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 coinciden tal. 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 expedi tious 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

C:2 Dr. Cordero's letter of 8/11/3 to CA2 Clerk of Court MacKechnie filing complaint v Judge Ninfo, WBNY

1jn:2

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

U.S. Court: 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 incom e-producing asset of the De btor. 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. Palm er 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 re ferred Dr. Cordero to the Trustee. This time not only di d t he Trustee fail to provide any inform ation or assi stance in retrieving his property, but in a letter of Septem ber 23, 2002, improper in its tone and unjustified in its content, he also en joined Dr. Cordero no t to contact him or his office anymore (A-1).

8. Dr. Cordero applied to this court, to which the Prem ier 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 comp etence of Dr. Cord ero. The latter brought this m atter to the court's attention (A-32, 41). However, the court did not even try to a scertain whether the Trustee had m ade such false representa tions in violation of Rule 9011(b)(3) F.R.Bkr.P.. Instead, it satisfied itself with just passi ng Dr. Cordero's application to the Trustee's supervisor, an assistan t U.S. Trustee (A-29), who was not even

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

10. By so doi ng, the court failed in its dut y 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 main tain the integrity and fairness of proceedings for the protection of inj ured parties, such as Dr. Cordero. The court's handli ng of Dr. Cordero's application to revie w 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 pa pers for this adversary proceeding on several defendants, including Trustee Gordon and Dr. Cordero.

12. Dr. Cordero, appearing pro se, cross-clai med against the Trustee (A-70, 83, 88), who m oved to dism iss (A-135). Before discovery had even begun or any init ial 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)- a nd before any conference of parties or pre-tria l 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 l onger do so, to garble his speech and submit her transcript to a higher-up court officer to be vetted before m ailing a fi nal 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 o f a court's decisi on, an objective observer can reasonably question i n what other wrongful conduct th at 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 st orage and insurance fees for years. Mr. Palmer, as president of the Debtor (A-433, entries 13, 12), was already under the bankruptcy court's juri sdiction. 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 defa ult judgment for a sum certain (A-290, 294) on Decem ber 26, 2002. But not hing happened for over a month during which Dr. Cordero had no oral or wr itten response from the court to his application.

26. Dr. Cordero called to find out. He wa s inform ed by Case Adm inistrator 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 im partiality. Would a reasonable person consider that for the court to protect precisely th e clearly undeserving party, the one with dirty hands, it had to be m otivated by bi as 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 val idity of t he claim or proper service although it had had the opportuni ty to exam ine those issues for six and eight mon ths, 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 resubm it, particularly without disclosing any remaining doubts a nd alerting him to t he need to dispel t hem? By so doing, it must have known that it would raise in hi m 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 disappoi nt those expectations and do so all the mo re acutely for having put him t hrough unnecessary work. It follows tha t the court intentionally inflicted em otional distress on Dr. Cordero by taking him for a fool! Woul d a reasonable person trust thi s 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. Pfunt ner, as plaintiff, who had sued them to begin with even without knowing whether they had any property in his warehouse, but sim ply because their names were on labels affixed to storage contai ners (A-364)…some 'acco m-modation'! 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 m aneuvering 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 enorm ous waste of time, effort, and tremendous aggravation. Dr. Co rdero 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 R ule 56(g) to sancti on a part y proceeding in bad faith, it disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon 's false statements subm itted to it. How much commitment to fairness and im partiality would a reasonable person expect from a court that exhibits such 'a nything goes' standard for the a dmission of dishonest statements? If tha t is what it allows outside offi cers 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 provi ded m ore than 125 pages of documents to support the bill.

67. All in all the m otion had m ore 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 a ttend the in spection, in which case they would ask the court to fi nd hi m to have disobeye d the order and t o order hi s property removed at his expense from Mr. Pfuntner's warehouse; and i f Dr. Cordero nevertheless did attend, to m ake him responsible for the failure of the inspection, for the fact is that Mr. Pfuntner never in tended for the inspection to take place. It was all a sham!

68. Yet, Mr. Pfunt ner and Mr. MacKnight had nothing to worry about. So m uch so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and com pensation. Mr. MacK night did not even object to it at its hearing on June 25. The court di d it fo r them at the outset, volunteering to advocate their interests just as it ha d 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 agai n objected to the dra gged-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 tr ial date. The dates in Oct ober 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 les s 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 i s this: There is no tri al, just t he series of hearings a nnounced by the court at the June 25 hearing, whic h will be dragged out for seven to eight months after those i n October and Novem ber. There is every reason t o believe that the court will in fact drag out this se ries that long, for it stated in the order that at the "discrete hearings" it will begin with Plaintiff Pfuntner's com plaint. Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case p ast the opening pleading. Given the totality of circumstances relating to the way the c ourt 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 com e 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 da te is anywhere in the horizon and loses sight altogether of other claim s can give the appearance of e ither impartiality or knowing what it is talking about. W ould an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic el ements of a case that has been before it for almost a year or rather because its bi as and prejudice agai nst Dr. Cordero prom pt it to make any statements, however ill-considered or contra ry 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 cour t intends to maxi mize Dr. Cordero' s transactional cost of prosecuting this case: On June 5 Mr. MacKnight subm itted 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 jurisd ictionally im portant that the dates of the orders appeal ed from and the notice of ap peal establish the appeal's timeliness. This justifies th e question whether the following om issions 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 bankr uptcy 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 deni al "in all respects" of Dr. Cordero's m otion for reconsideration in C ordero v. Gordon. By contrast, it did carry such an entry for the distric t court's denial, also of March 27, of Dr. Cordero's m otion for reconsideration in Cordero v. Palmer (A-454, entry-69, 453-66).

106. Also on May 19, the district court certifie d 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 appeal ing from and which are necessary to determine his appeal's tim eliness. 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 prejudi ce 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 term s 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 C ourt 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,

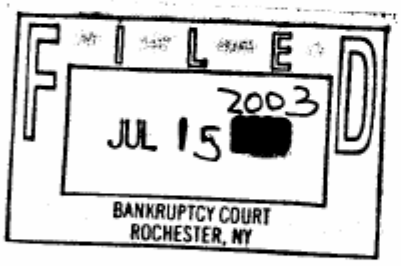
For the above reasons, and in order to: (1) ensure that there is a full and complete record created in this Adversary Proceeding; and (2) ensure that the Court can effectively manage the numerous issues that have been raised and assist the parties in concluding

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



E:60 Judge Ninfo's order of 7/15/3 requiring Dr. Cordero's participation in a series of discrete, discreet hearings

1jn:66

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

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

1jn:68

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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tel. (718) 827-9521; CorderoRic@yahoo.com

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

CA2 Clerk Allen requiring on 9/2/3 Dr. Cordero to comply with proper form re his complaint v. J. Ninfo C:71

1jn:77

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

C:72 Title page of separate exhibits volume with Dr. Cordero's complaint, as reformatted on 8/27/3, v Judge Ninfo

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

1jn:79

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

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.

1jn:82

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.

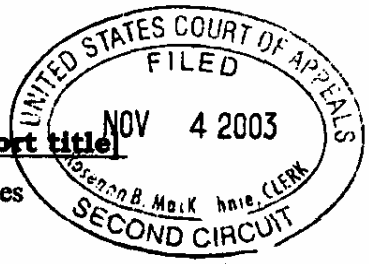
Sincerely,

Roseann B. MacKechnie, Clerk

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

1jn:83

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:

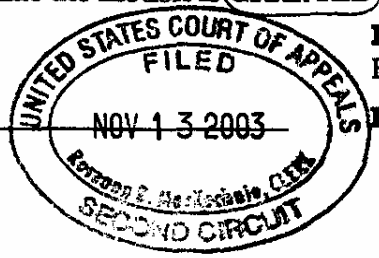
Dr. Richard Cordero

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

ljn:84

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

February 4, 2004

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

Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

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

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

Sincerely,
Roseann B. MacKechnie, Clerk

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

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
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.**

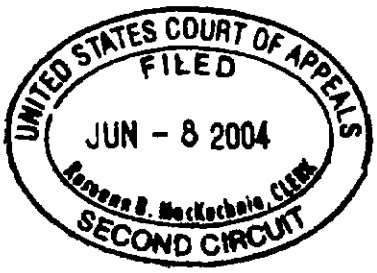
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

ljn:86

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

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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July 8, resubmitted on July 13, 2004

Mr. Fernando Galindo
Acting Clerk of Court
U.S. Court of Appeals, 2nd Circuit
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 the Complaint Provisions) and in need of investigation by a special committee

The dismissal of my complaint is an example of why Supreme Court Chief Justice William 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]).

[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.

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

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).

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!

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)

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 be applicable and weigh him down even for years until the complaint"s final disposition.

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

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the petition letter, consider that volume withdrawn, send it back to me, and file the letter, as we agreed on July 12.

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.

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).

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.

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):

1) Complainant has failed to provide evidence of any conduct "prejudicial to the effective 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.]

2) 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.]

3) 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"!]

4) 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…

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.

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?

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 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?

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.

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?

Had they appointed a special committee, it would have found at least the following:

1) 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)

2) 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?

3) 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.

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:

1) Neither the Chief Judge appoint himself nor Judge Jacobs be appointed to the review panel;

2) The review panel refer the petition to the full membership of the Judicial Council;

3) 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;

4) The special committee be charged with conducting an investigation to determine:

   a) 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;

   b) the link between judicial misconduct and a bankruptcy fraud scheme involving the approval for legal and illegal fees of numerous meritless bankruptcy petitions; and

   c) 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;

5) This matter be simultaneously referred to the FBI for cooperative investigation; and

6) 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

[2] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

Dr. Richard Cordero

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[Sample letter to the members of the Judicial Council of the 2nd Circuit.]

August 27, 2004

Judge Dennis Jacobs
U.S. Court of Appeals for the Second Circuit
40 Foley Square, Room 1802
New York, NY 10007

Re: petition for review of misconduct complaint, dkt. no. 03-8547

Dear Judge Jacobs,

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 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 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 $535.50. 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

I. 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!

1. 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.

2. 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?

3. 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!

II. 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

4. 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"?

5. 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.[*]
6. 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. 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.
7. 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 dismiss 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.
8. 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.

III. 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

[*] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

DeLanos that Judge Ninfo requested Dr. Cordero to submit

9. 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.

10. 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?

11. 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?

12. 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 not 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.

Dr. Richard Cordero

August 27, 2004

59 Crescent Street
Brooklyn, NY 11208

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

[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.

[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.

1jn:100

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

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

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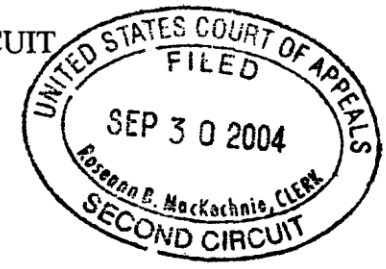
ORIGINAL

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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