Att. Tyler to write to me a letter stating why he had decided not to investigate the case. He said that he would send it to me with copy to Att. Battle. I have received no letter. Now I find out from you that he did not forward the files either. Att. Tyler's questionable conduct in not providing those files to Att. Battle and not sending me the promised letter only adds to his questionable conduct already pointed out in the appeal.

4. This case is not being investigated by Assistant U.S. Trustee Kathleen Dunivin Schmitt in Rochester. Nor can she do so because of her conflict of interests: She cannot want to find her supervisee, Trustee George Reiber, to have rubberstamped the meritless bankruptcy petition of David and Mary Ann DeLano, docket no. 04-20280. If so, she would be confronted with the question how many of Trustee Reiber's 3,909 *open* cases he also rubberstamped. If it were to be uncovered that Trustee Reiber approved other meritless cases, the next question would be not only why and on what incentive, but also why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes. Nor can Att. Tyler investigate this case either because he has a vested interest in a certain outcome.

I trust that you realize the seriousness of this matter and will have Att. Battle decide it. Meantime, I look forward to hearing from him.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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October 19, 2004

Mary Pat Floming, Esq. faxed to (716)551-3052 [tel. (716)843-5700]
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for returning my call today in which I inquired about the status of my appeal to U.S. Attorney Michael Battle from the decision of the U.S. Attorney in Charge of the Office in Rochester, Bradley Tyler, Esq. not to investigate my above-referenced complaint. Based on the facts stated in the appeal, it can be concluded that Mr. Tyler did not even read the cover letters of the two files forwarded to him from the office of Mr. David N. Kelley, U.S. Attorney for SDNY, on or around August 5. Instead, he relied on his conversations with one of the parties who could not have an interest in this matter being investigated because she could end up being investigated herself, namely, Assistant U.S. Trustee Kathleen Schmitt. Mr. Tyler and Ms. Schmitt work in the same small federal building in Rochester, where people can easily become acquaintances or friends, their word can be substituted for evidence, and an investigation can constitute betrayal.

It was only because of my repeated calls to Mr. Tyler and submissions of two written updates to him that I found out in a phone conversation with him on September 15 that he would not investigate my complaint. On that occasion, I told him that I would appeal to Mr. Battle and asked that he send me his decision in writing and forward the four files to Mr. Battle. Mr. Tyler agreed to do so. Yet, he has failed to send me any letter. Nor has he forwarded any files to Mr Battle, as stated to me by Mr. Battle's Executive Assistant, Mrs. J. Bowman, and you.

I appealed in writing to Mr. Battle on September 18. Nothing happened. So I called Mr. Battle's office and eventually found out from Mrs. Bowman that my appeal file had been sent back to Mr. Tyler! One need not work at the U.S. Attorney's Office or know 28 U.S.C. §47 – Disqualification of trial judge to hear appeal: No judge shall hear or determine an appeal from the decision of a case or issue tried by him- to realize that an appeal cannot be determined by the person appealed from. I faxed a letter to that effect to Mrs. Bowman on October 7, together with a copy of my appeal so that, as agreed, Mrs. Bowman would bring it to Mr. Battle's attention. On October 12 I found out from her that she had forwarded that material to you. You have stated that is not the case. I have recorded messages for Mrs. Bowman, which have not been replied to.

Something is not right here. You can find out what it is by, as agreed, informing Mr. Battle directly of the complaint and the appeal. While at it, you can do better than that FBI Agent who learned from a flight school instructor that some foreigners wanted to learn just how to fly large airplanes but not how to take them off or land them. The agent just told his superior rather than pursue the matter all the way to the top on the good-sense intuition that something was not right and the stakes were too high to leave it to protocol. He missed his once-in-a-lifetime chance to prevent the 9/11 tragedy and become a hero of moral courage and civic responsibility. This is your chance, Ms. Floming, to become a heroine by finding out why the four complaint files have been kept from Mr. Battle and how widespread bankruptcy fraud has become…as the appeal and the files show, there is so much money to spread around! Rest assured I will pursue this matter.

Sincerely,

Dr. Richard Cordero

C:1560 Dr. Cordero's request of 10/19/4 to Att. Floming to transmit his appeal to U.S. Att. Battle in Buffalo

Dr. Richard Cordero

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October 25, 2004

Mary Pat Floming, Esq.
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3052; tel. (716)843-5700

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for letting me know that you brought to U.S. Att. Michael Battle's attention my appeal from Att. Bradley Tyler's decision not to investigate the misconduct and bankruptcy fraud scheme evidenced in my four files and his failure to forward the latter to Mr. Battle.

This is an update showing Trustee George Reiber's factually and legally untenable allegations for refusing to examine under 11 U.S.C.§341 the DeLanos, who are the debtors in the case (dkt. no. 04-20280) that opens a window into the scheme. His motive for refusing is to prevent the DeLanos' fraud from being established. If it were, it would provide grounds for him to be investigated for having approved without any review a clearly questionable petition, for Mr. DeLano is a bank industry insider who has been for 15 years and still is a bank *loan* officer, and his numbers in the schedules are so incongruous as to red-flag his petition as highly suspicious. This would logically call for determining how many of his 3,909 *open* cases (as of April 2, 2004, according to PACER) Trustee Reiber approved that were also meritless or even fraudulent.

Such an investigation would entail a risk for Trustee Reiber's supervisor, Assistant U.S. Trustee Kathleen Schmitt. Indeed, she could also be investigated for having failed to provide adequate supervision and allowed one trustee to concentrate in his hands such an overwhelming and unmanageable workload. Could you read the petitions, check them against supporting documents, and monitor *monthly* plan repayments of thousands of cases? Bottlenecking thousands of cases through one person is outright questionable. It confers enormous power to control and generates a strong incentive to obey in a symbiotic relationship where supervisor and supervisee derive their respective benefits from prioritizing the approval of petitions and the concomitant unobstructed flow of percentage fees over compliance with Bankruptcy Code requirements.

Consequently, an investigation of the fraud scheme cannot limit itself to asking Trustee Schmitt to give her opinion about the evidence in the files, for she is unlikely to make any self-incriminating admission. The same applies to her supervisor, U.S. Trustee for Region 2 Deirdre A. Martini. In the first and only call that she has ever taken from me or returned, she was adamant that she would keep Trustee Reiber on the case and that she wanted me to stop calling her office because she wanted "closure". How odd, for the case had just started!: It was March 17 and only on March 8 had Trustee Reiber approved the suspicious termination by his attorney, James Weidman, Esq., of the §341 examination of the DeLanos after I, the only creditor present, had asked two questions but would not answer his insistent questions of how much I knew about their having committed fraud. Did Trustee Martini too not want me to examine the DeLanos?

I respectfully request that you share this update with Mr. Battle so that you both may **1)** realize that just as Mr. Tyler cannot investigate my appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme; instead, they should be investigated; and **2)** use the influence of your Office with the Executive Office of the U.S. Trustees to replace Trustee Reiber with an independent trustee to hold a §341 examination of the DeLanos. I look forward to hearing from you and receiving Mr. Battle's call.

Sincerely,

Dr. Richard Cordero

U. S. Department of Justice

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November 4, 2004

Richard Cordero, Ph.D.
59 Crescent Street
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Dear Dr. Cordero:

Upon a careful review of the documentation which you have submitted to my office and in relation to our recent conversation, I find no basis for your claim of bankruptcy fraud. Thank you for bringing this matter to my attention. Best of luck to you.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney
Western District of New York

MAB/jlb

Dr. Richard Cordero

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November 15, 2004

Michael Battle, Esq.
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138 Delaware Center
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faxed (716)551-3052; tel. (716)843-5700

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I am in receipt of your letter of November 4 in which you state that you find no basis for my claim of bankruptcy fraud and have closed this case. However, this is not in keeping with what you told me in our conversation on Monday, November 1, that you would do.

In that conversation you indicated that you had not yet received the files that I sent to the U.S. Attorney in Charge of the Rochester Office, Bradley Tyler, Esq., but that you would ask for them; that that you have very skilled people that would look into whether there was bankruptcy fraud; that it would take them several weeks to complete their review; and that after you reached your conclusion you would let me know and we would discuss them. I believed what you told me, not because I am naïve, but rather because I believe that the word of an attorney of the United States is not given lightly and should be taken seriously. Yet, what you told me that you would do could not have been done between November 1 and 4.

Indeed, you asked me what evidence I had of bankruptcy fraud and I told you that it was documentary evidence contained in the files that I sent to Mr. Tyler. I appealed to you on September 18 precisely because of the evidence that neither he nor his assistant, Richard Resnik, Esq., reviewed them, but instead relied on a building co-worker's assertion that no investigation was needed, that is, Assistant U.S. Trustee Schmitt, who has a vested interest in not having this matter investigated. But even that appeal to you, bound with supporting documents, was sent to Mr. Tyler for him to review an appeal against himself!, a decision that defies common sense and legal practice. So the only material that you could have reviewed was that 5-page appeal without supporting documents that I resubmitted by fax to you and which dealt with the questionable circumstances of Mr. Tyler's decision rather than with the evidence of the judicial misconduct and bankruptcy fraud scheme. So, you did not have the documentation to support your statement that "[You] find no basis for [my] claim of bankruptcy fraud"? No wonder you asked me at the beginning of our conversation to tell you what this was all about and what I wanted you to do.

That you had no other documentation, let alone reviewed it, can be inferred from the facts. Thus, after I sent you my appeal of September 18, I did not hear from your office in Buffalo or Rochester. I had to call you several times but could only speak with your Executive Assistant, Ms. J. Bowman, who eventually found out that the appeal file had been sent to Mr. Tyler. After I faxed her only the appeal and made more calls, her statement that it had been assigned to Mary Pat Floming, Esq., proved inaccurate. I made more calls requesting to speak with you.

Then on Wednesday, October 27, Ms. Bowman called me and said that you wanted to talk to me the next day at 3:00 p.m. I agreed. But on Thursday, that time came and went and you did not call. I called to find out what happened and Ms. Bowman said that you had been called to court urgently. She asked whether the conference could be rescheduled for Friday, at 9:00 a.m. I agreed. But you did not call either. Instead, at 9:42 Ms. Bowman called to say that you were on a

video conference with Washington, and whether you could call me at anytime later that day. I agreed. But you did not call either.

On Monday, November 1, I called and Ms. Bowman said that you had a 9:30 a.m. meeting and asked whether you could call me between 10:30 and 10:45. I agreed. But at about 11:02 she called back to reschedule your call for 11:45 a.m. When you finally called and although our conversation lasted some 12 minutes, you grew impatient toward the end of it, particularly when you asked me what type of evidence I had and I told you that it was the documents in the files and asked whether you had retrieved them from Mr. Tyler. Then you stated what you were going to do and put and end to the conversation.

If somebody told a jury or a fair-minded public servant how you ignored for well over a month an appeal made to you and then how you made appointments to discuss it only to successively ignore or reschedule them, could they reasonably believe that such hands-off treatment and informality revealed, or was intended to send the message of, how unimportant you considered the matter? If the answer is yes, would it be naïve or wishful thinking to expect them to believe that after our conversation on that Monday you dropped everything that you were doing, asked for the files from a person in another city, precisely the one who for over three months failed to deal with the four original files and the appeal, but who nevertheless dropped everything he was doing to send you five files with over 315 pages, which you reviewed and by Thursday you had with due diligence reached the decision that there was no basis for the claim of bankruptcy fraud? You even totally missed the other part of the scheme: judicial misconduct!

You could allow yourself to become hostile toward me because of this statement of facts, but that would be the wrong reaction. For one thing, I am not the suspect of criminal wrong-doing, but rather a responsible citizen appealing for your help. I need it and deserved it because for over two years I have suffered tremendous loss and aggravation at the hands of a group of powerful officers and have meticulously collected and analyzed evidence pointing to their motive therefor, money! Moreover, you are the top law enforcement officer in that area and your decision affects the public at large, for at stake here is the integrity of top judicial and bankruptcy officers and of systems set up for the common good, not for their private gain. In addition, it is not fair for you to ask me for evidence -particularly since you have not looked at what I already presented- since the law, at 18 U.S.C. §3057(a), does not even ask judges for evidence before they can make a report to a U.S. attorney about bankruptcy fraud, but just asks that they have "reasonable grounds for believing…that an investigation should be had in connection therewith".

Therefore, I respectfully request that you:

1. retrieve the five files from Mr. Tyler;
2. entrust them and the investigation of a judicial misconduct and bankruptcy fraud scheme, not to him or his office, for the reasons in my appeal, but as you said, to the very skilled people that you have and were going to assign to it; or request that the Acting Attorney General appoint outside investigators, such as from Washington, D.C., or Chicago; and
3. let me talk to them because both I know a file that now has over 1,500 pages so that I can facilitate their work and this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme.

Sincerely,

Dr. Richard Cordero

U.S. Department of Justice

United States Attorney
Western District of New York

Federal Centre *716-843-5700*
138 Delaware Avenue *FAX 716-551-3052*
Buffalo, New York 14202 Writer's Extension: 814
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November 29, 2004

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

Dear Dr. Cordero:

Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who have had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather, it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

Nevertheless, as previously indicated, having more clearly examined your concerns, I do not find there is a legal basis for the challenges that you now raise. The employees of this office have adequately reviewed any and all documentation, including court records of prior proceedings. While you may be unhappy with the result, it is my opinion that the court's decision is unlikely to be disturbed. Litigants and parties who do not get the results they hope for in cases, commonly react the way that you have and that is understandable. You have asked for review and oversight by this office, which I have undertaken, and at this time, I would like to reiterate that I find there to be no impropriety.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney

MAB/sas

U.S. Att. Battle's letter of 11/29/4 Dr. Cordero referring to the case as if resolved though it is still ongoing C:1565

Dr. Richard Cordero

Ph.D., University of Cambridge, England
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December 6, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3052 [tel. (716)843-5700]

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I received your letter of November 29. In your opening paragraph you stated as follows:

> Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who [sic] had had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

First, your reference to "our most recent telephone conversation" is misleading because in all the months that I have been pursuing this matter, and wrote to you, and made numerous calls to you, and left messages with your Executive Assistant, Mrs. J. Bowman, we have had one single conversation, i.e., the one that you quickly ended on November 1, which from the perspective of your writing on November 29 –triggered only by my message that day- is hardly recent.

Then you stated that you took what I "said and requested very seriously", thereby revealing once more that when we spoke you did not know the facts of my case because you had not read **1)** my Appeal to you of September 18 (E*-139), which despite appealing from the decision under questionable circumstances of Att. Tyler not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme, you sent back to him so that contrary to common sense and legal practice he could deal with a complaint about himself –which he has failed to do to date- nor had you read **2)** any of the copies of that Appeal that I faxed to you. Had you taken "very seriously" what I "said and requested" in my Appeal, you would have mentioned it at least once and realized how injudicious it was to rely on the word of those complained-about.

Evidence that you did not read the Appeal, let alone any of the four evidentiary files (E-137) that upon my request Att. Tyler agreed on September 15 to forward to you but failed to do so, is your statement that you "met with the other staff from who [sic] have had previous involvement with your case". But my Appeal discusses precisely the evidence that Att. Tyler failed to involve himself with the files because, following your example, he passed them on to an assistant, Att. Richard Resnick, whom the evidence shows not to have had the material possibility (E-136) of reviewing them before he wrote to me on August 24 (E-135) that no investigation would be opened and returned the four files. What they did is what you failed to read in ¶2 of the Appeal: "...neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself." Had you taken this matter seriously, you would have known that they did not involve themselves with my evidence and would have tried to determine with what they involved themselves and why.

It was not with the facts that they involved themselves, these "trusted professionals" whose word you accept uncritically. Indeed, you wrote next thus:

> During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

What are you talking about?! No action to which I am a party has been "resolved by a bankruptcy judge": The Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY, has been on appeal in the Court of Appeals for the Second Circuit since April 2003, from where it will go to the Supreme Court; and In re D. & M. DeLano, dkt. no. 04-20280, WBNY, has been reduced to the determination of the DeLanos' July 19 motion to disallow my claim (E-73), including all appeals, as stated by Judge John C. Ninfo, II, in his **Interlocutory** Orders of August 30 (E-101) and November 10 (E-244). What "final legal resolution" did your "trusted professionals" or you are referring to? How can you possibly qualify as 'appropriate' a decision that does not yet exit?

Or does it already exist? The implication of so interpreting your gross mistake of fact is that your "trusted professionals" have had direct ex parte or indirect contact with Judge Ninfo and know the outcome of a case still in process. This would confirm what I have asserted (E-109): that the DeLanos' motion, allowed by Judge Ninfo despite being untimely and barred by laches, is a subterfuge that by disallowing my claim against Mr. DeLano will remove me from the DeLano case so that I have no standing to ask for discovery of the DeLanos' documents that will show how their January 27 bankruptcy petition (E-167) is fraudulent (E-57, E-63) but supported by judicial misconduct that forms part of a bankruptcy fraud scheme. No wonder Judge Ninfo has allowed Mr. DeLano, a bank *loan* officer for 15 years who must know too much to be exposed to discovery, to deny me all documents that I requested (E-234-246) and even to disobey his order for document production of July 26 (E-81). The whole process is a sham!…and you have the evidence!

While in order to keep you quiet your "trusted professionals" may have told you that an 'appropriate' "final legal resolution" had been reached, you have constructive knowledge that such could not be the case. You claim that "Immediately after our conversation" on November 1 you talked to Att. Tyler and the others involved with my case and wrote to me on November 4 that "I find no basis for your claim of bankruptcy fraud" (E-147). Yet, on November 15, I wrote to you "let me talk to [outside investigators] because…this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme". That is the last clause of the last sentence of the letter, which you did not read either!

This much analysis of your letter should suffice to let any fair-minded prosecutor realize how perfunctorily you have treated this matter: The issue that I posed to you was not even whether I was "in agreement with" any decision, let alone a "final legal resolution", but, as stated in the caption, whether there is "a judicial misconduct and bankruptcy fraud scheme". This affects "the people of the United States", not just me. Therefore, if you take "very seriously" that you are "tasked with the responsibility of representing" all of them, I respectfully request that you:

1) refer the accompanying Request* and Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and **2)** copy me to the referral.

Sincerely,

Dr. Richard Cordero

* Exhibits=E and Request sent by mail

Dr. Richard Cordero

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December 6, 2004

REQUEST

to Michael A. Battle, Esq.
U.S. Attorney for the Western District of New York
to report to the Acting U.S. Attorney General
for investigation the evidence of
a judicial misconduct and bankruptcy fraud scheme
by
Dr. Richard Cordero

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I. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated

1. The evidence of judicial wrongdoing linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been referenced, many of which have already been submitted in five previous files. However, all of those included in the Table of Exhibits (i, infra) but not attached hereto, and those referred to in the ones attached are available on request.
2. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to call for an investigation and conduct it. Although intertwined, that evidence can be described in a few principal categories:
    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, **a)** a trustee sued for negligence and recklessness who had before the Judge some 3,000 cases! –how many do you have?-; **b)** an already defaulted bankrupt defendant against whom an application for default judgment was brought; **c)** parties who have disobeyed his orders, even those that they sought or agreed to; and **d)** debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.
    2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the fraud scheme.
    3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial

3. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (Exhibit page 1=E-1) in *Pfuntner v. Chapter 7 Trustee Kenneth Gordon et al.*, WBNY docket no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.
4. By that time, Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2§II)
   a) Indeed, the statistics on PACER as of November 3, 2003[4], showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[5] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.
5. Could you handle competently such an overwhelming number of cases, increasing at the rate of 1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3§§B-E; E-86§II).
6. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David

[4] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.
[5] Id.

Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY docket no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Thus, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Plaintiff Pfuntner!

a) Judge Ninfo would not compel Bankrupt Owner Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4§§C-D).

7. At the instigation of Mr. Pfuntner, who said that property had been found in his warehouse that might belong to Dr. Cordero, Judge Ninfo ordered Dr. Cordero to travel from New York City all the way to Avon, outside Rochester, to conduct an inspection of it within a month or the Judge would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less!
8. Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3,

2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5§E; E-90§III)

9. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets

10. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; WBNY docket no. 04-20280 (E-167). The values declared in their schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:
    a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.
    b) The DeLanos incurred scores of thousands of dollars in credit card debt;
    c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;
    d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;
    e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F (E-167 et seq.);
    f) owe also a mortgage of $77,084;
    g) but have near the end of their work lives equity in their house of only $21,415;
    h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;
    i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;
k) their cash in hand or on account declared in their petition was only $535;
l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;
m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;
n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-199);
o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal due to "unreasonable delay" (E-62; E-65§III; cf. 18 U.S.C. §152(9)).

11. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64§II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64§III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117§B) How extraordinary! given that:
    a) The DeLanos had treated Dr. Cordero as a creditor for six months;
    b) They were the ones who listed Dr. Cordero's claim in Schedule F (E-167 et seq.)…for good reason because
    c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into *Pfuntner v. Trustee Gordon et al*. as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115§A)
12. Extraordinary, for that closes the circuit of relationships between the main parties to the *Pfuntner* and the *DeLano* cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33§II)
13. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's claim is a desperate attempt to remove belatedly from their case Dr. Cordero, the only

creditor that objected to the confirmation of their repayment plan (E-57; E-199) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80**;** E-204). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92§IV), he refused to even docket it (E-80; E-84§I; 90§III) and only issued a watered down version on July 26 of Dr. Cordero's proposed order (E-76; E-81) that he then allowed the DeLanos to disobey by not producing the documents requested in the Judge's order! If not for leverage, what was it issued for?

14. Dr. Cordero moved (E-83) that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (E-107; E-121§III) That could take years! during which the other 20 creditors are prejudiced by not receiving any payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interests of creditors and the public so as to protect the DeLanos needs to be investigated.
15. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. (cf. E-245¶2) To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121§§III-IV) The stakes must be very high!

16. Thus, in his August 30 order (E-101) Judge Ninfo required Dr. Cordero to prove his claim against Mr. DeLano, though he cited no legal basis therefor and ignored the legal basis for not doing so. (E-109) Yet, to comply with it, Dr. Cordero requested Mr. DeLano to produce documents (E-204; E-225). Mr. DeLano alleged that they were irrelevant to Dr. Cordero's claim against him and produced none. (E-230). Dr. Cordero raised a motion (E-234) where he discussed the scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1). (E-237§II) He argued that he can request discovery not only to prove his claim against Mr. DeLano, but also to defend against the DeLanos' motion to disallow it by showing that it is a blatant attempt to remove him from the case before he can demonstrate that the DeLanos' petition is fraudulent and masks, among other things, concealment of assets.
17. The response to that motion of November 4 was ever so swift: On November 9, Mr. DeLano filed a response denying production of every document requested, alleging them to be irrelevant or not in his possession (E-242) and on November 10, without any hearing, Judge Ninfo entered an order stating that "The Cordero Discovery Motion is in all respects denied". (E-244) Neither the Judge nor the attorney for Mr. DeLano, Att. Werner, engaged in any legal discussion, much less cited any legal provision, (cf. E-40-42) for why waste time and effort researching and discussing the law, rules, and facts when the judge is on your side and he has no inhibition about resorting to conclusory statements to achieve his objective: to prevent at all costs Dr. Cordero from discovering information that can link judicial misconduct (E-1) to a bankruptcy fraud scheme. Would you feel proud of having written that order or rather, for standing up for your belief that just and fair process and the integrity of the judiciary require that an investigation should be had?

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

18. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-163). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[6] *open* cases! He cannot be all the time where he should be.
19. So at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he

[6] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-42)

20. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65§III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64§II) and perfunctorily (E-66§IV).
21. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F (E-167 et seq.) that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years, according to their 1040 IRS forms, despite having declared to have in hand and on account only $535! (E-66§IV; E-167 et seq.)
22. Despite Dr. Cordero's repeated requests that Trustee Reiber hold an adjourned meeting of creditors. (E-201; E-214; E-228**)** The Trustee has refused alleging that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined (E-213). What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo. (E-215)
23. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the

DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of the U.S. Trustees Schmitt and Martini (E-71¶32; E-93§V & §VI¶34d; E-224), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. No wonder he has been so flagrantly disingenuous in pretending that he cannot hold a §341 examination of the DeLanos because Judge Ninfo's order does not allow him to. (E-215; E-219; cf. E-214)

24. So has been Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Private Trustees Reiber and Gordon. Dr. Cordero asked her in writing (E-224) and in messages left on her voice mail and with her assistants that she instruct Trustee Reiber to hold a §341 examination of the DeLanos or state why neither she or he will do so. She has failed to return his calls or write to him. Instead, she had an assistant state that she "is planning to contact George Reiber, Esq., so they can coordinate setting up an adjourned meeting of creditors in the [DeLano case]…and will contact you [when she will be in] the office on November 17 to handle court appearances…or prior to it". (E-227) However, although she has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI (cf. 14§III, infra), and she did appear in court on November 17, according to her assistants, and can get a hold of Trustee Reiber there and on the phone, and summon him to her office, she failed to contact Dr. Cordero on that date, prior to it or thereafter, and will not return his messages.
25. Trustee Schmitt has an interest in not letting that examination take place. If Dr. Cordero, as a creditor, examined the DeLanos and found out that their petition was fraudulent, not to mention that Trustee Reiber knew it, and Trustee Reiber were investigated, she too could be investigated for having allowed her Supervisee Reiber –just as she did her Supervisee Gordon- to accumulate thousands of bankruptcy cases that he cannot possibly handle competently, but from each of which he receives a fee. Why? How does she figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases –and Trustee Gordon his 3,383 cases-, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? How could she expect those trustees to have time to do anything more than rubberstamp petitions and cash in? (11§IIA, infra) What was she thinking!? Certainly, what she has been doing with those trustees needs to be investigated.
26. So does the kind of supervision that U.S. Trustee for Region 2 Deirdre A. Martini has been or not been exercising over Assistant U.S. Trustee Schmitt. (E-68§V) Dr. Cordero has served on her every paper that he has written in the DeLano case since the unlawful termination of the

March 8 meeting of creditors by Trustee Reiber and his attorney, Mr. Weidman; in addition, he has written to her specifically. She has actual and constructive knowledge of the details of this case. In fact, as early as March 17 and without any investigation of the motives for preventing Dr. Cordero from examining the DeLanos, she stated categorically to him that she would not remove Trustee Reiber from the DeLano case, as Dr. Cordero had requested, and that instead she just wanted "closure". How odd, for the case had just gotten started! Then she engaged in deception to avoid sending him information that could allow him to investigate the case on his own. (E-141¶10)

27. More recently, Trustee Martini has failed to state, as requested by Dr. Cordero, whether she will ask Trustee Schmitt to instruct Trustee Reiber to hold an examination of the DeLanos at an adjourned meeting of creditors. She too has failed to write to Dr. Cordero thereon as promised in their phone conversation on November 1, the second one that she has deigned to take from him (E-224; E-247), just as Trustee Schmitt failed to contact Dr. Cordero on that subject, as she let him know she would (E-227).

28. Something is not right here…or rather a lot. Why none of them wants Trustee Reiber to investigate the DeLanos and all have countenanced his failure to do so calls for an investigation. No doubt, Mr. DeLano, a loan officer for 15 years, knows and could say too much under examination.

II. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme

A. How a bankruptcy fraud scheme works

29. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. (cf. fraudulent intent may be proven circumstantially. *United States v. Goodstein*, 883 F.2d 1362, 1370 (7th Cir. 1989), *cert. denied*, 494 U.S. 1007 (1990)) It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

30. Thus, as insiders they know that institutional lenders do not participate in bankruptcy

proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

31. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.
32. As for a standing trustee, who is a private professional, not a federal employee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the debt repayment plan of each debtor'. Thus, after receiving a petition, the trustee is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves his plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).
33. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).
34. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she

had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme

35. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case in violation of 18 U.S.C. §152(6) and does not accuse anybody thereof. But just as a jury is entitled to "put two and two together" at the time of deciding upon depriving a bankruptcy fraudster of his property or even his freedom (DoJ US Attorneys' Manual, Title 9, Criminal Resources Manual §840), Dr. Cordero too is entitled to use common sense in drawing reasonable inferences from what he does know and affirm:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER (¶¶4a and 18, supra;
    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document (E-64§I);
    c) chose to dismiss the case rather than subpoena the documents requested but not produced (E-62, E-65§III);
    d) has refused to trace the substantial earnings of the DeLanos' (E-68§V); and
    e) after ratifying the unlawful termination of the meeting of creditors (E-40-42), refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero (E213, E-215).
36. Moreover, there is something fundamentally suspicious when a bankruptcy judge:
    a) protects bankruptcy petitioners from a default judgment and from having to account for $291,470 (E-234, E-244);
    b) allows the local parties to disobey his orders with impunity (E-234, E-244; ¶8, supra);
    c) before any discovery has taken place, prejudges in his August 30 order that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud scheme (E-66¶¶17-20);
    d) yet shields them from discovery by suspending all further process until their motion to

disallow Dr. Cordero's claim is finally determined (E-107) and agreeing that they may not produce any documents at all, not even those that he had ordered them to produce! (E-81, E-92§IV; E-114§II); cf. 18 U.S.C.§154(2)); and

e) engages and allows other court officers to engage in inexcusable docket manipulation (E-75, E-80, E-84§§I-II) and knowingly makes onerous requests on Dr. Cordero for no purpose at all (E-84§III; ¶6, supra) and disregards the law, the rules, and the facts (E-1; E-40-42; E-114§II) so repeatedly and consistently to the detriment of Dr. Cordero, the only pro se and non-local party, and to the benefit of the local parties (E-121§IV) so that his and their acts form a pattern of non-coincidental, intentional, and coordinated wrongdoing.

37. These facts and circumstances together with those of the DeLanos (¶10, supra; §IV, infra) support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had (cf. 18 U.S.C. §3057(a)). That investigation should be an official one because

> 18 U.S.C. §152 was enacted to serve the important interests of government, not merely to protect individuals who might be harmed by the prohibited conduct [to that end, §152] attempts to cover *all the possible methods* by which a bankrupt *or any other person* may attempt to defeat the Bankruptcy Act through an effort to keep assets from being equitably distributed among creditors, *Stegeman v. United States*, 425 F.2d 984, 986 (9th Cir.), *cert. denied*, 400 U.S. 837 (1970)(citation omitted; emphasis in original).

III. The need for investigators to be unacquainted with any party that may be investigated

38. If that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work

in the same small federal building, as do the U.S. attorneys and FBI agents, or live in the same small community in Rochester or Buffalo, NY. They too may fear the consequences of admitting that right under their noses such a scheme developed. The evidence contained in letters and conversations between Dr. Cordero and U.S. officers (E-135-152) justifies such request and warrants the following remarks.

39. A competent investigation cannot limit itself to asking officers, whether they be trustees, U.S. attorneys, or FBI agents, to file a report on what they and others have done concerning this matter. It should be quite obvious that they would not write a mea culpa incriminating themselves. Could any reasonable person expect them to do so? Rather, what they will choose to write down, or say upon being questioned or interrogated, will bear the spin that they have put on it in order to make themselves appear to have discharged their trustees duties adequately and their investigative or supervisory functions appropriately. The same goes for what judicial officers have written in their orders or decisions. One must read them between lines, both in the context of everything else in the cases in question and with a basic understanding of what motivates people's conduct. The former provides knowledge of the facts and the latter calls for intuition, common sense, and a feeling for what is just, fair…and you would like done to you.
40. So equipped, a forensic investigator can apply the principle of plausible explanations, which says that if two explanations adequately explain the same set of circumstances and observations, neither can be discarded without further investigation that brings to light new relevant circumstances or observations that show one explanation to be less adequate than the other because, for example, to a substantial degree it is inconsistent with, or incapable of explaining, the new elements. That principle is of such paramount importance in decision making that it provides the foundation of our criminal law in the form of the standard of beyond a reasonable doubt.
41. Thus, one of two plausible explanations for the conduct of people under investigation cannot be preferred over the other because those people are assumed to be honest and competent, if that is precisely what the evidence cast doubt on and what the investigation must determine. To make such assumption and systematically give the benefit of the doubt to them because they are judges or other U.S. officers is to conduct a pro forma exercise guided by a preconceived idea that they can do no wrong and their word is implicitly truthful and correct. While a person is presumed to be innocent until proven guilty, that is not the same as assuming that he or she is honest, let alone incapable of a lapse of judgment, immune from the temptation of an illegal

gain or advantage too good to be missed, and has the integrity not to indulge in abuse of power to obtain it. Such assumption does not lead an investigation to ascertaining the facts, but rather reaches the intended objective of a whitewash.

42. Nor can a competent investigation proceed on the assumption that the complainant is fundamentally dishonest and nothing but a nuisance. That attitude betrays a bias against him, born of the mentality that 'we protect our own from outsiders that attack any of us'. Such way of thinking is inimical to the mentality of a public servant, one who welcomes the opportunity to serve a member of the public. But when the aim is to get rid of any of them, the first thing to go is his credibility, which results in discounting his statements as unreliable. Consequently, his statements are not used to check the reports received from the officers, which are accepted at face value, for why confront the truth and accuracy of "trusted professionals" (E-150) against the mere "allegations" (E-135)-of just 'another unhappy litigant' (E-150)?

43. Such uncritical acceptance of whatever officers say, which arbitrarily ignores the realistic possibility that their statements may be colored by their vested interests (cf. ¶¶4-5, supra), causes the investigator to follow them as if drawn by the nose, unaware of walking over a path strewn with gross mistakes of fact and reasoning, never caught because never searched for because always conceived as non-existent. The infirm conclusions arrived at by going through such motions of an investigation are not only unjust and unfair to the complainant, who is left to suffer even more abuse and bias (E-43 ftnts. 2-5 and related text), but they also protect the officers from being exposed and thereby affords them the sense of security that encourages them to persist in their ways (cf. E-42). If their ways are the twisted ones of wrongdoing and substandard performance, the situation complained-about only worsens until it explodes into a scandal.

44. Hence, an investigation conducted by those so involved with people to be investigated that, at best, they trust them more than the evidence (E-136, E-143¶17), and at worse, they excuse or look the other way for fear of being investigated themselves (E-143¶18), is fundamentally flawed. Let out-of-towners, unrelated to any potential investigative target, conduct all aspects of the investigation.

IV. Starting points for an investigation into the scheme

45. Such investigation should take into account 18 U.S.C. § 152 and start by:

a) subpoenaing the bank account and *debit* card statements of the DeLanos to establish the flow of their earnings since the date they alleged their financial problems began, that is, "1990 and prior credit card purchases" (E-167 et seq., Scheduled F; cf. 18 U.S.C. §152(9) and DoJ US Attorneys Manual, Title 9, Criminal Resources Manual §867);

b) ascertaining the whereabouts of the $291,407 earned in just the 2001-03 fiscal years according to their 1040 IRS forms (cf. 11 U.S.C. §542(a));

c) establishing the nature and use of $118,000 borrowed from Manufacturers & Traders Trust (MT&T) and ONONDAGA Bank, in two $59,000 charges that, according to the Equifax credit report of May 8, 2004, for Mrs. DeLano, appear on accounts opened in March 1988; were paid in little over 10 years; and are noted by Equifax as "Current status-Pays as agreed". Since the DeLanos have been late in paying their debts more than 232 times, according to that Equifax report and the one for Mr. DeLano of April 26, 2004, this money must have gone into something sufficiently important for the DeLanos not to risk losing it by failing to pay "as agreed". Where did $118,000 go or in which asset(s) is it? It is certainly not accounted for by their mere $21,415 home equity or their meager $2,910 worth of household goods (E-167 et seq., Schedules A and B)…near the end of two lifetimes of work! Will they retire to old-age poverty or to a golden nest?;

d) establishing the circumstances of their $10,000 loan to their son, undated and already declared uncollectible by the DeLanos, none too concerned by their financial security although at the time of their bankruptcy they declared only $535 "cash on hand" and in accounts (E-167 et seq. Schedule B; cf. 18 U.S.C. § 152(7) and Criminal Resources Manual §§858 and 862); and

e) examining the DeLanos under oath, for what a veteran bank loan officer and his technically-oriented wife know could lead to cracking a far-reaching bankruptcy fraud scheme!

V. Relief requested

46. Therefore, Dr. Cordero respectfully requests that you:

a) report this Request and Exhibits to the Acting U.S. Attorney General (28 U.S.C. §526(a)(1)) for an investigation (cf. 18 U.S.C. § 3057(b)) into the evidence of a judicial misconduct and bankruptcy fraud scheme, which has emerged in connection with the

following cases:

1. *Premier Van et al.*, docket no. 03-5023, CA2;
2. Mr. Palmer's *Premier Van Lines, Inc. case*, docket no. 01-20692, WBNY;
3. *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, WBNY; and
4. *In re David and Mary Ann DeLano*, docket no. 04-20280, WBNY;

b) recommend to the Acting U.S. Attorney General that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties that may be investigated in order to insure that they can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way and that to that end, they be from U.S. Attorney or FBI Offices other than those in Rochester and Buffalo, NY, such as those in Washington, D.C. or Chicago;

c) copy Dr. Cordero to your report and referral letter.

Respectfully submitted on,

December 6, 2004

Dr. Richard Cordero

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

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TABLE OF EXHIBITS

in support of the Request of December 6, 2004
to Michael A. Battle, Esq., U.S. Attorney, WDNY
to report to the Acting U.S. Attorney General
for investigation the evidence of
a judicial misconduct and bankruptcy fraud scheme
by
Dr. Richard Cordero

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I. Files submitted by Dr. Cordero that were to have been forwarded by Att. Tyler to U.S. Attorney Battle; but available on demand

1. Dr. Richard **Cordero**'s letter of **May 6**, 2004, to David N. **Kelley**, U.S. Attorney for the **Southern District** of NY, to submit **evidence** of bankruptcy **fraud** and judicial **misconduct** and request and investigation and a meeting ..... 76 pages [C:1345]

2. Dr. **Cordero**'s updating letter of **June 29**, 2004, **to** U.S. Att. **Kelley** containing, among others, Dr. Cordero's ..... 128 pages [C:1391]

    a) **Analysis** of **June 26**, 2004, A **Trustee** With **Thousands** of Open **Cases** and **One** Case that **Opens** a **Window into** the Operation of the Bankruptcy Fee **Scheme**, and his ..... [C:1401]

    b) Annotated **Table** of June 26, 2004, **Comparing Claims** on the Bankruptcy Petition of David and Mary Ann DeLano and other Documents Produced by them or Created by the Bankruptcy Court ..... [C:1415]

        1) The DeLanos' **bankruptcy petition** no. 04-20280 WBNY of January 26, 2004 ..... [C:1431-68]
        2) Incomplete **Equifax credit reports** of April 26 and May 8, 2004 ..... [C:1469]
        3) **Claims register** of the bankruptcy court for the DeLanos' case as of June 23, 2004 ..... [C:1481]
        4) Incomplete credit card **statements of account** as of between July and October 2003, one of each of the eight credit card issuers holding claims larger than $5,000 ..... [C:1491]
        5) **Creditors matrix** for the DeLanos' case as of June 23, 2004, in the bankruptcy court ..... [C:1488]

    c) Dr. **Cordero**'s letter of **June 29**, 2004 **to** David **Jones**, Esq., Chief of the Bankruptcy Unit in Civil Matters at the U.S. Attorney's Office in New York ..... [C:1393]

3. Dr. **Cordero**'s letter of **August 14**, 2004, to Bradley E. **Tyler**, Esq., Attorney in Charge of the U.S. Attorney's Office in Rochester, to inform him of the **hearings** on August 23 and 25, 2004, and request his attendance, with file of relevant documents ..... 46 pages [C:1513]

4. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler**, to **send back** to him the unread **files** that were **returned** to Dr. Cordero **by** Assistant U.S. Attorney Richard **Resnick** .....[but letter at 136, infra] 25 pages [C:1546]

Exhibits=E

II Documents provided herewith

A. Complaint against WBNY Judge J.C. Ninfo, CA2 docket no. 03-8547

5. Dr. Richard **Cordero**'s judicial misconduct **complaint against** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on

August 11, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit ..... 1 [1, 63]

6. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence ..... 7 [C:105]

7. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made ..... 9 [C:109]

8. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** against Judge **Ninfo** ..... 10 [C:144]

9. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** against Judge **Ninfo**, CA2 docket no. 03-8547 ..... 11 [C:145]

10. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review ..... 15 [C:530]

11. **Rule 17(a) and (b)** of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers ..... 16 [C:531]

12. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints ..... 19 [C:533]

13. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando **Galindo**, Chief Deputy of the Clerk of Court, **concerning** the warning to him by **Mrs. Harris**, Head of the In-take Room, that if he nodded a third time in the reading room while reading misconduct orders, she would **call the marshals on him** ..... 21a [C:537]

14. Acting Clerk of Court Fernando **Galindo**'s letter of **July 9**, 2004, **returning** to Dr. **Cordero** his 10-page **petition** for review **of July 8**, 2004, because "It has been the long-standing practice of this court to…establish the definition of *brief* as applied to the *statement of*

grounds for petition to five pages" (emphasis in the original) ..... 22 [C:621]

15. Dr. **Cordero**'s **petition to** the **Judicial Council** of the Second Circuit of July 8, reformatted and resubmitted **on July 13**, 2004, for review of the dismissal of his **complaint** against Judge **Ninfo**, and addressed to Acting Clerk Galindo **with** a separate **volume of exhibits** after the exhibits attached to the July 8 petition were not accepted ..... 23 [C:623]

16. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **July 16,** 2004, to Dr. Cordero **acknowledging** receipt of his **petition** for review to the Judicial Council, wrongly dating it as of February 13, and **returning** the also unaccepted separate **volume** of exhibits..... 28 [C:651]

17. Dr. **Cordero**'s letter of **July 30**, 2004, to the **members** of the **Judicial Council** to let them know that neither the **volume** of exhibits nor the **table of exhibits** accompanying the petition for review was accepted but instead were **returned unfiled** and sending each a copy of the table as well as of the 5-page petition ..... 29 [C:652]

18. Clerk **MacKechnie**'s letter by Deputy **Allen** of **August 13**, 2004, accompanying the **return** of Dr. Cordero's copies of July 30, 2004, to Chief Judge **Walker** of the table of exhibits and the 5-page petition ..... 30 [C:657]

19. Dr. **Cordero**'s letter of **August 27**, 2004, **to** the Judicial **Council updating** the petition to review with information pointing to **money** generated by fraudulent bankruptcy petitions as the force **driving** the complained-about **judicial misconduct** ..... 31 [C:660-65]

20. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **October 6**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review..... 36 [C:671]

21. **Judicial Council**'s **order** of **September 30**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his complaint against Judge Ninfo, CA2 docket no. 03-8547 ..... 37 [C:672]

B. Complaint against CA2 Chief Judge J.M. Walker, Jr., docket no. 04-8510

22. Dr. **Cordero**'s judicial misconduct **complaint** of **March 19**, 2004, as reformatted and resubmitted on March 29, **against** the Hon. John M. **Walker**, Jr., Chief Judge of the Court of Appeals for the Second Circuit..... 39 [C:271

23. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **September 28**, 2004, to Dr. Cordero accompanying the order of **dismissal** of his **complaint against** CA2 Chief Judge **Walker** ..... 44 [C:390]

24. Acting Chief Judge **Jacobs**' **order** of **September 24**, 2004, dismissing Dr. Cordero's misconduct **complaint against** Chief Judge **Walker**, CA2 docket no. 04-8510 ..... 45 [C:391]

25. Dr. **Cordero**'s **petition** of **October 4,** 2004, **to** the **Judicial Council** of the Second Circuit, for **review** of the **dismissal** of his judicial misconduct **complaint** against Chief Judge **Walker**, addressed to Clerk MacKechnie..... 47 [C:711]

26. Dr. **Cordero**'s letter of **October 14**, 2004, **to** the **Judicial Council submitting exhibits** in support of the petition to review the dismissal of the complaint against Chief Judge Walker **and requesting** an **investigation**..... 52 [C:717]

27. Clerk **MacKechnie**'s **letter** by Deputy **Allen** of **October 20**, 2004, **returning** to Dr. Cordero the **exhibits** submitted on October 14 and stating that complaints cannot be supplemented..... 53 [C:777]

28. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **November 10**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker** ..... 54 [C:780]

29. **Judicial Council**'s **order** of **November 10**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker**..... 55... [C:781]

C. Descriptive and Evidentiary Documents Supporting Both Complaints and Pointing to a Judicial Misconduct and Bankruptcy Fraud Scheme

30. Dr. **Cordero**'s **Objection** of **March 4**, 2004, to **Confirmation** of the Chapter 13 Plan of Debt Repayment..... 57 [D[1]:63]

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[1] **D:**=Designated items, i.e. documents, in the record for the appeal from Bankruptcy Judge Ninfo's decision in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*, 05cv6190L, WDNY. These items are contained on the accompanying CD in the D folder.

The latter also holds **Add:**=Addendum to the D: files; **Pst:**= PostAddendum; and **Tr:**=transcript of the evidentiary hearing in *DeLano* held before Judge Ninfo on March 1, 2005.

Mr. DeLano is a 3rd-party defendant whom Dr. Cordero brought into *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, Judge Ninfo presiding. Later on, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against him arising from *Pfuntner*.

31. Trustee **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition "for unreasonable delay" in submitting documents, noticed for July 19, 2004 ..... 62 [D:164]

32. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition and containing in the relief the text of a **requested order** ..... 63 [D:193]

33. Att. **Werner**'s **notice** of hearing and order filed on **July 22**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it ..... 73 [D:218]

34. Dr. **Cordero**'s cover letter of **July 19**, 2004, faxed **to** Judge **Ninfo** and accompanying: ..... 75 [D:207]

    b) Dr. **Cordero**'s **Proposed order** for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004 ..... 76 [D:208]

35. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, objecting to Dr. Cordero's proposed order because it "extends beyond the direction of the Court" ..... 79 [D:211]

36. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 ..... 80 [D:217]

37. Judge **Ninfo**'s **order** of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" ..... 81 [D:220]

38. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WDNY, for docketing and issue of proposed order, transfer, referral, examination, and other relief ..... 83 [D:231]

    a) **Proposed Order** For Docketing and Issue of Proposed Order, Transfer, Referral, and Examination ..... 98 [D:246]

39. Judge **Ninfo's Order** of **August 30**, 2004, to **sever** Dr. **Cordero's claim** against Mr. DeLano arising in *Pfuntner v. Trustee Gordon et al.*, which is on appeal (*Premier Van et al.*, docket no. 03-5023, CA2) and require Dr. Cordero to take discovery of Debtor **DeLano** for the purpose of determining the motion to **disallow that claim** raised in the *DeLano* case, docket no. 04-20280, WBNY ..... 101 [D:272]

40. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** Judge **Ninfo's Order** of **August 30**, 2004 ..... 109 [D:440]

41. **Order** of the **Court of Appeals** of **October 13**, 2004, **denying** Dr. Cordero's motion to **quash** Judge **Ninfo's Order** of **August 30**,

2004, and stating that **Chief Judge** Walker **recused himself** from further consideration of the *Premier Van et al.* case, no. 03-5023, CA2 ..... 127 [D:312]

42. Dr. **Cordero**'s **motion** of **November 2**, 2004, in the Court of Appeals to **stay** the **mandate** following denial of the motion for panel rehearing and **pending** the filing of a **petition** for a writ of certiorari in the **Supreme Court** ..... 128 [**C**:395]

D. Basis for Requesting that the Investigators Be Appointed From Outside the Buffalo or Rochester Offices of the U.S. Attorney and the FBI

43. Letter of Richard **Resnick**, Esq., Assistant U.S. Attorney, of **August 24**, 2004, **to** Dr. **Cordero** stating that the U.S. Attorney's Office in Rochester will **not investigate** Dr. Cordero's "allegations of bankruptcy fraud and judicial misconduct" **and returning** to him all the **files** ..... 135 [C:1545]

44. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler**, to **send back** to him the unread **files** that were **returned** to Dr. Cordero **by** Assistant U.S. Attorney Richard **Resnick** ..... 136 [C:1546]

45. Dr. **Cordero**'s cover letter of **September 18**, 2004, to Michael A. **Battle**, Esq., U.S. Attorney for WDNY, accompanying: ..... 138 [C:1551]

    a) Dr. **Cordero**'s **Appeal** of **September 18**, 2004, **to** Att. Battle **from** the **decision** taken **by** Att. **Tyler** not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made ..... 139 [C:1552]

46. Dr. **Cordero**'s letter of **October 7**, 2004, **to** Jeannie **Bowman**, Executive Assistant to U.S. Att. Battle, accompanying the **resubmission of the appeal** to Att. Battle from the decision of Att. Tyler and stating that the latter was to have forwarded Dr. Cordero's files to Att. Battle and why he should not investigate the case ..... 144 [C:1559]

47. Dr. **Cordero**'s letter of **October 19**, 2004, **to** Mary Pat **Floming**, Esq., Assistant U.S. Attorney at the U.S. Attorney's Office in Buffalo, requesting that she sees to it that the accompanying appeal to Mr. Battle gets to him and requesting her assistance ..... 145 [C:1560]

48. Dr. **Cordero**'s letter of **October 25**, 2004, **to** Att. **Floming** with an update about why Trustee **Reiber** is **refusing** to hold an **examination** of the DeLanos and stating that just as Mr. Tyler cannot investigate Dr. Cordero's appeal from his decision, neither

of Trustees **Schmitt, Martini, or Reiber** can investigate the bankruptcy fraud scheme, but instead, they **should be investigated**..... 146 [C:1561]

49. U.S. Att. **Battle**'s letter of **November 4**, 2004, to Dr. Cordero stating that he **reviewed** the **documentation** and **found no** basis for Dr. Cordero's claim of bankruptcy **fraud** and closing the matter..... 147 [C:1562]

50. Dr. **Cordero**'s letter of **November 15**, 2004, **to** U.S. Att. Battle showing that as of November 1 Mr. Battle did **not have the documentation** and **could not** have **retrieved it** from the Rochester office **and reviewed** over 315 pages by November 4, and requesting that he obtain the files and assign the case to skilled bankruptcy fraud investigators as he had said on November 1 that he would do ..... 148 [C:1563]

51. Att. **Battle's** letter of **November 29**, 2004, to Dr. Cordero stating that his trusted professionals indicated that Dr. Cordero was a party to a bankruptcy that was later appropriately resolved by a bankruptcy judge..... 150 [C:1565]

52. Dr. **Cordero**'s letter of **December 6**, 2004, **to** U.S. Att. **Battle** showing that **either** he committed a gross **mistake of fact or** his "trusted professionals" had direct or indirect contact with the judge and **learned** the **outcome** of a **case still in process**..... 151 [C:1566]

153-162 reserved

E. The DeLanos' Bankruptcy Petition

53. **Notice** of the §341 **Meeting of Creditors** for March 8, 2004, in the Chapter 13 case of **DeLanos**, filed on February 6, 2004..... 163 [D:23]

54. **Petition for Bankruptcy,** with Schedules, under Chapter 13 of the Bankruptcy Code, 11 U.S.C., filed by David and Mary Ann **DeLano**, on **January 27**, 2004, in the WDNY Bankruptcy Court, docket no. 04-20280 ..... 167 [D:27]

55. The DeLanos' Chapter 13 **Plan of Debt Repayment**, dated January 26, 2004 ..... 199 [D:59]

F. Updating documents that show the efforts of Judge Ninfo, Trustee Reiber, and other parties to prevent discovery that would incriminate the DeLanos and them in the bankruptcy fraud scheme

56. Dr. **Cordero**'s letter of **September 22**, 2004, **to** Trustee **Reiber** proposing dates to **examine** the **DeLanos** under §341 and describing the broad scope of the examination as provided under FRBkrP Rule 2004(b)..... 201 [D:283]

57. Att. **Werner**'s letter of **September 28**, 2004, **to** Trustee **Reiber** informing him that he would **not submit dates for the examination** of the DeLanos in response to Dr. Cordero's September 22 letter until the Trustee instructs him to do so ..... 203 [D:286]

58. Dr. **Cordero**'s letter of **September 29**, 2004, **to** Att. **Werner** requesting **production of documents** pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals ..... 204 [D:287]

59. Trustee **Reiber**'s letter of **October 1**, 2004, **to** Dr. **Cordero** stating that he does **not** think that he has **authority** under Judge Ninfo's bench order **to examine the DeLanos** until the matter of the allowability of Dr. Cordero's claim has been resolved ..... 213 [D:296]

60. Trustee **Reiber**'s letter of **October 1**, 2004, **to CA2 Motions Attorney Arthur Heller** stating that he is not aware of any notice of appeal filed in the Second Circuit and that and that he does **not** believe that Judge Ninfo's Bench Order is **appealable** because it is **not a final order** ..... 214 [D:297]

61. Dr. **Cordero**'s letter of **October 12**, 2004, **to** Trustee **Reiber** setting out the factual and legal reasons why Judge Ninfo's order does not prevent the Trustee from conducting a §341 examination of the DeLanos ..... 215 [D:298]

62. Trustee **Reiber**'s letter of **October 13**, 2004, **to** Dr. **Cordero** stating that he only had Judge Ninfo's bench order, not the August 30 written version and that the latter has nothing to do with the appeal of the Premier case to the Court of Appeals ..... 218 [D:301]

63. Dr. **Cordero**'s letter of **October 20**, 2004, **to** Trustee **Reiber** showing that the Trustee's letter of October 13 belies his statement that he did not have Judge Ninfo's written order of August 30 and once more requesting the §341 examination of the DeLanos ..... 219 [D:302]

64. Dr. **Corder**o's letter of **October 21**, 2004, **to** Trustee **Schmitt** and to Trustee **Martini** requesting each to instruct Trustee Reiber to hold a §341 examination of the DeLanos ..... 224 [D:307]

65. Dr. **Cordero**'s letter of **October 27,** 2004, **to** Att. **Werner** to make a good faith effort under FRCivP 37(a)(2) to **obtain discovery** from Mr. David DeLano before moving for an order to compel such and for sanctions ..... 225 [D:310]

66. Trustee **Reiber**'s letter of **October 27**, 2004, **to** Dr. **Cordero** requesting a copy of the order by which CA2 Chief Judge Walker recused himself from *Premier Van et al.*, 03-5023, CA2 ..... 226 [D:308]

67. Ms. Christine **Kyle**'s letter of **October 27**, 2004, stating that Trustee **Schmitt will contac**t Dr. **Cordero** on November 17 when she comes back to the office or before concerning her discussion with Trustee Reiber on the request that the Trustee hold the §341 examination of the DeLanos ..... 227 [D:309]

68. Dr. **Cordero**'s letter of **October 28**, 2004, **to** Trustee **Reiber** providing Trustee Reiber with **dates for** holding the §341 **examination** of the DeLanos and accompanying a ..... 228 [D:311]

    a) Statement of **Chief Judge** Walker's **recusal** from *Premier Van et al.*, no. 03-5023, CA2 ..... 229 [D:312]

69. Att. **Werner**'s letter of **October 28**, 2004, **to** Dr. **Cordero** stating that Dr. Cordero's **discovery** demands are largely **irrelevant** to his alleged claim against Mr. DeLano, that Mr. DeLano objects thereto, and that the **DeLanos object** to the demand for discovery of their finances ..... 230 [D:313]

    a) Response to **discovery** demand of Richard Cordero-Objection to Claim of Richard Cordero, denying as **not relevant all documents** requested and stating that the item concerning Mr. Palmer is **not in** Mr. DeLano's **possession** ..... 231 [D:314]

70. Trustee **Reiber**'s letter of **November 2**, 2004, **to** Dr. **Cordero** stating that he has **nothing to add** to his position concerning Dr. Cordero's request that the Trustee hold the §341 **examination** of the **DeLanos** ..... 233 [D:316]

71. Dr. **Cordero**'s notice of **motion** and supporting brief of **November 4**, 2004, **to enforce** Judge Ninfo's **Order** of August 30, 2004, by ordering Mr. **DeLano** to **produce** the requested documents and declaring that the Order does not and cannot prevent Trustee **Reiber** from holding a §341 **examination of the DeLanos** ..... 234 [D:317]

72. Att. **Werner**'s **statement** of **November 9**, 2004, to the court on behalf of the DeLanos' "opposition to Cordero motion [sic] regarding **discovery"** and request that it **be denied in all respects** ..... 242 [D:325]

73. Judge **Ninfo's** Interlocutory **Order** of **November 10**, 2004, **denying** in all respects Dr. **Cordero's motion** of November 4 and holding the hearing, noticed for November 17, to be moot ..... 244 [D:327]

74. Dr. **Cordero**'s letter of **November 14**, 2004, **to** Trustee **Martini requesting** that she **send** him the **letter** that she agreed to send him to confirm her position that she will not remove Trustee Reiber and requesting that she **instruct** Trustee **Reiber** to conduct a §341 **examination** of the **DeLanos** ..... 247 [D:330]

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Dr. Richard Cordero

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M.B.A., University of Michigan Business School
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December 27, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

On 6 instant I faxed you a letter followed by a formal "REQUEST to Michael A. Battle, Esq. U.S. Attorney for the Western District of New York to report to the Acting U.S. Attorney General for investigation the evidence of a judicial misconduct and bankruptcy fraud scheme."

To date I have received no reply from you thereto although your Executive Assistant, Mrs. J. Bowman, has acknowledged receipt of both the letter and the Request. I have also left messages, recorded for you on your Office voice mail and in conversation with Mrs. Bowman, requesting a reply from you. However, I can reasonably expect a reply from you given that in your letter to me of last November 29, you stated the following:

> I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously.

If you really did mean this, then you can take only more seriously my letter and Request because not only does evidence of a judicial misconduct and bankruptcy fraud scheme keeps piling up, but also the wrongdoing of the participants in the scheme is now compounded by the statements in your November 29 letter showing, among other things, that your "trusted professionals":

1) gave you factually wrong and misleading information that my case was "resolved by a bankruptcy judge" although I am party to not one, but two cases and both are ongoing;
2) must have had direct ex parte or indirect contact with Judge Ninfo through which they have learned the outcome of a case still in progress, thus turning it into a sham process;

and 3) have dissuaded you from opening an investigation into the judicial misconduct and bankruptcy fraud scheme that I complained about by pretending that I had complained about a "final legal resolution" that I was not "in agreement with" although there has not been a legal resolution to anything, let alone a final one, so that this matter is very much open and an investigation is very much called for. Anyway, who ever heard that a U.S. Attorney refrains from investigating evidence of bankruptcy fraud just because a judge complained-about for supporting it with his misconduct has "resolved" it?

Therefore, I respectfully reiterate my request that you:

a) reply to my letter and request of December 6;

b) refer the Request and its Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and

c) copy me to the referral.

Sincerely,

Dr. Richard Cordero

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[C:1602-1610 reserved]

Murphy filed a complaint under 28 U.S.C. § 372 against seven members of the United States Court of Appeals for the Second Circuit and a district judge of the Southern District of New York. He charged a number of judges with "conspiracy and obstruction of justice" on the basis of rulings in particular cases involving the admission and use of psychiatric reports and testimony. He asserted that municipal employers were visiting "psychiatric abuse" upon employees and that the accused judges were aiding and abetting it. He charged the judges with "psychiatric racketeering" and conducting a "psychic scam."

He wrote to two newly appointed judges of the Court of Appeals inquiring of them as to their position about "the Second Circuit's psychiatric racketeering." He wanted their responses, he said, to enable him to decide whether or not to oppose their confirmation. He got no response from either of them, but their silence is the basis of a charge that they joined the "conspiracy." He complained of "a hotbed of suppression of human rights involving psychiatric stigmatization" of those who dissented from official misconduct. One judge was charged with an attempt to disbar a lawyer for daring to bring an action "that psychiatry should be delegalized and extirpated from both medicine and the justice system." The district judge who ordered the psychiatric evaluation of him during his litigation against his former employer was charged with an offense based on that order.

Two of the Second Circuit judges were charged with wrongdoing in relieving Murphy's lawyer of further responsibility. Murphy charged that there was no jurisdiction to hear the motion and that the judges knew that the lawyer had violated his fiduciary duty by calling Mr. Murphy "irrational."

Finally, one judge was charged with improperly sitting in a case involving the chairman of a local Republican committee when a Republican senator had been instrumental in the judge's appointment.

Chief Judge Feinberg considered all of the charges and dismissed them. Insofar as they involved particular rulings of judges, or generalizations of rulings about the admission and use of psychiatric reports and testimony, he concluded that the complaint "directly related to the merits of a decision" within the meaning of § 372(c)(3)(A). The charge against the judge who had not recused himself was dismissed on the same ground since it was reasoned that each judge in each case must decide whether or not to recuse himself and that the complaint directly related to the judge's decision in that case. That charge also was dismissed as frivolous.

The charges against the two judges who had not responded to his inquiry were dismissed as frivolous.

In his appeal to the Judicial Council of the Second Circuit, he charged Chief Judge Feinberg with having withdrawn from the hearing of his appeal in his case against his former employer. He also charged him with having failed to publish a letter he claims to have written to Chief Judge Feinberg about his former lawyer's dismissal of a former associate of that law office.

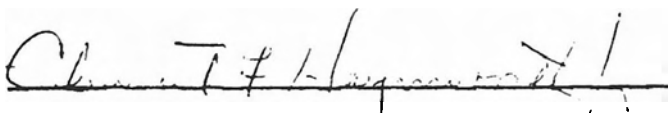
The Judicial Council of the Second Circuit, Chief Judge Feinberg not participating, upheld Chief Judge Feinberg's dismissal of the charges against the other judges. It found the charges against Judge Feinberg frivolous. It stated that there was no evidence in the clerk's office that Judge Feinberg had been assigned to the panel to hear the complainant's case, and expressed the view that there would have been no wrongdoing if he had been assigned to it but withdrew with the result of the substitution of Judge Gurfein. As to the letter, it stated that no such letter could be found in Judge Feinberg's Chambers or in the clerk's office, and that the complainant had been requested to produce a copy but had been unable to locate one. It expressed the view that even if there had been such a letter, the Chief Judge was under no duty or obligation to "publish" it.

The complainant then sought review here.

All of these charges were properly dismissed. Those against the Chief Judge and the two judges who had

failed to respond to the complainant's inquiry are frivolous. So is the one against the judge who allegedly sought the disbarment of a lawyer, for a judge may properly bring to the attention of proper officials conduct that he thinks warrants consideration in a disciplinary proceeding. The remainder of the charges are simply a reflection of the complainant's disagreement with the court's rulings. Such was his charge leveled at the decision approving the withdrawal of his lawyer. His underlying complaint goes to decisions and rulings respecting psychiatric examinations and receipt into evidence and use of psychiatric testimony and reports. As such, these complaints are "directly related to a decision or procedural ruling" within the meaning of § 372(c)(3)(A). Such decisions and rulings are not reviewable under the complaint procedures provided by § 372, however much the complainant may attempt to characterize them as wrong or evil.

PETITION DENIED



Clement F. Haynsworth, Jr.

For the Committee

complained particularly of the language in the district judge's memorandum, but also complained of the drastic reduction in his fee claim and the disallowance of the expenses in the preparation of the exhibits and the photographic reproductions of them.

Upon receipt of a copy of the complaint, Judge Sand amended his memorandum to remove the language to which the claimant had objected, but concluded that no other change in his action upon consideration of the voucher was called for.

The Chief Circuit Judge dismissed the claim as "directly related to the merits of the decision." As to the allegedly offensive language, dismissal was also based upon the ground that effective corrective action had been taken.

Under 18 U.S.C. § 3006A(e)(2), subject to later review, appointed counsel may obtain the services of an expert without prior judicial authorization only if the cost does not exceed $150 plus reasonable expenses. Under paragraph one of subsection (e), the lawyer may apply to the court for prior authorization to engage the services of such an expert. Such an application permits the court, in advance, to consider the need of such services, together with alternatives affecting their cost. No such application was made to the court in this instance.

Under paragraph three of subsection (e) the cost of such expert services may not exceed $300 unless payment in excess of that amount is certified by the court "as necessary

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

November 26, 2004

Justice Stephen Breyer
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Justice Breyer,

I am submitting hereby to you and the Judicial Conduct and Disability Act Study Committee a copy of my November 18 petition for review to the Judicial Conference [C:823] in the context of the dismissals by the chief judge of the court of appeals and the judicial council of the Second Circuit of my two misconduct complaints. It deserves your consideration as a test case of the misapplication of the Act because these dismissals are particularly egregious given the compelling evidence that supports reasonable suspicion of judicial corruption linked to a bankruptcy fraud scheme, yet the complaints were dismissed without any investigation at all.

Indeed, this case concerns the evidence that I submitted of a series of instances for over two years of disregard for the law, rules, and facts by U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY, so numerous and consistently to my detriment, the only non-local and pro se litigant, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Then evidence emerged of the operation of the most powerful driver of corruption: money!, a lot of money in connection with fraudulent bankruptcy petitions. This results from the concentration of *thousands* of bankruptcy cases in the hands of each of the private standing trustees appointed by the U.S. trustee. They have a financial interest in rubberstamping the approval of all petitions, especially those with the least merits, since petitions confirmed by the court produce fees for the trustees, even a fee stream as a percentage of the debtors' payments to the creditors. Who and what else is being paid?

That question was not even looked at, which follows from the fact that although I submitted the evidence that I had and that which kept emerging, for the underlying cases are still pending, to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, he neither conducted a limited inquiry nor appointed a special committee. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions to the CA2 Judicial Council.

Therefore, since this case falls squarely within the mold of systematic dismissals of complaints and review petitions that the Committee is studying and given its particular nature, I respectfully request that you as well as the Committee as such, whether formally or informally:

1. bring to the attention of the Judicial Conference or its members the advisability both of taking jurisdiction of the petition herewith [C:823], on grounds such as those set forth therein, and of investigating the complaints for the purpose, among others, of shedding light on the misapplication of the Act by chief judges and judicial councils;
2. include this case in your Study and investigate it as part thereof, and if the Committee holds hearings, invite me to be heard and answer your questions; and
3. if you believe that Judge Ninfo or any of the others has committed an offense, make a report of this case to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Meantime, I look forward to hearing from you.

sincerely, Dr. Richard Cordero

Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Rm. 6100
Washington, DC 20002-8003

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

11208+1515

[Dec 4, 04]

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated 11/26/04. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Rm. 6100
Washington, DC 20002-8003

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Dr. Richard Cordero
59 Crescent Street
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18

[Dec. 6, 2004]

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated Nov. 26, 2004. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

Dr. Richard Cordero

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

December 20, 2004

Judge Sarah Evans Barker
U.S. District Court, Southern District of Indiana
46 East Ohio Street
Indianapolis, IN 46204

Dear Judge Barker,

Last November 26, I submitted to you and the Judicial Conduct and Disability Act Study Committee a copy of my petition for review to the Judicial Conference [C:823] of the denials by the Judicial Council of the 2nd Circuit of two petitions for review. Those denials and the underlying complaint dismissals constitute a test case of the egregious misapplication of the Act given the compelling evidence of judicial corruption linked to a bankruptcy fraud scheme, yet the council and the chief judge disposed of the petitions and the complaints without any investigation at all.

Now, to render contempt for the Act complete, my petition to the Conference has been dismissed, before ever reaching it or even its Committee to Review Circuit Council Conduct and Disability Orders, by a clerk, that is, a member of the Administrative Office (AO) of the U.S. Courts that renders clerical services to the Conference. The event begs the question whether that clerk, Mr. Robert Deyling, Assistant General Counsel (GC) at the AO's GC's Office, was bold enough to pass judgment on his own on a jurisdictional issue despite lacking therefor any authority under both the Act and the Conference's Rules for Processing Petitions (1§I, infra) [AuC:5102], or whether in light of the circumstances of the dismissal by Mr. Deyling (2 §II)[C:881], he acted on instructions and, if so, who imparted them, out of what motive, and with what purpose.

This case supports the proposition that the judges who under the law are supposed to apply the Misconduct Act and its implementing Rules have rigged them so that they have become a useless pretense of the Judicial Branch's self-policing mechanism. In addition, according to Chief Justice Rehnquist, in the more than 200 years of our federal judiciary, only five federal judges have been convicted for offenses involving financial improprieties, income tax evasion, and perjury[1]…only one judge in more than every 40 years so that statistically, a judge has more chances of becoming chief judge of the Supreme Court than of being investigated, impeached, and convicted! The explanation for this oddity is not that judges are a superior kind of men and women nominated for their immunity to the lure of money, the mentality of a clique, and peer pressure, and who enter office after their incorruptibility has been confirmed. If neither the Act nor impeachment is effective in supervising judges and insuring their continued honesty and impartiality, is a judgeship a safe haven for wrongdoing? Since power corrupts, does non-controlled judicial power corrupt uncontrollably?

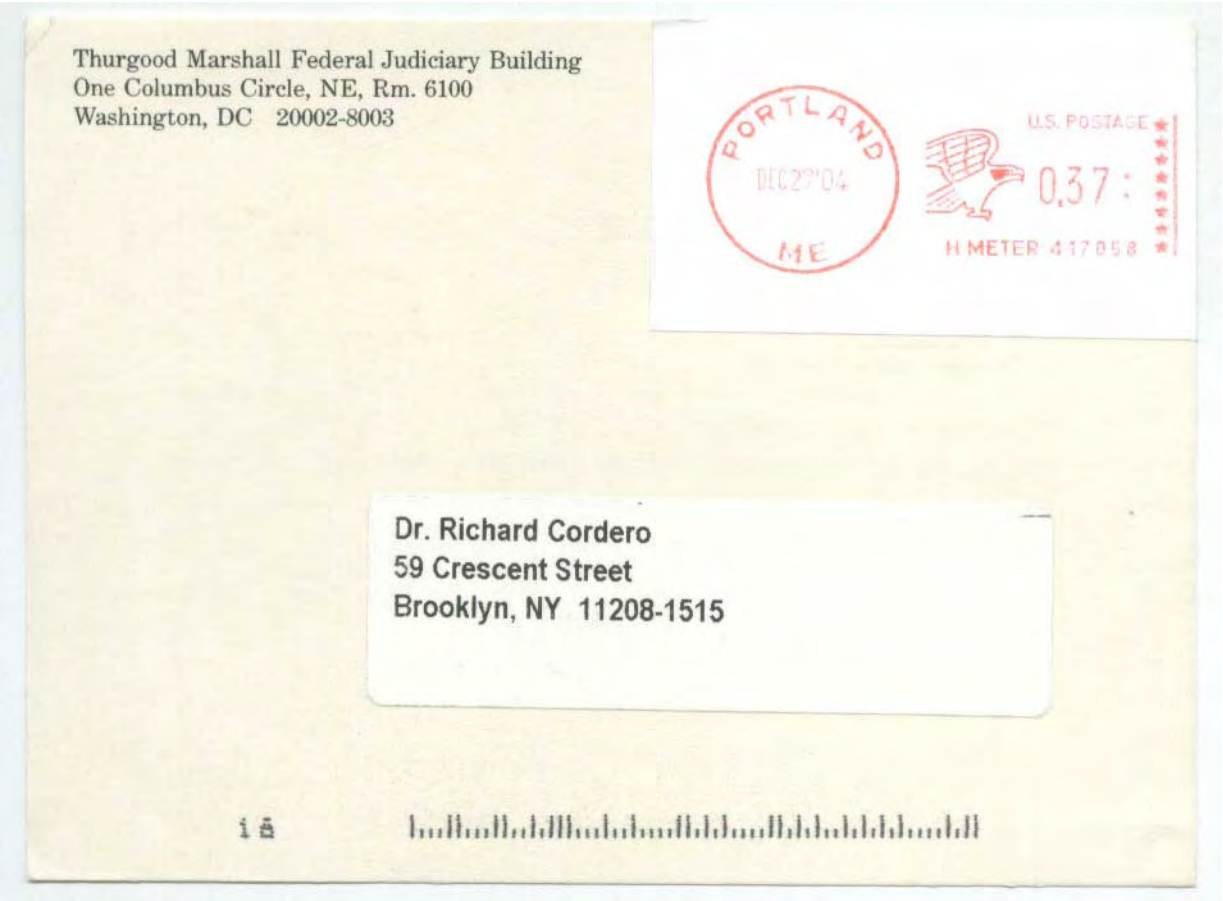
Therefore, I respectfully request that you and the Committee:

1. add this letter & supporting documents [C:845] to my case and include them in your Study; and
2. convey to the AO and the Conference that in the interest of studying the handling in the Act's last review stage of the first petition filed with it in many years [C:1771], my petition [C:823] should be forwarded to the Conference to be investigated and decided by it.

Looking forward to hearing from you,

sincerely, Dr. Richard Cordero

[1] Remarks of Chief Justice Rehnquist at the Federal Judges Association Board of Directors Meeting, May 5, 2003; at http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html. [C:1384]



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

Dec 30,04

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated 12.20.04. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

J Conduct Act Study Com'tee's acknowledgment of 12/27/4 of receipt of Dr. Cordero's 12/20/4 submission ToEC:1755

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

Recvd. 10 Jan 05

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated 12/20/2004. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

ToEC:1756 J Conduct Act Study Com'tee's acknowledgment of 1/7/5 of receipt of Dr. Cordero's 12/20/4 submission

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

[Sample of letters to Judicial Misconduct Act Study Committee & members]

March 9, 2005

Ms. Sally M. Rider
Administrative Assistant to the Chief Justice
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Ms. Rider,

On November 26, I submitted to your consideration as member of the Judicial Conduct and Disability Act Study Committee [C:1751] a copy of my petition to the Judicial Conference [C:823] for review of the denials by the Judicial Council of the Second Circuit of petitions for review concerning my two judicial misconduct complaints. My petition opened precisely with an argument based on 28 U.S.C. §357(a) for the Conference to take jurisdiction of it. Nevertheless, as stated in my letter to you of December 20 [C:1754], the Office of the General Counsel of the Administrative Office of the U.S. Courts has blocked my petition from reaching the Conference by alleging that under §352(c) the Judicial Conference has no jurisdiction to determine it.

On January 8 and February 7 [cf. C:877; C:890], I brought in writing to the attention of General Counsel William R. Burchill, Jr., that neither his office nor even the Administrative Office has any authority to pass judgment on any argument, let alone on a specific jurisdictional argument, which is a question to be decided in limine by the Conference. I requested Mr. Burchill to forward my petition to the Conference. Far from doing so, he never replied to my letters.

I have brought these unsuccessful requests to the attention of Chief Justice Rehnquist, to whom I have also submitted an addendum [C:899] to my jurisdictional argument. I am submitting it to you too for its consideration as part of the Committee's work. Together with it I also submit to you and the Committee the question whether one of the reasons why since March 2002 the *Report[s] of the Proceedings of the Judicial Conference of the U.S.* [cf.C:1771] have repeated the statement that there was no petition pending before the Conference is that petitions have been arbitrarily blocked by the General Counsel's Office and the Administrative Office. Hence the importance that the Conference consider the argument of its jurisdiction based on §357(a).

To that end, I respectfully request that you and the Committee, whether formally or informally, 1) make known to the Chief Justice the importance for the work of the Committee, which he himself appointed, that he cause the Conference to determine the jurisdictional issue either as presented in the addendum or by having my petition forwarded to it from the Administrative Office; and 2) convey to Mr. Burchill and the Director of the Administrative Office, Mr. Leonidas Mecham, the need to forward the petition so that the Conference be the one to perform that determination. These are necessary steps to answer the question in my December 20 letter whether the ineffectiveness of judicial misconduct complaints and impeachment procedures to discipline judges has allowed a judgeship to become a safe have for wrongdoing.

So that you may realize the need in legal and practical terms to have the Conference review this petition given the egregious nature and harmful effect on me of the misconduct of Complained-about Bkr. Judge John C. Ninfo, II, WBNY, I am including a copy of my motion for his recusal. [C:905] It describes the latest events showing his bias against me and suspiciously toward the debtors although the evidence points to them as participants in a bankruptcy fraud scheme. I look forward to hearing from you.

sincerely, Dr. Richard Cordero

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

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[received March 16,05]

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated 3/9/05. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

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

Mar 25, 05

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated March 9, 2005. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

J Conduct Act Study Com'tee's acknowledgment of 3/22/5 of receipt of Dr. Cordero's 3/9/5 submission ToEC:1759

Dr. Richard Cordero

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

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[Sample of letters to Judicial Misconduct Act Study Committee & members]

March 28, 2005

Judge Pasco M. Bowman
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
St. Louis, MO 63102

Dear Judge Bowman,

As stated in my letters to you of 9 instant and November 26 and December 20, 2004 [C:1751,-1754, 1757], last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004 [C:823], for the Judicial Conference to review the denials by the Judicial Council, 2nd Cir., (Exhibits pg. 37=E-37; E-55)♣ of two petitions for review (E-23; E-47) concerning two related judicial misconduct complaints (E-1; E-39) [C:1761], one against Judge John C. Ninfo, II, WBNY, and the other against Chief Judge John M. Walker, Jr., CA2.

By letter of December 9, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23, infra) [C:859], thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised in the petition (3§II, infra). As part of my efforts to have the petition submitted to the Conference to let it decide that issue, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders. Judge Winter answered by letter of February 15 (25) where he states that neither he nor the Conference has jurisdiction to act on my petition. I am submitting to you and the Study Committee a copy of my reply (28; 29) to his letter. Therein I argue, among other things, that under 28 U.S.C. §331 the Review Committee must review all petitions so that the Committee as a whole, not just he as its chairman, should consider mine; and that since the Review Committee derives its jurisdiction from that of the Conference, it should forward my petition to the latter with the request that it be the one to determine the jurisdictional issue that I raised.

I respectfully request that you and the Study Committee, whether formally or informally, bring to the attention of Judge Winter and the Review Committee the need to let the Conference decide that issue. If so, it would have the opportunity to contribute to your own Study by considering whether too narrow an interpretation of the jurisdictional provisions of the Judicial Misconduct Act accounts for the fact that since March 2002 not a single petition has been submitted to it. Thus, the Conference has not had occasion to consider petitions and in the process provide guidance to judicial councils and chief judges on the Act's proper application. Thereby the Act has become as useless as the impeachment process as a mechanism to control and discipline the judiciary. Instead of it being interpreted to protect individuals who suffer abuse and bias through judicial misconduct (53) or the public at large who must bear the loss of access to justice and the material cost caused by judges engaged in wrongdoing (E-83; E-109), the Act has been interpreted as a means for judges to take care of their own. Has the Conference not been aware of this for the past 25 years during which it issued only 15 misconduct orders? [C:1611]

sincerely, Dr. Richard Cordero

♣These Exhibits were submitted to you and the Study Committee together with a copy of the petition last November 26. The Exhibits are not reproduced below, but reference to their page numbers is made hereinafter with the format (E-#).

TABLE OF EXHIBITS

submitted on March 26, 2005, to the Members of the Committee to Review Circuit Council Conduct and Disability Orders
in support of the request that they forward to
the Judicial Conference of the United States for its determination
the petition for review of November 18, 2004

by

Dr. Richard Cordero

1. Dr. Cordero's **petition** of **November 18**, 2004, **to** the **Judicial Conference**.....1 [C:823]
2. Letter from Robert P. **Deyling**, Esq., Assistant General Counsel at the General Counsel's Office of the **Administrative Office** of the U.S. Courts, of **December 9,** 2004, stating that **no jurisdiction** lies **for** further **review by** the Judicial **Conference** of the orders of the Judicial Council .....23 [C:859]
3. Letter of **February 15**, 2001, of the Hon. Ralph K. **Winter**, Jr., Circuit Judge at the Court of Appeals for the Second Circuit and Chair of the Committee to Review Circuit Council Conduct and Disability Orders, **to** Dr. **Cordero** stating that the Judicial **Conference** does **no**t have **jurisdiction** for further review .....25 [C:893]
4. Dr. **Cordero**'s **letter** of **March 24**, 2005, **to** Judge **Winter** requesting that he formally submit to the other members of the Committee as well as to the Judicial Conference the following attachment:.....28 [C:935]
    a) Dr. **Cordero**'s **Reply** of March 25, 2005, **to** Judge **Winter** on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions **for** review to the Judicial Conference and on the need for the **Conference to decide** the issue of **jurisdiction**.....29 [C:936]
5. Dr. **Cordero**'s letter of **January 8**, 2005, and supporting files sent **to** Judge **Winter** to **request** that he withdraw or cause the Judicial Conference to **withdraw** Mr. **Deyling's letter** of December 9 as ultra vires, and **forward** Dr. Cordero's November 18 **petition to** the **Conference** for review .....43 [C:877]
6. Dr. **Cordero**'s letter of **February 7**, 2005, and supporting files sent **to** Judge **Winter,** stating that he has received **no response** to his January 8 letter of and **requesting** that **action** be taken on that letter and its requests .....51 [C:890]
7. Judge **Ninfo**'s **bias** and **disregard for legality** can be heard from his own mouth through the **transcript** of the evidentiary **hearing** held on **March 1**, 2005, and can be read about in a caveat on ascertaining its authenticity that illustrates **his tolerance for wrongdoing**.....53 [C:951
8. **Key Documents and dates in the procedural History** of the judicial misconduct complaints filed by Dr. Richard Cordero ..... i [C:886]
9. **Table of Exhibits of the petition** for review to the Judicial Conference ..... ii [C:845]

    a) Exhibits.....E-# [page num.]

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

April 4, 05

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated 3.28.05. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

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

April 7, 05

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated March 26, 2005, If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

Dr. Richard Cordero

Ph.D., University of Cambridge, England
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[Sample of letters to Judicial Misconduct Act Study Committee & members]

August 5, 2005

Judge D. Brock Hornby
U.S. District Court for the District of Maine
156 Federal Street
Portland, Maine 04101

Dear Judge Hornby,

Last March 9, I wrote to you as member of the Judicial Conduct Act Study Committee (exhibit page 12, infra=E:12) to inform you that on November 18, 2004, I had petitioned the Judicial Conference [C:823] to review the denials by the Judicial Council, 2nd Cir., of my petitions for review of my two judicial misconduct complaints. However, by letter of December 9, a clerk for the Conference at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it. [C:859] My direct appeals to the Conference members to cause it to seize the petition and decide the threshold jurisdictional issue did not succeed.

Now, last July 28, I wrote to the Conference to petition an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript [C:1083], which is yet another in a long series of acts of disregard for duty and legality stretching over more than three years and pointing to a bankruptcy fraud scheme and a cover up. Indeed, on March 1 the evidentiary hearing took place of the motion to disallow my claim in the bankruptcy case of David and Mary Ann DeLano. Bankruptcy Judge John C. Ninfo, II, WBNY, disallowed my claim against Mr. DeLano. Oddly enough, he is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank, who declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years $291,470, whose whereabouts neither the Judge nor the trustees want to request that he account for.

At the end of the hearing, I asked Reporter Mary Dianetti to count and write down the numbers of stenographic packs and folds that she had used; she did. For my appeal from the disallowance, I requested her to estimate the transcript's cost and state the numbers of packs and folds that she would use to produce it. 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. But she asked me to prepay and explicitly rejected that request! [C:1155-1165]

I called the Administrative Office last August 3, to confirm its receipt of this petition. Mr. Deyling acknowledged it, but again stated that he will not forward it to the Conference because the latter cannot intervene and I do not have a right to petition it. He disregarded my argument that the Conference is a governmental administrative body that under §753(c) has a duty to act on this matter and that I have a constitutional right "to petition the Government for a redress of grievances" under the First Amendment. To the extent that Mr. Deyling is following instructions from the Conference, I pose the question for your Committee whether the uselessness of the Misconduct Act since its enactment 25 years ago results from the determination of the Conference and the judges never to police themselves formally. [cf. C:1611, 1771] I also respectfully request that you let me know to whom in the Conference I can address my petition so as to seize that body thereof.

sincerely, Dr. Richard Cordero

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

Aug 15, 05

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated August 5, 2005, If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

Dr. Richard Cordero

Ph.D., University of Cambridge, England **59 Crescent Street**
M.B.A., University of Michigan Business School **Brooklyn, NY 11208-1515**
D.E.A., La Sorbonne, Paris **tel. (718) 827-9521; CorderoRic@yahoo.com**

[Sample of letters to Judicial Misconduct Act Study Committee & members]

September 1, 2005

Hon. Judge J. Harvie Wilkinson, III
As Member of the Judicial Conduct Act Study Committee
In care of: U. S. Court of Appeals for the Fourth Circuit
255 West Main Street
Charlottesville, VA 22902

Dear Judge Wilkinson,

Last August 5, I sent you a letter explaining the submission to the Committee of my petition under 28 U.S.C. §753(b-c) [C:1083] to the Judicial Conference for an investigation, in the context of a bankruptcy fraud scheme pointing to official corruption, of a court reporter's refusal to certify the reliability of her transcript and the designation of another individual to prepare it.

I also submitted the petition to Chief Justice Rehnquist [cf. C:1082] as presiding member of the Conference. On August 11, I received a letter [C:1121] returning it. Anybody who had bothered to read my letter, let alone the caption of the petition, would have realized that neither dealt with an Article III case sent to the Court. Rather, they concerned §753 reporter-related duties of the Conference.

Likewise, the copies of the petition that I filed with the Administrative Office have been returned. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); wrongly copies *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned! [C:1120]

Another letter [C:1119] pretends that a circuit chief judge cannot forward to a colleague who is the chair of a Conference committee a petition within its jurisdiction with a note "for any appropriate action". I wrote to the Executive Committee chair [C:1123], but have received no answer. There is a pattern: Judges avoid investigating one another by resorting to cursory reading, disingenuous answering, and indifference to official corruption. Yet, there is evidence of a scheme: I served a motion for replacement on the Reporter on July 18 [C:1183], but she did not file even a stick-it with the scribble "I oppose it", though by default she could lose her job, as could the Trustee, who has also disregarded my motion of July 13 [Add:881] for his removal. How did they know that Judge D. Larimer would not act on those motions, which implicate Judge J. Ninfo?

I am respectfully submitting to you and the Committee a Supplement [C:1127] to the Petition showing how the reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, yet the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you set an example for your peers of concern for judicial integrity and compliance with judges' duty under 18 U.S.C. §3057(a) by referring both the Petition and its Supplement to Attorney General Alberto Gonzales.

sincerely, Dr. Richard Cordero

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Washington, DC 20002-8003

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

C018

Sept. 10, 05

The Judicial Conduct and Disability Act Study Committee has received the information you submitted dated Sept. 1, 2005. If you have not filed a formal complaint and want to do so, please refer to section 351(a) of title 28 of the United States Code.

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Judicial Conference Proceedings

2006: March (pdf)
2005: September (pdf) | March (pdf)
2004: September (pdf) | March (pdf)
2003: September (pdf) | March (pdf)
2002: September (pdf) | March (pdf)
2001: September/October (pdf) | March (pdf)
2000: September (pdf) | March (pdf)
1999: September (pdf) | March
1998: September | March
1997: September | March

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REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 11, 1997

The Judicial Conference of the United States convened in Washington, D.C., on March 11, 1997, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Judge William H. Barbour, Jr.,
Southern District of Mississippi

Sixth Circuit:

1. Authorized an additional full-time magistrate judge position at Orlando;

2. Authorized an additional full-time magistrate judge position at Tampa; and

3. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Committee to Review Circuit Council Conduct and Disability Orders

Processing of Petitions for Review

The *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders under the Judicial Conduct and Disability Act (Rules for the Processing of Petitions for Review)* govern the handling by the Committee to Review Circuit Council Conduct and Disability Orders of petitions for Judicial Conference review filed pursuant to 28 U.S.C. § 372(c)(10). These rules do not impose any time limit upon the filing of a petition for review with the Conference. Because of the potential problems created by the absence of a clear time limit for filing a petition for review, the Committee recommended, and the Judicial Conference approved, an amendment to Rule 6 of the *Rules for the Processing of Petitions for Review* to establish a 60-day time limit for the filing of a petition for Conference review of final action of a circuit council, with an additional 30 days for the filing of cross-petitions.

As a result of the above amendment, two conforming changes to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability are necessary. On recommendation of the Committee, the Judicial Conference approved (a) the deletion of Illustrative Rule 17(d) (Special rule for decisions of judicial council) and the renumbering of the other subsections of Rule 17; and (b) the deletion of the last sentence of Illustrative Rule 18(e) (Judge under investigation) to conform to the amended Judicial Conference Rule 6.

Committee on Rules of Practice and Procedure

Federal Rules of Civil Procedure

The Committee on Rules of Practice and Procedures submitted to the Judicial Conference proposed amendments to Federal Rule of Civil Procedure 73 (Magistrate Judges; Trial by Consent and Appeal Options) and proposed amendments abrogating Rules 74 (Method of Appeal From Magistrate Judge to District Judge Under Title 28, U.S.C. § 636(c) and Rule 73(d)), 75 (Proceedings on Appeal From Magistrate Judge to District Judge Under Rule 73(d)), and 76

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 23, 1997

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 1997, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

The accelerated funding program was established to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings or impacted by the Civil Justice Reform Act. On recommendation of the Magistrate Judges Committee, the Judicial Conference designated the new magistrate judge positions at Texarkana, Texas; San Diego, California; and Atlanta, Georgia, for accelerated funding in fiscal year 1998.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

JUDICIAL REFORM ACT OF 1997

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has been following closely the progress of two legislative proposals in the 105th Congress that would amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). H.R. 702 and section 4 of the original version of the Judicial Reform Act of 1997 (H.R. 1252) would provide that any complaint of judicial misconduct or disability filed under the Act shall be referred to another circuit for complaint proceedings. On recommendation of the Committee, the Judicial Conference, in a mail ballot, expressed opposition to the provision (see *infra,* "Mail Ballots," pp. 84-85). The Committee will continue to monitor these legislative proposals.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATER PROCEDURE

The Advisory Committee on Appellate Rules completed a style revision project to clarify and simplify the language of the appellate rules. The Committee on Rules of Practice and Procedure concurred with the advisory committee's recommendations and submitted revisions of all 48 Rules of Appellate Procedure and a revision of Form 4, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments to Appellate Rules 1 to 48 and to Form 4 and agreed to transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Official Bankruptcy Forms 1 (Voluntary Petition), 3 (Application and Order to Pay Filing Fee in Installments), 6 (Schedule F), 8 (Chapter 7 Individual Debtor's Statement of Intention), 9A-9I (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates), 10 (Proof of

COURTHOUSE MANAGEMENT

In March 1988, the Judicial Conference approved guidelines for the establishment of delegations of authority from the General Services Administration for courts to manage and operate court facilities (JCUS-MAR 88, p. 40). Although Conference policy currently allows up to ten courts to participate in the delegated building management program (JCUS-SEP-89, pp. 81-82), it appears that many more courts may be interested in the program. On recommendation of the Committee on Security, Space and Facilities, the Judicial Conference agreed (a) to expand its policy limiting participation in the delegated building management program to ten courts and to allow any court meeting the Conference-approved conditions to participate in the program; and (b) to amend the conditions established in March 1988, under which courts may assume responsibilities for managing a court facility under a delegation of the General Services Administration's authority, by adding the following:

> All courts and court units occupying a building must approve a request for a delegation of General Services Administration's management and operations authority prior to submission of the request by the Administrative Office to the General Services Administration.

MAIL BALLOTS

The Judicial Conference completed two mail ballots since its last session. On April 14, 1997, the Conference concluded a ballot endorsing transmittal to Congress of a letter from the Chair of the Criminal Law Committee expressing the Conference's preference for a statutory approach, as opposed to a constitutional amendment, on victims' rights (see *supra*, "Victims' Rights Legislation," pp. 66-67).

By mail ballot concluded on May 9, 1997, the Conference considered three sections (2, 4, and 5) of a proposed Judicial Reform Act of 1997 (H.R. 1252, 105th Congress). The Conference voted to adhere to its 1995 position in opposition to three-judge panels generally and to oppose section 2, which would require that three-judge panels consider challenges to state laws adopted by referenda (see *supra*, "Judicial Reform Act of 1997," p. 71). In the same ballot, Conference members voted to oppose section 4, which would amend the Judicial Conduct and Disability Act to provide that complaints under the Act be referred to another circuit for proceedings (see *supra*, "Judicial Reform Act of 1997," pp. 81-82), and also to oppose section 5, which would limit court-imposed taxation. See also *supra*, "Judicial Reform Act of 1997," pp. 64-65.

FUNDING

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of

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March 10, 1998

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- Chapter 7 Filing Fee Waiver Program
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Committee on Court Administration and Case Management

- Juror Attendance Fee
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- Combining Functions of the Bankruptcy and District Court Clerks' Offices
- Statistical Reporting of Bankruptcy Appeals

magistrate judge positions in the district.

Western District of Washington

1. Discontinued the part-time magistrate judge position at Olympic National Park;

2. Increased the salary of the part-time magistrate judge position at Vancouver from Level 6 ($10,557 per annum) to Level 5 ($21,115 per annum); and

3. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

TENTH CIRCUIT

District of Wyoming

1. Increased the salary of the part-time magistrate judge position at Casper from Level 8 ($3,167 per annum) to Level 7 ($5,279 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee reported on pending legislation, H.R. 1252 (105th Congress), which would amend the Judicial Conduct and Disability Act of 1980, 28 U.S.C. § 372(c), to provide that any complaint of judicial misconduct or disability filed under the Act that is not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves shall be transferred to another circuit for further complaint proceedings. The provision has been amended since the Judicial Conference opposed it in April 1997 (JCUS-SEP 97, pp. 81-82). The Committee advised that no new Judicial Conference action was necessary, but that it would continue to monitor the legislation.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Report of the Proceedings of the Judicial Conference of the United States

September 15, 1998

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- Fiscal Year 2000 Budget Request
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Committee on Codes of Conduct

- Code of Conduct for Federal Public Defender Employees
- Judges' Recusal Obligations

Beach, Florida; and Columbus, Georgia, for accelerated funding in fiscal year 1999.

Committee to Review Circuit Council Conduct and Disability Orders

Committee Activities

In May 1997, the Judicial Conference determined to oppose legislation introduced in the 105th Congress to amend the Judicial Conduct and Disability Act of 1980 (28 U.S. C. § 372(c)) regarding the transfer to another circuit of complaints of judicial misconduct (JCUS-SEP 97, pp. 81-82). The Committee to Review Circuit Council Conduct and Disability Orders reported that there had been no action on this proposal in the Senate, and that the Committee would continue to monitor any legislative developments in this area. The Committee further reported that it determined to add commentary to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability to provide guidance in dealing with the problem of mass filings of identical section 372(c) complaints by different individuals against the same judge or judges.

Committee on Rules of Practice and Procedure

Federal Rules of Bankruptcy Procedure

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 1019 (Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3021 (Distribution under Plan), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 4007 (Determination of Dischargeability of a Debt), 6004 (Use, Sale, or Lease of Property), 6006 (Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases), 7001 (Scope of Rules of Part VII), 7004 (Process; Service of Summons, Complaint), 7062 (Stay of Proceedings to Enforce a Judgment), 9006 (Time), and 9014 (Contested Matters). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 16, 1999

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- Committee Activities

Committee on Court Administration and Case Management

- Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases
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- Commission on Structural Alternatives for the Federal Courts of Appeals

Committee on Criminal Law

- Home Confinement Program Monograph
- Pretrial Services Investigation and Report Monograph
- Operation Drug TEST

Committee on Defender Services

- Disclosure of Criminal Justice Act Payments

1. Authorized an additional full-time magistrate judge position at Ocala; and

2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Committee to Review Circuit Council Conduct and Disability Orders

Committee Activities

The Committee to Review Circuit Council Conduct and Disability Orders reported that the 105th Congress adjourned without enactment of any proposal to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). A measure passed in the House of Representatives in April 1998 would have amended the Act to provide that any complaint of judicial misconduct or disability filed under the Act that was not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves would be transferred to another circuit for further complaint proceedings. In April 1997, the Judicial Conference approved a resolution expressing opposition to a similar version of this legislation (JCUS-SEP 97, pp. 81-82). The Committee will continue to monitor legislative developments in this area in the 106th Congress.

Committee on Rules of Practice and Procedure

Federal Rules of Criminal Procedure

Forfeiture Procedures. A proposed new Criminal Rule 32.2 would establish a comprehensive set of forfeiture procedures, consolidating several procedural rules (Rules 7, 31, 32, and 38) currently governing the forfeiture of assets in a criminal case. Under the proposed amendments, the nexus between the property to be forfeited and the offense committed by the defendant would be established during the first stage of the proceedings as part of the sentencing. In the second stage, procedures governing ancillary proceedings are prescribed to determine the claims of any third party asserting an interest in the property. After considering public comments, and making revisions in light of those comments, the Advisory Committee on Criminal Rules recommended, and the Standing Rules Committee concurred, that the Judicial Conference

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 15, 1999

The Judicial Conference of the United States convened in Washington, D.C., on September 15, 1999, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Judge Joseph A. DiClerico, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Greenville, Spartanburg, or Anderson, South Carolina; El Paso and Del Rio, Texas; Little Rock, Arkansas; Davenport, Iowa; Sioux Falls, South Dakota; and Yuma, Arizona, for accelerated funding in fiscal year 2000.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 4 (Summons), 5 (Serving and Filing Pleadings and Other Papers), 12 (Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings), 14 (Third-Party Practice), 26(d) (Timing and Sequence of Discovery), 26(f) (Conference of Parties; Planning for Discovery), and 37 (Failure to Make Disclosure or Cooperate in Discovery: Sanctions), along with amendments to the Supplemental Admiralty Rules B (In Personam Actions: Attachment and Garnishment), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions). The Judicial Conference approved these amendments and the accompanying Committee Notes for transmittal to the Supreme Court.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 14, 2000

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2000, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Judge Joseph A. DiClerico, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Chief Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,

1. Increased the salary of the part-time magistrate judge position at Saint George from Level 4 ($32,749 per annum) to Level 2 ($54,582 per annum); and

2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

ELEVENTH CIRCUIT

Middle District of Alabama

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported on the status of litigation arising from an order issued by the Judicial Council of the Fifth Circuit and affirmed by the Committee, imposing sanctions against a district judge.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it reviewed the status of a number of proposed rules changes and approved proposed amendments to the Appellate and Criminal Rules for publication and comment. The Committee also considered issues relating to rules governing attorney conduct and rules requiring non-governmental corporate parties to disclose financial interests, and embarked on a second comprehensive national local rules project.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 19, 2000

The Judicial Conference of the United States convened in Washington, D.C., on September 19, 2000, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Judge Joseph A. DiClerico, Jr.,
District of New Hampshire

Second Circuit:

Chief Judge Ralph K. Winter, Jr.
Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

effective functioning of magistrate judges. The Committee communicated these positions to the Committees on Security and Facilities and Court Administration and Case Management.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has published, and will distribute to the courts, a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Bankruptcy Rules 1007 (Lists, Schedules, and Statements; Time Limits), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 3016 (Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 9006 (Time), 9020 (Contempt Proceedings), and 9022 (Notice of Judgment or Order). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. In addition, the Committee submitted and the Conference approved proposed revisions to Official Form 7 (Statement of Financial Affairs).

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 14, 2001

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2001, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Judge Charles P. Sifton,
Eastern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

established by the Judicial Conference, as it has to date, and that it will continue to monitor the growth of the magistrate judges system carefully. The Committee forwarded background materials and a statement of the issues on this topic to the Executive Committee (*see supra,* "Miscellaneous Actions," p. 5).

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has distributed to the courts a pamphlet containing the current version of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability and related materials that may be useful to judges and court staff in implementing the complaint procedure established by 28 U.S.C. § 372(c).

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for immediate publication proposed amendments to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims to conform with recent legislation. The Committee's Subcommittee on Technology is working with the Committee on Court Administration and Case Management studying privacy issues that arise from electronic case filing and developing guidance for courts to implement an electronic case filing system. The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules are reviewing comments from the public submitted on amendments proposed to their respective sets of rules, including most significantly a proposed comprehensive style revision of the Federal Rules of Criminal Procedure.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September/October 2001

The Judicial Conference of the United States convened in Washington, D.C., on September 11, 2001, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Judge Charles P. Sifton,
Eastern District of New York

Third Circuit

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit

Chief Judge Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

The Committee determined not to seek a change to the regulations to address the issue, but instead to add language to the selection and appointment pamphlet that each panel member must disclose to all other panel members any personal or professional relationships with any applicants for the position. The Committee also declined to adopt a judge's suggestion that the regulations be modified to allow career law clerks with at least five years of clerkship experience to have that clerkship time considered in computing the five-year active practice of law requirement.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it met in August 2001 to consider a petition for review of an order entered by the Judicial Council of the District of Columbia Circuit in proceedings conducted under the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). The petition, filed in April 2001, was taken under advisement.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 1 (Scope of Rules; Title), 4 (Appeal as of Right -- When Taken), 5 (Appeal by Permission), 21 (Writs of Mandamus and Prohibition, and Other Extraordinary Writs), 24 (Proceeding in Forma Pauperis), 25 (Filing and Service), 26 (Computing and Extending Time), 26.1 (Corporate Disclosure Statement), 27 (Motions), 28 (Briefs), 31 (Serving and Filing Briefs), 32 (Form of Briefs, Appendices, and Other Papers), 36 (Entry of Judgment; Notice), 41 (Mandate: Contents; Issuance and Effective Date; Stay), 44 (Case Involving a Constitutional Question When the United States Is Not a Party) and 45 (Clerk's Duties), and new Form 6 (Certificate of Compliance With Rule 32(a)), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new form and authorized their transmittal to the

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 13, 2002

The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2002, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

COMMITTEE ACTIVITIES

The Committee reported that it discussed the allocation of pro se law clerk positions and voted unanimously to advise the Judicial Resources Committee that it favors changing the current allocation procedure to enable courts to offer at least a two-year commitment when hiring pro se law clerks (*see supra*, "Pro Se Law Clerks," p. 22). Also, the Committee identified the following as the four most important long-range planning issues for the magistrate judges system: 1) appropriate limits on magistrate judge numbers and authority; 2) roles of magistrate judges in court governance; 3) appropriate chambers staffing for magistrate judges; and 4) contributions of magistrate judges to the quality of justice and the evaluation of full, fair, and effective utilization of magistrate judges.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has undertaken a review and analysis of H.R. 3892 (107th Congress), legislation to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CRIMINAL PROCEDURE

In September/October 2001, the Judicial Conference approved amendments to the Federal Rules of Criminal Procedure, including comprehensive style revisions, and forwarded them to the Supreme Court for approval (JCUS-SEP/OCT 01, p. 70). Subsequent to the Conference's approval, but prior to Supreme Court action on the proposal, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Public Law No. 107-56, which amended Criminal Rules 6 and 41.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 24, 2002

The Judicial Conference of the United States convened in Washington, D.C., on September 24, 2002, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Chief Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

courts to continue efforts to achieve diversity in all aspects of the magistrate judge selection process. The Committee also discussed the issue of magistrate judge involvement in court governance. The Committee agreed to write to the chief judges of those circuits without a magistrate judge on the circuit council to encourage them to consider including magistrate judges on their respective circuit councils.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

INFORMATION ON COMPLAINT PROCEDURES

In recognition of the increasing importance of on-line availability of information for the transaction of legal business, and at the suggestion of two members of Congress, the Committee to Review Circuit Council Conduct and Disability Orders recommended that the Judicial Conference:

a. Urge every federal court to include a prominent link on its website to its circuit's forms for filing complaints of judicial misconduct or disability and its circuit's rules governing the complaint procedure; and

b. Encourage chief judges and judicial councils to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders continued to monitor the status of H.R. 3892 (107th Congress), legislation to amend (in several minor respects) the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 18, 2003

The Judicial Conference of the United States convened in Washington, D.C., on March 18, 2003, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it is monitoring the status of *Spargo v. New York State Commission on Judicial Conduct*, 244 F.Supp. 2d 72 (N.D.N.Y. 2003). That ruling strikes down, as an impermissible prior restraint under the First Amendment, discipline of a New York state judge based on his alleged violation of provisions of the New York Code of Judicial Conduct restricting New York state judges' political activities (apart from their own campaigns for judicial office). The court also found that generally-worded provisions of the New York Code (such as the provision that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) were too vague to support discipline for activity otherwise protected by the First Amendment.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Rule 4008 of the Federal Rules of Bankruptcy Procedure, which would establish a deadline for filing a reaffirmation agreement. The Committee also approved for publication proposed amendments to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. These proposed amendments are modest and technical in nature. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2002 to their respective sets of rules. The Committee also received the report of its Local Rules Project and referred it to the committees' reporters for their review.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 23, 2003

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 2003, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee-s detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 16, 2004

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 2004, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Chief Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it opposes elimination of the statutory authority of magistrate judges to vote on the selection of chief pretrial services officers, disagreeing with the Criminal Law Committee's recommendation to the Judicial Resources Committee that legislation be sought to amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as the selection process for chief probation officers under 18 U.S.C. § 3602(c). The Judicial Resources Committee will consider both committees' views at its June 2004 meeting. The Magistrate Judges Committee also agreed to include in all future survey reports that analyze requests for new magistrate judge positions information on the space implications of any new positions, and, if available, the related costs of such requests.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 5005 (Filing and Transmittal of Papers) and 9036 (Notice by Electronic Transmission) of the Federal Rules of Bankruptcy Procedure. The Committee also approved for later publication proposed style amendments to Civil Rules 16-37 and 45. Publication of these rules as well as proposed style amendments to Civil Rules

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 21, 2004

The Judicial Conference of the United States convened in Washington, D.C., on September 21, 2004, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Chief Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

2. Discontinued the part-time magistrate judge positions at Monticello and Vernal upon the appointment of the new full-time magistrate judge at Salt Lake City; and

3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2005.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it voted unanimously to recommend to the Judicial Branch Committee that it recommend that the Judicial Conference support pending legislation to extend the "FEGLI fix" to magistrate judges and bankruptcy judges. The Magistrate Judges Committee also considered updated diversity statistics from *The Judiciary Fair Employment Practices Annual Report* published for the period October 1, 2002 to September 30, 2003, and noted that magistrate judges were a more diverse population in 2003 than in 2002.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders approved a study to examine the operation of the existing procedures under the Judicial Conduct and Disability Act (28 U.S.C. § 351 *et seq*.), proposed by the Judicial Conduct and Disability Act Study Committee appointed by Chief Justice Rehnquist and chaired by Justice Stephen Breyer. The Committee communicated its approval to Justice Breyer by letter dated August 16, 2004. Pursuant to Rule 16(h) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (which has been adopted by most of the circuits), the Committee's approval permits the circuit councils to authorize access to confidential materials for purposes of this research project.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 15, 2005

The Judicial Conference of the United States convened in Washington, D.C., on March 15, 2005, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Chief Judge Glen H. Davidson,
Northern District of Mississippi

[The Report of the Proceedings of the
Judicial Conference of the United States
of **March 15, 2005**,
contained no entry from the
Committee to Review Circuit Council Conduct and Disability Orders.
http://www.uscourts.gov/judconfindex.html]

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 20, 2005

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 2005, pursuant to the call of the late Chief Justice of the United States, William H. Rehnquist, issued under 28 U.S.C. § 331. Associate Justice John Paul Stevens presided in accordance with 28 U.S.C. § 3, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Chief Judge Glen H. Davidson,
Northern District of Mississippi

- Approved a recommendation of the Committee on Financial Disclosure to authorize the chair of that committee to work on the Conference's behalf to obtain enactment of legislation extending, in the broadest possible terms, the Conference authority to redact financial disclosure reports for security purposes that is scheduled to expire on December 31, 2005, with the understanding that, if extension is otherwise unattainable, the Conference would not oppose legislation limiting that authority to protection against physical danger;

- On recommendation of the Committee on Criminal Law, approved a revised Statement of Reasons form to be attached to the Judgment in a Criminal Case;

- On recommendation of the Committee on the Budget, agreed to seek legislation to give the judiciary the flexibility in multi-year contracting and contract payments already permitted to executive branch and certain legislative branch agencies;

- Approved interim fiscal year 2006 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, and for the Electronic Public Access program, pending congressional enactment of the judiciary's appropriations for fiscal year 2006;

- Recommitted to the Committee on Federal-State Jurisdiction a recommendation regarding the proposed REAL ID Act of 2005 (H.R. 418 and H.R. 1268, 109th Congress) for development of a more general position that would address any legislation intended to preclude judicial review of constitutional claims (see also *infra*, "Legislation to Eliminate Federal Court Jurisdiction," p. 23);

- Approved an amended jurisdictional statement for the Committee to Review Circuit Council Conduct and Disability Orders that reflects minor technical changes to the Judicial Conduct and Disability Act;

- Approved a recommendation of the Committee on Judicial Resources that the judiciary seek legislation to amend 5 U.S.C. § 6391(a)(2) to include judicial branch agencies among those agencies authorized to participate in emergency leave transfer programs; and

- Deferred for six months implementation of a policy adopted by the Conference in March 2005 relating to funding of circuit judicial conferences so that various practical issues could be studied.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 14, 2006

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2006, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Glen H. Davidson,
Northern District of Mississippi

California from Level 5 ($25,512 per annum) to Level 2 ($63,786 per annum), and made no changes in the number, locations, salaries, or arrangements of the full-time and part-time magistrate judge positions in the following districts: the District of New Jersey, the Middle District of North Carolina, the Southern District of West Virginia, the Southern District of Ohio, the Western District of Tennessee, and the Western District of Missouri. The Judicial Conference also made no change in the location, salary, or arrangements of the part-time magistrate judge position at Salisbury in the District of Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that as part of its cost-containment efforts it would continue its practice of not considering any requests for additional full-time magistrate judge positions at its December meetings. Pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee considered requests from three courts to fill vacancies in magistrate judge positions and determined that the three vacancies should be filled. Currently, three magistrate judge positions are being held vacant. As part of its ongoing oversight and review of the magistrate judge recall program, the Committee reviewed a cost-benefit study of the program prepared by staff. It determined that the program to recall retired magistrate judges to active service continues to be effective in providing needed assistance to courts at a lower cost than authorizing additional permanent positions and should be continued.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

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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

November 17, 2005

PRESS RELEASE

Chief Judge John M. Walker of the Court of Appeals for the Second Circuit, jointly with Bettina B. Plevan, President of the Association of the Bar of the City of New York, and Joan Wexler, President of the Federal Bar Council, announced the continuing and new members of the Joint Committee on Judicial Conduct, originally created in 2001.

The Committee's mission is to serve as an intermediary between members of the bar and the federal courts, in receiving confidential written complaints from members of the Bar regarding conduct (as opposed to the merits of decisions) of judges of the Second Circuit and the Eastern and Southern Districts of New York. The committee was created, with the concurrence of the Chief Judges of those courts, to address such complaints, in appropriate circumstances, in a "constructive, confidential and effective manner" with the approval and *ex officio* participation of the presidents of both bar associations.

The Committee's procedure involves reviewing the complaints and then taking such action as it deems appropriate, but the Committee's rules mandate that no communication may be made with any judge without the prior approval of the presidents of both bar associations. Further, the complainant's name, which must be contained on any complaint, is kept confidential and will not, without the complainant's consent, be disclosed to anyone other than the members of the Committee and the presidents of both bar associations. The rules also mandate that the Committee members must personally perform the Committee's work and may not delegate it to others.

The Committee's focus is on complaints that "indicate a possible pattern of behavior on the part of the judge" – for example, improper courtroom behavior, including improper treatment of and consideration to attorneys, witnesses, and others; improper physical conduct; persistent tardiness; or persistent failure to dispose of business promptly. In addition, the Committee may, in its discretion, also consider complaints dealing with a "single occurrence."

Chief Judge Walker stated "I welcome both the new members of this Committee and the Committee's continued presence which can only help assist these courts in continuing their practice of judging in accordance with the highest standards."

The Committee is comprised of six members who are appointed by the presidents of the two Bar Associations to serve staggered terms. The current members of the Committee are Barry M. Kamins, Loretta E. Lynch, Hon. E. Leo Milonas, Mary Kay Vyskocil, Gerald Walpin, and William E. Willis.

Persons wishing to submit a complaint to the Committee should send them in writing and signed, to the Committee on Judicial Conduct, c/o the President of the Association of the Bar of the City of New York, 42 West 44th Street, New York, N.Y. 10036-6689.

Federal judges have no grant of immunity from the Constitution

In a system of "equal justice under law" they must be liable to prosecution as defendants in a class action like anybody else

by

Dr. Richard Cordero, Esq.

http://Judicial-Discipline-Reform.org

The judicial power of the United States is established by Article III of the U.S. Constitution. That article does not immunize judges for their judicial actions from prosecution under the laws of the United States, or those of any state for that matter. The sole protection that it affords judges is found in section 1, which provides that they "during their Continuance in Office shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished". (Authorities Cited:U.S. Constitution; all references are found at Judicial-Discipline-Reform.org) Neither the Legislative nor the Executive Branches can retaliate against judges by diminishing their salary; otherwise, Article III leaves judges as exposed to other sanctions for their official and personal acts as any government officer or private person is.

Indeed, that same Article III, section 1 specifically states that "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour". To be meaningful, this necessarily implies that they 'can no longer hold their Offices' if they engage in 'bad Behaviour'. Given the fundamental principle of our democracy that government is by the rule of law, judges engage in 'bad Behaviour' when they, as members of the Third Branch of Government, violate such law.

As a matter of fact, Article II, section 4, of the Constitution sets forth types of 'Behaviour' that when engaged in by judges results in the obligation, not merely the possibility, that they "shall be removed from Office". They include not only "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes", but also "Misdemeanors". This means that the offense need not threaten national security, involve corruption, or manifest itself outrageous evil or harmful to warrant removal from office, but rather it may entail such a relatively small deviation from legally accepted conduct as to be classified as a misdemeanor and still give cause for removal.

Removal from office is not the only consequence that judges risk for 'Bad Behaviour'. This follows also from Article II, section 4, for it provides the same consequence for "The President, the Vice President, and all civil Officers of the United States". Never has it been affirmed even by a reasonable judge, let alone by Congress or any top member of the Executive Branch, that citizens that are elected or nominated and confirmed, not to mention merely hired, as "civil Officers of the United States", receive a grant of immunity providing that if they, whether in their official or personal capacity, commit any act of "Treason, Bribery, or other high Crimes and Misdemeanors", no sanction shall be visited upon them graver than removal from office and no compensation shall be demanded of them for the benefit of those that they harmed. Hence, judges, like "all civil Officers", may not do whatever they want, however unlawfully injurious to the life, liberty, and property of others, and if they are caught, they simply move on to a different job.

Far from it, when judges engage in 'bad Behaviour', they expose themselves to any other punishment that the law imposes on any other lawbreaking person. This follows from the other fundamental principle that is the corollary to the one mentioned above, namely, nobody is above that law. This principle is expressed on the frieze below the pediment of the Supreme Court building by the inscription "Equal Justice Under Law". Consequently, judges that violate the law are liable to third parties as much as all the other "civil Officers" are. Stamping the label 'judicial

act' on any of their unlawful actions neither limits their loss to that of their offices nor deprives any third party of any compensation for the harm inflicted upon them by such actions.

Since neither the Constitution nor Congress endows a federal judgeship with a blanket exemption from liability for lawbreaking, judges cannot fashion one from the bench for the benefit of their peers. That would in itself constitute a violation of the law, which provides at 28 U.S.C. §453 that "before performing the duties of office, [they shall] solemnly swear (or affirm) that [they] will **administer justice without respect to persons**, and **do equal right** to the poor and to the rich, and that [they] will faithfully and **impartially** discharge and perform all the duties incumbent upon [them] under the Constitution and the laws of the United States". (emphasis added)

Therefore, when judges are sued in court, whether by the district attorney or private persons, the sitting judges cannot simply dismiss their complaints in order to insulate their peers from any further legal action, just as during the proceedings before them they must not show bias in their favor by issuing rulings or decisions that are either unwarranted under the law or even motivated by the desire of securing a positive outcome for the defendant judges. By doing so, they would both breach their oath to administer equal justice "without respect to persons", abuse the power of their offices, and deny the plaintiffs due process under law. Nor are judges entitled to hold the prejudice that members of their judicial class 'can do no wrong' and thus, cannot be held accountable to anybody for what their actions, for that assumption contradicts the explicit statement of Article II, section 4, of the Constitution that judges, just like all other "civil Officers", are liable to "Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors".

"Crimes and Misdemeanors" are offenses against the people that the government prosecutes on their behalf. Yet, an indictment by the government does not prevent those individual members of the people proximately injured by the criminally accused from becoming plaintiffs in civil actions and bringing them directly against the accused named as defendants. What is more, neither filing their complaints nor litigating their causes of action depends on the government having secured a conviction. Indeed, the government's failure to establish the guilt of the accused upon application of the highest standard of legal responsibility of "guilty beyond a reasonable doubt", has no bearing on the plaintiffs' ability to obtain a judgment against the defendants upon application of the lower standard of 'clear and convincing proof', let alone the lowest standard applied in most civil actions, namely, 'by a preponderance of the evidence'.

When those individual members of the people "(1)…are so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to [them and], (3) the claims or defenses of the representative parties are typical of [their] claims or defenses" (FRCivP 23(a)), they may be certified as a class to maintain a class action. Rule 23 and the Class Action Fairness Act of 2005 (Pub.L. 109-2, Feb. 18, 2005, 119 Sta. 4; cf. 28 U.S.C. §1711 et seq.), do not prevent a group of people from forming a class to take legal action against a group of judges. Their provisions can neither constitutionally exclude nor as a matter of fact exclude judges from becoming a defendant class while exposing any other group of people to become such a class, for that would constitute unequal treatment under the law. The Racketeer Influenced and Corrupt Organizations Act (RICO, 18 U.S.C. §1961 et seq.), does not exclude judges from its scope either.

Whether a judge or panel of judges will apply the law "without respect to persons" or disregard it in order to take care of their own and themselves remains to be seen. One can only hope that, as in other groups of people, there are judges who value their personal integrity and that of their office enough to do, not what is expedient and predetermined to immunize their peers, but rather what is right and appears to be right, namely, to administer "equal justice under law".

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