

Dr. Richard Cordero

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

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

[Sample of letters to 2nd Cir. judges]

September 6, 2005

Circuit Judge Reena Raggi
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: 2nd supplement to comments against
reappointing J. John C. Ninio, II, WBNY

Dear Judge Raggi,

Last March I responded to the Appeals Court's request for comments on the reappointment of Judge Ninio. I indicated that the Court and the Judicial Council could 'hear' him express his bias and disregard for the law, the rules, and the facts by obtaining the transcript of the evidentiary hearing held on March 1, 2005, of the motion raised by the debtors in *David and Mary Ann DeLano* (04-20280) to disallow my claim. Revealingly enough, that is the transcript that Bankruptcy Court Reporter Mary Dianetti has refused to certify as complete, accurate, and untampered-with. (E:9-11) The evidence thereof is what I submitted to the Court and the Council in the supplement of last August 3.

New evidence discussed in the supplement below shows that the Reporter's refusal is part of a bankruptcy fraud scheme: Judge Ninio has confirmed the DeLanos' debt repayment plan upon the pretense that the trustee investigated and cleared them of fraud in his "Report" (E:271-273; §I) although the Judge knew that there was no investigation (§IIA) because he had refused to order them to produce even checking and savings account statements and because the trustee, who before asking for any documents from the DeLanos vouched for the good faith of their bankruptcy petition, had a conflict of interests in conducting an investigation that could prove him wrong (§IIB; E:309-323). Through his confirmation without investigation (§IIC), Judge Ninio allowed the whereabouts of \$291,470 earned by the DeLanos in just 2001-03 to remain unknown and the astonishing string of mortgages (¶53, E:284-298) to go unexplained through which the DeLanos took in \$382,187 since 1975 only to end up 30 years later with equity in the very same home of a meager \$21,415 and a mortgage debt of \$77,084! Over \$670,000 unaccounted for! Not enough, for Judge Ninio spared them repayment of over \$140,000. Thereby Judge Ninio protected a scheme and Mr. DeLano, who has spent his 32-year career in banking, is currently in charge of bankruptcies of clients of his bank (¶36), and has learned so much about bankruptcy abuses that the Judge could not risk letting an investigation indict Mr. DeLano for playing the system, lest he disclose his incriminating knowledge in a plea bargain.

Hence, Judge Ninio cannot let the transcript be produced and the Reporter be investigated or the Trustee be removed. I moved for that on July 18 and 13, respectively; but neither the Reporter nor the Trustee has bothered to file even a stick-it with the scribble "I oppose it". But wait! I raised those motions in my appeal before Judge David Larimer (05cv6190, WDNY). How did they know that he would not grant them by default and cause them to lose their jobs? Yet, they must know that Judge Larimer's protection of Judge Ninio and the others by not ruling on my motions -four, the earliest filed in *June*- can lead me to petition for a writ of mandamus again (cf. 03-3088, CA2). Do they know that the Court will deny it and leave me with a frozen appeal or no option but to file my brief without the transcript? (E:333-343) The scheme! How high does it reach? (cf. 03-8547 and 04-8510, CA2)

Circumstantial and documentary evidence warrants that Judge Ninio not be appointed. Instead, let your duty to safeguard the integrity of judicial officers and process cause him to be investigated for participating in a bankruptcy fraud scheme; and let your duty under 18 U.S.C. 3057(a) cause you to report this matter to A.G. Alberto Gonzales for investigation. Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

List of Judges
 of the Second Circuit Court of Appeals and Judicial Council
 to whom the 2nd supplement of September 5, 2005
 to comments against the reappointment
 of Bankruptcy Judge John C. Ninfo, II, WBNY
 to a new term of office was sent together with the letter of
 September 6, 2005
 by
Dr. Richard Cordero

Madam Justice Ginsburg
 Circuit Justice for the Second Circuit
 U.S. Supreme Court
 1 First Street, N.E.
 Washington, D.C. 20543
 tel. (202) 479-3000

Circuit Judge Jose A. Cabranes
 Circuit Judge Guido Calabresi
 Circuit Judge Dennis Jacobs
 Circuit Judge Rosemary S. Pooler
 Circuit Judge Robert D. Sack
 Circuit Judge Chester J. Straub
 Circuit Judge Sonia Sotomayor
 Circuit Judge Robert A. Katzmann
 Circuit Judge Barrington D. Parker
 Circuit Judge Reena Raggi
 Circuit Judge Richard C. Wesley
 Circuit Judge Peter W. Hall
 Circuit Judge James L. Oakes
 Circuit Judge Ralph K. Winter
 U.S. Court of Appeals
 Thurgood Marshall Courthouse
 40 Centre Street
 New York, NY 10007
 tel. (212) 857-8500

Chief Judge Michael B. Mukasey
 U.S. District Court, SDNY
 500 Pearl Street, Rm 2240
 New York, NY 10007
 tel. (212) 805-0136; (212) 805-0234

Chief Judge Edward R. Korman
 U.S. District Court, EDNY
 225 Cadman Plaza East
 Brooklyn, NY 11201
 tel. (718) 330-2188

Chief Judge Frederick J. Scullin, Jr.
 U.S. District Court, NDNY
 James T. Foley U.S. Courthouse
 Albany, NY 12207-2924
 tel. (518) 257-1800 or-1661

Chief Judge Robert N. Chatigny
 U.S. District Court
 for the District of Connecticut
 450 Main Street
 Hartford, Ct 06103
 tel. (860) 240-3659

Chief Judge William Sessions, III
 U.S. District Court for the District of Vermont
 P.O. Box 945
 Burlington, VT 05402-0945
 tel. (802) 951-6395

2nd SUPPLEMENT TO COMMENTS
against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted on September 5, 2005
to the Second Circuit Court of Appeals and Judicial Council
by
Dr. Richard Cordero

Dr. Richard Cordero states under penalty of perjury the following:

1. On March 17, 2005, Dr. Richard Cordero timely submitted comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, based on evidence in two related cases, namely, *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, and *David and Mary Ann DeLano*, docket no. 04-20280, of his participation in a series of acts of bias and disregard for the law, the rules, and the facts that form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (Exhibits, page 12, below = E:12)
2. Last August 3, Dr. Cordero submitted a supplement that discussed the express refusal of Judge Ninfo's Court Reporter, Ms. Mary Dianetti, to agree to certify that her transcript of the stenographic record that she herself had taken of the evidentiary hearing before the Judge on March 1, 2005, would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence. (E:9-11) That transcript is indispensable to Dr. Cordero's appeal to District Court (docket no. 05-cv-6190, WDNY) because it will confirm and reveal to the appellate judges Judge Ninfo's contempt for due process and his role as on-the-bench advocate for Mr. DeLano before and during the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim as a creditor of them. A reliable transcript would also justify the Court of Appeals and the Judicial Council, as bodies with responsibility for ensuring the integrity of the courts in the Circuit, in investigating Judge Ninfo on the strength of the evidence of his participation in a bankruptcy fraud scheme.
3. That scheme and Judge Ninfo's participation in it are further revealed by the evidence presented in the instant supplement: The Judge confirmed the debt repayment plan of the DeLanos upon

the pretense that the trustee, Chapter 13 Trustee George Reiber, had investigated the DeLanos and found no bankruptcy fraud on their part, yet Judge Ninfo knew that no such investigation of the DeLanos had ever been conducted (§II¶33 below). Indeed, he knew it because of his own acts in *DeLano* and those of the Trustee as well as the latter’s filed “Report” (§I¶5 below; E:271-273) and the type of documents that the Trustee and the DeLanos had refused and failed to produce (§A¶36 below) including those that Judge Ninfo ordered them to produce but allowed them not to produce with impunity. By predicating a confirmation of the plan upon the statement known to be false that an investigation had cleared the debtors of fraud, Judge Ninfo and others worked fraud on the court as an institution to the detriment of judicial process and of Dr. Cordero’s rights (§C¶61 below).

4. To engage in such fraud, Judge Ninfo and other participants in the scheme have had two motives: One is to avoid a harm in that the confirmation of the plan despite the evidence of bankruptcy fraud insures that the DeLanos will not be charged with fraud and, therefore, will have no incentive to enter into a plea bargain in which Mr. DeLano, who has spent his 32-year career in banking and is currently in charge of bankruptcies of clients of his bank, Manufacturers and Traders Trust Bank (M&T Bank), would disclose what he has during those many years learned about bankruptcy fraud committed by debtors, trustees, and judicial officers, which would result in the likely indictment of those people. The other very powerful and corruptive motive is to gain a benefit: MONEY!, for the plan’s confirmation allows the DeLanos to avoid 78¢ on the dollar owed for a saving of over \$140,000 plus all compounding delinquent interest at the annual rate of over 25% and in addition spares them having to account for more than \$670,000! (§B¶49 below)

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5. The investigation of the confirmation of plan can take as its starting point the following entries in the *DeLano* docket no. 04-20280, which is available through PACER at <https://ecf.nywb.uscourts.gov/> (Exhibits to the August 3 Supplement, page 176=1stSupp.E:176)

| Filing Date | # | Docket Text |
|-------------|---|--|
| 06/23/2005 | | Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s) 5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005) |

| | | |
|------------|---------------------|---|
| 07/25/2005 | 134 | Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to \$635.00 per month in July 2004 and will increase to \$960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of \$6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005) |
|------------|---------------------|---|

6. When one clicks on hyperlink [134](#) what downloads is a three-page document titled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (E:271-273) Their acceptance by Judge Ninfo as the Trustee's "Report" (¶33 below) is so revealing that they warrant close analysis. [Add:937-943]

7. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

FRBkrP 9004. General Requirements of Form

(a) Legibility; abbreviations

All petitions, pleadings, schedules **and other papers shall** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

8. The handwritten jottings on those scrap papers are certainly not "clearly legible". The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

Local Bankruptcy Rule 9004. PAPERS

9004-1. FORM OF PAPERS [Former Rule 13 A]

All pleadings **and other papers shall** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; **shall** be **without erasures or interlineations materially defacing them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)

9004-2. CAPTION [Former Rule 13 B]

All pleadings **and other papers shall** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned,

and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., *shall* be **dated, signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. [*Former Rule 13 D*] (emphasis added)

9. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.

10. What is more, the ‘description’ “Trustee’s Findings of Fact and Summary of 341 Hearing” is ambiguous and confusing. Indeed, there is no such thing as a “341 Hearing”. What is there is “§341 Meetings of creditors and equity security holders”. The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

11. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not listen passively at such a meeting either. This is how his role is described:

11 U.S.C. §343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

12. The trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works “for the benefit of general unsecured creditors whom the trustee represents”. That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

The purpose of the examination is to enable creditors and **the trustee** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

13. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible “341 Hearing” before

Judge Ninfo? And in *DeLano*, when did that “341 Hearing” take place?, for not only is such “Hearing” not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (§8 above) that they “**shall be dated**”. However, if the Trustee’s scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

14. Nor do those scrap papers comply with the requirement that they “**shall be signed**”. Merely initial-izing page 2 (E:272) is no doubt another manifestation of the perfunctory nature of Trustee Reiber’s scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee’s shame about putting his full name on such unprofessional filing with a U.S. court?

A. The third scrap of paper “I/We filed Chapter 13 for one or more of the following reasons:” with its substandard English and lack of any authoritative source for the “reasons” cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted

15. The third scrap paper (E:273) bears the typewritten statement “I/We filed Chapter 13 for one or more of the following reasons:” Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own “341 Hearing”, did he simply hear the DeLanos’ “reasons” for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those “reasons” raise a host of critical questions. Let’s examine those that have been checkmarked and have any *handwritten jottings* next to them:

Lost employment (*Wife*) *Age 59*

16. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of \$67,118 in 2003, according to the Statement of Financial Affairs in their petition.

17. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a “reason” for filing their petition on January 27, 2004, to a “*pre-1990*” event, it is fair to ask when she lost her employment and what impact it had on their filing now.

Hours or pay reduced (*Husband 62*) *To delay retirement to complete plan*

C:1032 Dr. Cordero’s 2nd supplement of 9/5/5 to comments for 2nd Cir. judges against reappointment of J. Ninfo

18. Does the inconsistency between writing “62” inside the parenthesis in this “reason” and writing “*Age 59*” outside the parenthesis in the “reason” above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the \$67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will “*delay retirement*” until he turns 62 so as “*to complete plan*”?
19. Otherwise, what conceivable logical relation is there between “Hours or pay reduced” and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a “reason” for debtors not having to pay their debts to their creditors?
20. Given that a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases! -3,907 before Judge Ninfo-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the “I/We...” who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the “I/We...” meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

21. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but rather the longer period of five years...or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have planned to pay more than just \$635.

| | |
|------------------|---|
| \$4,886.50 | projected monthly income (Schedule I of the DeLanos’ bankruptcy petition) |
| <u>-1,129.00</u> | presumably after Mrs. DeLano’s unemployment benefits ran out in 6/04 (Sch. I) |
| \$3,757.50 | net monthly income |
| <u>-2,946.50</u> | for the very comfortable current expenditures (Sch. J) of a couple with no dependents |
| \$811.00 | actual disposable income |

22. Yet, the DeLanos plan to pay creditors only \$635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of \$176 per month = \$811 – 635, they withhold from creditors an extra \$4,400 = \$176 x 25. No explanation is given for this ...although these objections were raised by Dr. Cordero in his written objections of March 4,

2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

23. What is the total of those secured liens and in what way do they provide a “reason” for filing a bankruptcy petition?

√ Children's college expenses *pre-1990 when wages reduced \$50,000 → 19-000*

24. The DeLanos’ children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos’ residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check “Student loans”. So, what “college expenses” are being considered here? Moreover, according to that jotting, whatever those “college expenses” are, they were incurred “*pre-1990*”. Given that such listed “reasons” as, “Medical problems”, “To stop creditor harassment”, “Overspending” and “Protect debtor’s property” were not checked, how can those “college expenses” have caused the DeLanos to go bankrupt *15 years later*? This is one of the most untenable and ridiculous “reasons” for explaining a bankruptcy...

25. ...until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of “reasons” was extracted; no reference to any document where the “reasons” checked were quantified in dollar terms and their impact on the DeLanos’ income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos’ plan “meets the best interest test”? (¶5 above)

26. Nor is there any reference to a document explaining in what imaginable way, for example, “Matrimonial” is a “reason” for anything, let alone for filing for bankruptcy; or how “Reconstruct credit rating” is such an intuitive “reason” for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby “Student loans” are such a “reason” despite the fact that 11 U.S.C. provides thus:

§523. Exceptions to discharge

(a) A discharge under section...1328(b) of this title does not discharge an individual debtor from any debt...(8) for an education benefit overpayment or loan made...

27. The lack of grammatical parallelism among the entries on that list is most striking. So the first “reason” appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every “reason” and thereby give the list semantic as well as syntactic consistency: “I/We filed...” because: (I/We omitted but implicit) “Lost employment”. However, the second “reason” does not fit this pattern: “I/We filed...” because: “Hours or pay reduced”. The next reason is expressed by an adjective, “Matrimonial”, while the following one is a noun “Garnishments”. A “reason” is set forth with a gerund, “Overspending”, but others are stated with the bare infinitive, “Protect debtor’s property”, whereas others use *to*-infinitive, “To receive a Chapter 13 discharge” (which by the way, is a particularly *enlightening* “reason”, for is that not the result aimed at when invoking any other “reason”?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult. Who bungled that form? Was it approved by any of the U.S. trustees? How many plans has Judge Ninfo confirmed based on it? It was not made specifically for the DeLanos, was it? Is there a financial motive for confirming plans no matter what?
28. The grammar of the “reasons” is not the only bungled feature in this form. In addition, it lacks a caption. Then the sentence that introduces the “reasons” is written in broken English: “I/We filed Chapter 13 for one or more of the following reasons:” What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: ‘You filed Chapter 13....’
29. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your peers and hierarchical superiors and even be made publicly available for close scrutiny, would you fill out an order form thus?: “The respondents filed Chapter 13 and win ‘cause they *ain’t* have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with’em after cookin’ a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.” (Completing the order form in handwriting would give it a touch of flair...in pencil, for that would show...no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of all the peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)
30. Still worse, the third scrap paper is neither initialized nor signed; of course, it bears no address

or telephone number. So who on earth is responsible for its contents? (cf. E:263) And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

(a) Signing of papers

Every petition, pleading, written motion, **and other paper**, except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address** and **telephone number**, if any. An **unsigned paper shall be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

31. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to Rule 9011, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All...lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that "the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)".
32. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under Local Rule 10 of the District Court, WDNY, requiring that "All text...in...memoranda and other papers shall be plainly and legibly...typewritten...without erasures or interlineations materially defacing them,...signed...and the name, address and telephone number of each attorney or litigant ...shall be...thereon. All papers shall be dated."

II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation

33. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:275). Therein he stated that he "has considered...the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

The Court found that the...Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee

read a statement into the record regarding his investigation.

34. However, what page 2 of Trustee Reiber's scrap papers (E:272) states is this:

7. Objections to Confirmation: Trustee – disposable income –

1) I.R.A. available; 2) loan payment available;

3) pension loan ends 10/05.

35. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough "~~1) Best interest \$1255;~~" "Attorney fees". At the bottom of the page is written: "ATTORNEY'S FEES" \$ 1350 and, below that, "Additional fees Yes" \$16,655. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:279) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:282).

A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber had approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos

36. Although Trustee Reiber was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections of March 4, 2004 and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶12 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections.

37. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their petition's Schedule B, where they declared having only \$535 in cash and account despite having earned \$291,470 in just the immediately
Dr. Cordero's 2nd supplement of 9/5/5 to comments for 2nd Cir. judges against reappointment of J. Ninfo C:1037

preceding three years yet declaring nothing but \$2,910 in household goods, while stating in Schedule F a whopping credit card debt of \$98,092! Where did the money go or is?

38. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' petition, filed on January 27, 2004, without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004...in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

39. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interests that the Trustee faced due to the request that he:

investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

40. So it turned out to be: a sham. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the

last 36 months of each of only 8 accounts, even though the DeLanos had listed in their petition's Schedule F 18 credit card accounts on which they had piled up that staggering debt of \$98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

41. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!...insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
42. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner...but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
43. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee...any recorded information...", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were part of the same sham!
44. But not just any sham, rather one carried out in all confidence, for by now Trustee Reiber has worked with Judge Ninfo on well over 3,907 cases (§20 above). Presumably many are within the scope of the bankruptcy fraud scheme given that it is all but certain that *DeLano* is not the first case that they, had they always been conscientious officers, all of a sudden decided to deal with by coordinating their actions to intentionally disregard the law, the rules, and the facts for

the sake of the DeLanos, who in that case would have something so powerful on them as to cause them to violate the law. In any event, one violation is one too many. Actually, what they have on each other is knowledge of their long series of unlawful acts forming a pattern of wrongdoing. Now, nobody can turn against the other for fear that he or she will be treated in kind. Either they stick together or they fall one after the other.

45. Consequently, Trustee Reiber did not have to consider for a second that upon Dr. Cordero's motions of July 9 and August 14, 2004, Judge Ninfo would remove him from *DeLano* under §324(a). That would have entailed his automatic removal as trustee from all other cases under §324(b), and thereby his termination as trustee. Since that would and will not happen, the Trustee did not file even a scrap paper to state pro forma that he opposed the motions. Revealingly enough, he is not concerned either that District Judge David Larimer may remove him upon Dr. Cordero's motion of July 13, 2005. Hence he has not wasted time scribbling anything in opposition.
46. Not only he, but also Reporter Dianetti has not considered it necessary to waste any effort in the formality of opposing Dr. Cordero's motion of July 18 requesting that Judge Larimer designate another individual to prepare the transcript of her recording of the March 1 evidentiary hearing. Yet, all they needed to do was as cursory a gesture as Att. Werner's two conclusory sentences (E:332) to oppose Dr. Cordero's July 13 motion to stay the confirmation hearing...and a cover letter addressed directly to Judge Larimer to show him ingratiating deference (E:331).
47. Can you imagine either the Trustee or the Reporter reacting with such assured indifference to motions that can cost them their livelihood or Att. Werner skipping any legal argument and slipping in a mere courtesy note had this case been transferred to another court, such as that in Albany, NDNY, where they did not know the judge and could not tell on him? Of course not, they could lose the motions by default! But they have nothing to worry about, for Judge Larimer has not decided any of the four motions of Dr. Cordero pending before him, even one as far back as June 20 to link to this case *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano. (1stSupp.E:43; 1stSupp.¶33)
48. What a contrast with the celerity with which Judge Larimer reacted when the Bankruptcy Clerk, disregarding FRBkrP 8007, forwarded to him upon receipt on April 21 (E:333-34), Dr. Cordero's designation of items on appeal and a copy of his first letter of April 18 to Reporter Dianetti to make arrangements for the transcript. Though the record was legally incomplete, lacking the transcript and the appellee's designation of additional items and any issues on cross appeal, the following day, April 22, Judge Larimer issued a scheduling order requiring Dr. Cordero to file

his appellate brief 20 days hence (E:335), knowing full well that the date of the Reporter's completion of the transcript was nowhere in sight so that his order would effectively prevent Dr. Cordero from using it when writing his brief. (E:337-343; 1stSupp.§III). Could it not be in Judge Larimer's interest to decide any of those motions, thereby exposing not only this case and the sham investigation, but also the bankruptcy fraud scheme itself to scrutiny by circuit judges and justices?

B. The sham character of Trustee Reiber's pro forma request for documents and the DeLanos' token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages

49. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at \$98,500. However, they still owe on it \$77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of \$21,415 in the very same home that they bought 30 years ago! Yet, they earned \$291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding debtors, trustees, and judicial officers?
50. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶39 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion

to proceed, but he also barred any other proceeding unrelated to its consideration.

51. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Dierdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:283), he backed down from that limit.
52. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.
53. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production...and still they failed to produce them by the end of that period.
54. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:285-297) once more (¶40 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:284). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

| Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber | Exhibit page # | Amounts of the mortgages |
|--|----------------|--------------------------|
| 1) took out a mortgage for \$26,000 in 1975; | E:285 [D:342] | \$26,000 |
| 2) another for \$7,467 in 1977; | E:286 [D:343] | 7,467 |
| 3) still another for \$59,000 in 1988; as well as | E:289 [D:346] | 59,000 |
| 4) an overdraft from ONONDAGA Bank for \$59,000 and | E:298 [D:176] | 59,000 |
| 5) owed \$59,000 to M&T in 1988; | E:298 [D:176] | 59,000 |
| 6) another mortgage for \$29,800 in 1990, | E:291 [D:348] | 29,800 |
| 7) even another one for \$46,920 in 1993, and | E:292 [D:349] | 46,920 |
| 8) yet another for \$95,000 in 1999. | E:293 [D:350] | 95,000 |
| Total | | \$382,187.00 |

55. The whereabouts of that \$382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:284), accompanying those incomplete documents adds more unknowns:

It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of \$18, 746.69 to Mr. and Mrs. DeLano. Of this cash, \$11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

56. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed \$77,084.49 on their home, \$98,092.91 on credit cards, and \$10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the \$291,470 earned in 2001-03 that is nowhere to be seen...and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!

57. Although Dr. Cordero identified these incongruous elements (E:300-302) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:306)

58. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:307), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:308). When Att. Werner

belatedly served him (E:309), it became apparent why he had tried to withhold the documents (E:310-323) from him: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:324) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:327-330).

59. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the \$291,470 earned in the 2001-03 period, over \$670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16, 2005, Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! Yet she created nothing and simply produced work for hire.
60. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at that hearing nor made any reference to them in the scrap papers of his "Report". Do they fear that those documents will reveal conceal assets?

C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth

61. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that

the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, the Judge was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thus requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Reporter Dianetti (E:9-11; 1stSupp.§II).

62. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Therefore, common sense and good judgment required that the Trustee's investigation be reviewed as to its contents, method, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".
63. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. They confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of the DeLanos having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would provide incriminating testimony of participation in a bankruptcy fraud scheme.
64. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none" in order to induce the Bankruptcy Court to confirm the DeLanos' plan and to escape his own conflict of interests (§39 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Court as an institution even if Judge Ninfo knew that his statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos.
65. It also follows that insofar as Judge Ninfo knew or by carrying out his judicial functions with due diligence and impartiality would have known, that Trustee Reiber had conducted no

investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm their plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process. In so doing, the Judge and the Trustee have caused Dr. Cordero the loss of an enormous amount of effort, time, and money and inflicted on him tremendous emotional distress.

III. Request for Relief

66. Therefore, Dr. Cordero respectfully requests that the Court of Appeals and the Judicial Council:
- a) do not reappoint Judge Ninfo to a new term of office as bankruptcy judge;
 - b) open an investigation into the participation of Judge Ninfo in a bankruptcy fraud scheme and determine how high the scheme reaches and whether it involves official corruption;
 - c) investigate why Trustee Reiber did not investigate the financial affairs of the DeLanos and whether his statement and Judge Ninfo's that he had conducted such investigation and it had cleared the DeLanos of fraud constituted perjury, subornation of perjury, and fraud on the court;
 - d) determine whether the DeLanos' petition was filed in bad faith and the plan was confirmed by means forbidden by law, in violation of 11 U.S.C. §1325(a)(3), and worked fraud on the court;
 - e) determine whether Judge Ninfo influenced Reporter Dianetti to refuse to certify the reliability of the transcript of the *DeLano* evidentiary hearing and designate another reporter to prepare it;
 - f) investigate whether the pattern of non-coincidental, intentional, and coordinated acts of bias and disregard for the law, the rules, and the facts engaged in by Judge Ninfo and others in *DeLano* and *Pfuntner* has become the modus operandi of the Bankruptcy and District Courts, WDNY; and
 - g) refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester (where the DoJ office is literally the next-door neighbor of the Office of the U.S. Trustee) or Buffalo participate in any way in such investigation.

Dated: September 5, 2005
59 Crescent Street
Brooklyn, NY 11208

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

Table of Exhibits
 in support of
 the 2nd supplement to comments
 against the reappointment of
 Bankruptcy Judge John C. Ninfo, II, WBNY
 submitted to
 the Second Circuit Court of Appeals and Judicial Council
 on September 5, 2005
 by
Dr. Richard Cordero

I. Comments

E:#=exhibits page #

- a. Dr. Cordero's letter of **March 17, 2005, to Circuit Executive** Karen Greve Milton in response to the invitation of the Court of Appeals, 2nd Cir., to members of the bar and the public to **comment** on the **reappointment** of WBNY Bankruptcy Judge John C. **Ninfo, II**, to a new term of office E:12 [C:982]

- b. **First supplement of August 3, 2005, to the comments** against the reappointment of WBNY Bankruptcy Judge John C. Ninfo, II, submitted to the Court of Appeals for the Second Circuit and the Judicial Council of the Second Circuit..... previously submitted 1-20 [C:1001]
ToE 21-23

II. Exhibits¹

- 1.h. Dr. Cordero's letter of **June 25, 2005, to Reporter Dianetti** requesting that she state whether she merely copied the **numbers of paper packs and folds** that she gave him at the end of the March 1 evidentiary hearing or counted those that she will actually transcribe; **and** that she agree to **certify** that her **transcript** will be complete, accurate, and untampered with.....9 [Add²:867]

- i. Rep. **Dianetti's** letter of **July 1, 2005, to Dr. Cordero** requiring that he **pre-pay \$650** for the transcript and rejecting the balance of his June 25 letter11 [Add:869]

¹Pages E:13-257 have been submitted to Cir. Executive K.G. Milton, but are available on demand.

²Add=Addendum to D:=Designated items, i.e. documents, in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*, 05cv6190L, WDNY; see those items in the PDF files in the D Add Pst folder on the accompanying CD.

Mr. DeLano is a third-party defendant who was brought into *Pfuntner* by Dr. Cordero. Subsequently, he filed for bankruptcy and included Dr. Cordero among his creditors because of the latter's claim against Mr. DeLano arising from *Pfuntner*.]

| | | |
|--|-----|-----------|
| 24. Dr. Cordero's letter of March 17, 2005, to Circuit Executive Milton in response to the invitation of the Court of Appeals for the Second Circuit to members of the bar and the public to comment on the reappointment of Bankruptcy Judge John C. Ninfo, II , to a new term of office | 12 | [C:982] |
| 25. Useful Addresses for the Investigation of <i>In re DeLano</i> , no. 04-20280, WBNY, and <i>Pfuntner v. Trustee Gordon et al.</i> , no. 02-2230, WBNY | 259 | [C:1051] |
| 26. Chapter 13 Trustee George Reiber's undated "Findings of Fact and Summary of 341 Hearing" together with | 271 | [Add:937] |
| a) Undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons:" | 273 | [Add:939] |
| 27. Order of Bankruptcy Judge Ninfo of August 8, 2005 , instructing M&T Bank to deduct \$293.08 biweekly from his employee, Debtor David DeLano , and pay it to Trustee Reiber | 274 | [Add:940] |
| 28. Judge Ninfo's order of August 9, 2005, confirming the Chapter 13 debt repayment plan of David and Mary Ann DeLano after considering their testimony and Trustee Reiber's Report..... | 275 | [Add:941] |
| 29. Application of July 7, 2005 , by Christopher K. Werner, Esq., attorney for the DeLanos , for \$16,654 in legal fees for services rendered in <i>In re DeLano</i> | 278 | [Add:871] |
| a) Att. Werner's itemized invoice of June 23, 2005 , for legal services rendered to the DeLanos and consisting almost exclusively of maneuvers to avoid production of the documents requested by Dr. Cordero, Creditor [D:63, 87§VI, 112, 124, 147, 159, 161, 199§VI, etc., 287, etc.] | 279 | [Add:872] |
| 30. Trustee Reiber's letter of December 30, 2004 , to Dr. Cordero confirming that he will conduct a Section 341 Hearing of the DeLanos on February 1, 2005, at his office on South Winton Court, Rochester | 283 | [D:333] |
| 31. Letter of Att. Werner of February 16, 2005, to Trustee Reiber accompanying the following incomplete documents described as "relevant portion of Mr. and Mrs. DeLano's Abstract of Title " in response to "your request at the adjourned 341 Hearing"; these documents begin thus: | 284 | [D:341] |
| a) "4. Church of the Holy Spirit of Penfield New York"..... | 285 | [D:342] |
| b) "Public Abstract Corporation", concerning an interest in premises from October 5, 1965, recorded in Liber 3679, of Deeds, at page 489, of the Records in the office of the Clerk of the County of Monroe, NY | 287 | [D:344] |
| c) "#12,802 Abstract of Title to Part Lot #45 Township 13, Range 4, East Side Shoecraft Road, Town of Penfield" | 288 | [D:345] |
| d) "33516 Abstract to Lot #9 Roman Crescent Subdivision" | 290 | [D:347] |
| e) \$95,000 "Mortgage Closing Statement April 23, 1999, 1262 Shoecraft Road, Town of Penfield" | 294 | [D:351] |

| | | |
|---|-----|-----------|
| f) “U.S. Department of Housing and Urban Development Optional for Transactions without Sellers” | 296 | [D:353] |
| 32. Excerpt from Mrs. Mary DeLano’s Equifax credit bureau report of May 8, 2004 , produced with missing pages..... | 298 | [D:173] |
| 33. Dr. Cordero’s letter of February 22, 2005, to Trustee Reiber analyzing the documents produced by Att. Werner as incomplete, incapable of explaining the flow of mortgages, silent on equity, and at odds with information previously provided; and requesting that the Trustee recuse himself or hire professionals to conduct a title search and appraisal, and follow the money earned by the DeLanos | 299 | [D:461] |
| 34. Trustee Reiber’s letter of February 24, 2005, to Att. Werner requesting information about the mortgage to Columbia Bank that later on ended with the government [HUD] but that is not recorded as having been discharged | 306 | [D:469] |
| 35. Att. Werner’s letter of March 10, 2005, to Trustee Reiber in response to the latter’s February 24 letter concerning records of discharge of DeLanos’ mortgages | 307 | [D:472] |
| 36. Dr. Cordero’s letter of March 19, 2005, to Att. Werner stating that no enclosures were sent to Dr. Cordero with the copy of Att. Werner’s March 10 letter to Trustee Reiber and requesting that he send a list of everything that Att. Werner sent to the Trustee as well as a copy | 308 | [D:473] |
| 37. Att. Werner’s letter of March 24, 2005, to Dr. Cordero with 14 “copies of the enclosures to our letter to Trustee Reiber of March 10, 2005, which were apparently omitted from your copy of the correspondence” | 309 | [D:477] |
| a) Printouts of pages of February 25, 2005, of electronic records indexing from the website of the Monroe County Clerk’s office | 310 | [D:478] |
| 38. Dr. Cordero’s letter of March 29, 2005, to Trustee Reiber commenting on the uselessness of Att. Werner’s printed screenshots ; asking whether the Trustee’s lack of protest means that the §341 examination of the DeLanos on February 1, 2005, was a charade that he conducted with no intention to obtain any financial information from the DeLanos; and requesting that he either take certain steps to obtain that information or recuse himself and let another trustee be appointed who can conduct an efficient investigation of the DeLanos [never replied to]..... | 324 | [D:492] |
| 39. Dr. Cordero's letter of April 19, 2005, to Trustee Martini requesting that she remove Trustee Reiber and let him know what she intends to do [never replied to]..... | 327 | [Add:682] |
| 40. Dr. Cordero's letter of April 21, 2005, to Trustee Schmitt requesting a 4th time a statement of her position on Trustee Reiber’s failure to investigate the DeLanos [never replied to]..... | 328 | [Add:685] |

| | | |
|--|-----|-----------|
| 41. Dr. Cordero's letter of April 21, 2005, to Trustee George Reiber requesting a response to his letter of March 29 concerning the uselessness of the printouts of screenshots from the Monroe County Clerk's Office that were to have provided information about the mortgages of the DeLanos; and sending him a copy of the Designation of Items in the Record and Statement of Issues on Appeal to the District Court from Judge Ninfo's disallowance at the evidentiary hearing on March 1, 2005, of Dr. Cordero's claim against Mr. DeLano [never replied to]..... | 329 | [Add:683] |
| 42. Att. Werner's letter of July 19, 2005, on behalf of the DeLanos to Judge Larimer accompanying his:..... | 331 | [Add:935] |
| a) "Statement in opposition to Cordero motion [sic] to stay confirmation and other relief"..... | 332 | [Add:936] |
| 43. Bankruptcy Court's notice of April 11, 2005, to Dr. Cordero requesting that pursuant to FRBkrP 8006 he perfect the record on appeal by submitting by April 21 his designation of items in the <i>DeLano</i> record..... | 333 | [Add:679] |
| 44. Letter of Karen Tacy, <i>DeLano</i> Case Administrator at the Bankruptcy Court, of April 22, 2005, informing Dr. Cordero of the transmittal , upon the Court's receipt of his Designation of Items and Statement of Issues on Appeal, of the record to the District Court, WDNY | 334 | [Add:686] |
| 45. District Judge David G. Larimer's order of April 22, 2005, scheduling Dr. Cordero's appellate brief for submission by 20 days hence | 335 | [Add:692] |
| 46. Dr. Cordero's Objection of May 2, 2005, to Judge Larimer's scheduling order , which was issued with disregard for FRBkrP 8007(b) a day after Dr. Cordero's Designation of Items was filed in Bankruptcy Court, so that the record could not be complete given that the period for the DeLanos to file their Designation of Additional Items had just begun to run and the transcript had not even been started [and was not finished and filed until November 4, 2005!] | 337 | [Add:695] |
| 47. Judge Larimer's order of May 3, 2005, scheduling Dr. Cordero to file his appellate brief by June 13, 2005 | 339 | [Add:831] |
| 48. Dr. Cordero's motion of May 16, 2005, for compliance with FRBkrP 8007 in the scheduling of his appellate brief and the urgent rescission of the scheduling order because the transcript was not yet in, the record was still incomplete, so that its transmittal from the Bankruptcy Court to Judge Larimer was premature, whereby the Judge had no jurisdiction over the case and could not issue any scheduling order | 340 | [Add:836] |
| 49. Judge Larimer's order of May 17, 2005, rescheduling Dr. Cordero to file his brief within 20 days after the filing of the transcript , as if he had requested only additional time rather than compliance with the FRBkrP..... | 343 | [Add:839] |

USEFUL ADDRESSES FOR THE INVESTIGATION
of *In re David and Mary Ann DeLano*, no. 04-20280, WBNY
and *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY

I. *In re DeLano*

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

Christopher K. Werner, Esq.
Attorney for the DeLanos
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528

David G. DeLano and Mary Ann DeLano
1262 Shoecraft Road
Webster, NY 14580

Trustee George M. Reiber
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

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

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

II. *Pfuntner v. Gordon et al.*

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

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

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

Michael J. Beyma, Esq.
Attorney for M&T Bank and David DeLano
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Manufacturers & Traders Trust Bank (cf. E:274)
(M&T Bank) [Add:940]
255 East Avenue
Rochester, NY
tel. (800) 724-8472

Karl S. Essler, Esq.
Attorney for David Dworkin and
Jefferson Henrietta Associates
Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585) 641-8000; fax (585) 641-8080

TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

1. Debtor(s) **DAVID G DELANO** Bk.# 04-20280
MARY ANN DELANO

2. Attorney **CHRISTOPHER K WERNER, ESQ** Filing Fees: \$ 185 Paid
 Plan:

A. Summary: \$ 1940 per month by wage order
 \$ 14145* annually **R**

Repayment to secured creditors \$ 6900
 Repayment to priority creditors \$ 16,655
 Repayment to unsecured creditors \$ 4646 ~5% **specific estimated**

Classification of unsecured creditors None
 Class _____ % \$ _____
 Class _____ % \$ _____

Rejection of executory contracts None

Other: * Payments decrease to \$635/month in July, 2004; then increase to \$1940/month in August, 2006. Plus proceeds of accounts receivable.

B. Feasibility: **why then returned loan paid**
 Total Indebtedness \$ 185462 including mortgages
 Monthly Income (net) \$ 4886.50 ~~2946.50~~ (gross) \$ 7501.
 Less Estimated Expenses \$ 2946.50
 Excess for Wage Plan \$ 1940.
 Duration of Plan 3 years

92,920 TOTAL

why End of Sec a Unemployment

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:
 Interest rate unless otherwise stated: 8 1/4 %

| Name of Creditor | Amount of Security | Security Claimed | Perfectured | 341 Valuation | Disputed |
|------------------|--------------------|------------------|-------------|---------------|----------|
| Capital One Auto | \$ 10,285 | 198 Chevy Blazer | Yes | \$ 6900 | STIP |

3. Best interest of creditors test:

A. All assets were listed.

B. Total market value of assets: \$ 256,562

Less valid liens \$ 83734
Less exempt property \$ 171732
Available for judgment liens \$ 2666
Less priority claims \$ 16,655
(Support \$)

C. Total available for unsecured creditors in liquidation \$ 1096 0

D. Amount to be distributed to unsecured creditors \$ 4646

E. Nature of major non-exempt assets:

4. Debtor(s) states that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) states that to the best of his/her/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income - 1) IRA available; 2) loan payment available; 3) pension loan ends 10/35.

8. Debtor requests no wage order because, (+) 2 concerns (1)

9. Other comments: 1) Best Interest \$ 1255, Attorney fees (OK) AFIS BUT COURT RECALCULATED COMMITMENT CONFIRM ORDER

10. Converted from Chapter 7 because (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: \$ 1350

Additional fees Anticipated? Yes \$ 16,655

Signature of GEORGE M. REIBER TRUSTEE

IN RE:

DeSousa David - MaryAnn

BK. #

04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- Lost employment *(Wife) Age 59*
- Hours or pay reduced *(Husband 62) To delay retirement to complete plan*
- Matrimonial
- Garnishments
- Medical problems
- To receive a Chapter 13 discharge
- Filed a previous bankruptcy proceeding within six (6) years
- Owe priority (example: tax) claims
- Reconstruct credit rating
- To pay back creditors as much as possible *w/ 3 yrs prior to retirement*
- To stop creditor harassment
- To stop foreclosure or other legal proceedings
- To cram down secured liens
- To avoid contracts
- Overextension of credit
- Decline in income from business, commissions or business failure
- Overspending
- Student loans
- Children's college expenses *pre-1990 when wages reduced \$30,000 → 19,000*
- Avoid Chapter 7 substantial abuse charge
- Protect debtor's property
- Others: _____

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
IN RE:**

**ORDER TO EMPLOYER
TO PAY TRUSTEE**

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

BK# 04-20280

**EMPLOYEE: DAVID G. DELANO
S.S. #xxx-xx-3894**

Upon representation of the Trustee or other interested party, the Court finds that:

The above-named debtor has pending in this Court a proceeding for the adjustment of debts by an individual with regular income under Chapter 13 of the Bankruptcy Code (Title 11 U.S.C.) and pursuant to the provisions of said statute and the debtor's plan the debtor has submitted all future earnings and wages to the exclusive jurisdiction of this Court for the execution of debtor's plan; and

That under the provisions of 11 U.S.C. §1306 this Court has exclusive jurisdiction of the earnings from service performed by the debtor during the pendency of this case and may require the employer of the debtor, upon the order of this Court, to pay over such portion of the wages or earnings of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that until further order of this Court the employer of said debtor:

M&T BANK

deduct from the earnings of said debtor the sum of **\$293.08 bi-weekly** to begin on the next payday following the receipt of this order and deduct a similar amount for each pay period there-after, including any period for which the debtor receives periodic or lump sum payment for or on account of vacation, termination, or other benefits arising out of present or past employment of the debtor, and to forthwith remit the sum so deducted to: **GEORGE M. REIBER, TRUSTEE, Chapter 13 Trustee, PO Box 490, Memphis, TN 38101-0490; (585)427-7225; (PLEASE INCLUDE THE DEBTOR'S FULL NAME AND CASE NUMBER ON THE CHECK REMITTED)** and

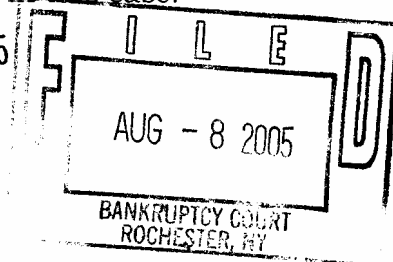
IT IS FURTHER ORDERED, that said employer notify said Trustee if the employment of said debtor be terminated and the reason for such termination; and

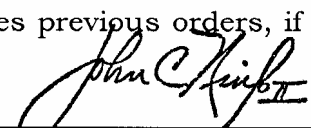
IT IS FURTHER ORDERED, that all earnings and wages of the debtor, except the amount required to be withheld by the provisions of any laws of the United States or laws of any State or political subdivision, or by an insurance, pension, pension loans, current maintenance or support payments or by the order of this Court, be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures; and

IT IS FURTHER ORDERED, that no deductions for or on account of any garnishment, wage assignment, credit union or other purpose not specifically authorized by the Court be made from the earnings of said debtor; and

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the debtor or employer in this case.

Dated: AUG - 8 2005




**HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE**

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

IN RE:

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

**ORDER CONFIRMING
CHAPTER 13**

BK #04-20280

**S.S. #xxx-xx-3894
#xxx-xx-0517**

A Petition was filed by Debtor(s) under Chapter 13 of the Bankruptcy Code, and a meeting of creditors conducted upon due notice pursuant to 11 U.S.C. §341 at which the Chapter 13 Trustee, Debtor(s), and attorney for Debtor(s) were present and creditors or representatives of creditors were afforded an opportunity to be heard.

A hearing on confirmation of the Plan has been held upon due notice pursuant to 11 U.S.C. §1324. The Court has heard and determined all objections to confirmation and to Debtor's Schedules and has considered the Plan as proposed or modified, the Trustee's Report and the testimony of Debtor.

THE COURT THEREFORE FINDS:

- (1) The Plan complies with the provisions of Chapter 13, Title 11, United States Code, and other applicable provisions of Title 11;
- (2) The contents of the plan comply with 11 U.S.C. Section 1322 where applicable;
- (3) The Plan represents the Debtor's reasonable effort and has been proposed in good faith and not by any means forbidden by law;
- (4) The Plan complies with the standards required by 11 U.S.C. Section 1325 for confirmation; and
- (5) Any objections to the plan have been disposed of, and there is presently pending no objection to confirmation of the instant Plan or Debtor's Schedules.

It is accordingly, ORDERED that

- (1) Debtor's Plan under Chapter 13 of the Bankruptcy Code, as proposed or modified, is confirmed.
- (2) Debtor is stayed and enjoined from incurring any new debts in excess of \$500.00 except such debts as may be necessary for emergency medical or hospital care without the prior approval of the Trustee or the Court unless such prior approval was impractical and therefore cannot be obtained.
- (3) Except as provided by specific order of this Court, all entities are and continue to be subject to the provisions of 11 U.S.C. §362 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against Debtor, as the same is defined by §362, and subject to the provisions of 11 U.S.C. §1301 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against a co-debtor, as the same is defined by §1301.

The provisions of the Plan bind the Debtor(s) and each creditor, whether or not such creditor has objected to, has accepted, or has rejected the plan.

The Debtor(s) shall forthwith and until further order of the Court pay to the Trustee in good funds the sum of **\$1940.00 per month by wage order. Payments decrease to \$635.00 monthly in July, 2004; then increase to \$960.00 monthly in August, 2006 when pension loan ends; plus proceeds of mother's annuity.**

(4) A fee of **\$18,005.00** is allowed the attorney for the debtor(s) herein for all services rendered in connection with this Plan, except as otherwise ordered and allowed by the Court.

(6) All of the Debtor(s) wages and property, of whatever nature and kind and wherever located, shall remain under the exclusive jurisdiction of this Court; and title to all of the debtor's property, of whatever nature and kind and wherever located is hereby vested in the debtor during pendency of these Chapter 13 proceedings pursuant to the provisions of 11 U.S.C. §1327.

(7) From the Debtor(s) funds the Trustee is directed to make payments in the following order:

- a. Filing fee to the Clerk of the Court, U.S. Bankruptcy Court (if unpaid);
- b. Retain at all times sufficient funds to pay all other accrued administrative expenses;
- c. The unpaid balance of the above described fee to the debtor's attorney;
- d. Priority payments in full as allowed by the Court, except where priority claims are deferred until payment of the secured claims;
- e. Secured claims shall retain their liens as hereinafter set forth:

| <u>CREDITOR</u> | <u>SECURITY</u> <u>VALUE</u> | <u>SECURITY</u> | <u>RATE</u> |
|-------------------------|---------------------------------|------------------|--------------|
| Capital One Auto | \$6,900.00 | '98 Chevy | 8.25% |

Until the secured claim is paid in full, the secured creditor shall retain its lien. After the secured claim has been paid in full, the Debtor(s) will be entitled to an immediate lien release. Any timely and properly filed claim which alleges a security interest and is filed subsequent to the Confirmation Hearing shall be allowed as unsecured only for purposes of payment under the plan, except as may otherwise be agreed to by the Debtor(s) and the Court.

f. The balance of funds not retained for administrative expenses or used for payment of secured or priority claims shall be accumulated and distributed to unsecured creditors, as follows.

g. Classified unsecured claims as hereinafter set forth:

| <u>CREDITOR</u> | <u>AMOUNT</u> | <u>CLASSIFICATION</u> | <u>DIVIDEND</u> |
|-----------------|---------------|-----------------------|-----------------|
| NONE | | | |

h . General unsecured creditors shall be paid a **pro rata share** of their claims as are finally determined by the Court; notwithstanding the above, the plan will not be deemed completed until the debtor(s) pay(s) three years worth of plan payments, unless allowed unsecured claims are paid in full. No claims shall be allowed unless the creditor shall file a proof of claim within 90 days of the first date set for the First Meeting of Creditors; payment to unsecured creditors as allowed by the Court will be made in monthly installments of not less than \$15.00. **Plan to run 3 years.**

i. Any temporary reduction in, or suspension of installment payments under this plan, for a period not to exceed ten (10) weeks may be granted upon application of the debtor, without notice to creditors, as the Court or Trustee deems proper.

(8) The debtor has rejected as burdensome the following executory contract(s) of the debtor:

NONE

Any claim timely and properly filed by a creditor arising from rejection of such executory contract(s) shall be allowed as if such claim had arisen before the date of the filing of the petition, subject to the right of the debtor or the Trustee to object to the amount of the claim.

(9) The following secured creditors will be paid by the debtor directly. Said secured claims are either being paid pursuant to their original contract or pursuant to new agreements reached between the parties. To the extent that any such new agreements exist, the parties are hereby ordered to execute any and all documents necessary to reflect the new notes and obligations which exist between the parties. In the event of a dismissal of the plan, the secured creditors may reinstate the terms of the original obligations, subject to the further order of this court. All parties will promptly execute any and all documents necessary to be filed. To the extent that the new arrangements reflects an extension of the obligations secured by valid liens filed prior to the filing of the petition, said liens will continue in existence as of the date of the filing of the lien, and not as of the date of the new arrangement between the parties, unless this court orders otherwise or the parties so stipulate otherwise.

| <u>CREDITOR</u> | <u>SECURED CLAIM</u> | <u>SECURITY</u> | <u>BASIC TERMS</u> |
|-------------------------|----------------------|-----------------|--------------------------|
| Genesee Regional | \$76,300.71 | Mortgage | Original Contract |

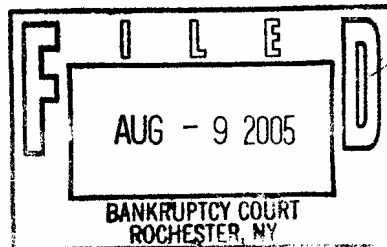
(10) Upon conversion of this case to a case under another chapter, the failure of the debtor to honor bad funds negotiated by the Chapter 13 Trustee shall be deemed a willful failure to obey an order of this Court.

Dated:

8/9/05

Rochester, New York

HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE



United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

IN RE: DAVID G DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

SSN #1: XXX-XX-3894
SSN #2: XXX-XX-0517

MOTION TO ALLOW CLAIMS

Pursuant to 11 U.S.C. 704(5), the trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

| Claim # | Name and Address of Creditor | Amount | Forgive % | Classification |
|---------|---|-----------|-------------------------|------------------------|
| 001 | SHERMAN ACQUISITIONS LP / D/B/A/RESURGENT CAPITAL SERVI PO BOX 10587 / GREENVILLE, SC 29603 | 1,991.00 | 87.3900% | Unsecured |
| 002 | BANK OF AMERICA / P O BOX 970 NORFOLK, VA 23501 | 3,335.08 | 87.3900% | Unsecured |
| 003 | B-FIRST, LLC / % WEINSTEIN TREIGER & RILEY, P.S. 2101 FOURTH AVE., STE. 900 / SEATTLE, WA 98121 | 10,203.24 | 87.3900% | Unsecured |
| 004 | B-FIRST, LLC / % WEINSTEIN TREIGER & RILEY, P.S. 2101 FOURTH AVE., STE. 900 / SEATTLE, WA 98121 | 5,317.97 | 87.3900% | Unsecured |
| 005 | BANK ONE / CARD MEMBER SERVICE P O BOX 15153 / WILMINGTON, DE 19886-5153 | None | 87.3900% | Not Filed .00 |
| 006 | BANK ONE/FIRST USA BANK / PO BOX 517 RECOVERY DEPT / FREDERICK, MD 21705-0517 | None | 87.3900% | Not Filed .00 |
| 007 | CAPITAL ONE / P O BOX 85147 RICHMOND, VA 23285 | None | 87.3900% | Not Filed .00 |
| 008 | CAPITAL ONE / P O BOX 85147 RICHMOND, VA 23285 | None | 87.3900% | Not Filed .00 |
| 009 | CAPITAL ONE AUTO FINANCE / P O BOX 260848 PLANO, TX 75026 | 6,900.00 | 8.2500% From 07/25/2005 | Secured |
| 009 | CAPITAL ONE AUTO FINANCE / P O BOX 260848 PLANO, TX 75026 | 3,853.28 | 87.3900% | Unsecured |
| 010 | CAPITAL ONE / C/O TSYS DEBT MANAGEMENT P.O. BOX 5155 / NORCROSS, GA 30091 | None | 87.3900% | Not Filed .00 |
| 011 | ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480 | 11,616.06 | 87.3900% | Unsecured |
| 012 | CHASE MANHATTAN BANK USA / JP MORGAN CHASE 1820 E SKY HARBOR CIRCLE SOUTH / PHOENIX, AZ 85034-9701 | None | 87.3900% | Not Filed .00 |
| 013 | CITIBANK/CHOICE / P O BOX 6305 EXCEPTION PYMT PROCESSING / THE LAKES, NV 88901-6305 | None | 87.3900% | Not Filed .00 |
| 014 | ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480 | 2,227.57 | 87.3900% | Unsecured |
| 015 | SHERMAN ACQUISITIONS LP / D/B/A/RESURGENT CAPITAL SERVI PO BOX 10587 / GREENVILLE, SC 29603 | 4,170.45 | 87.3900% | Unsecured |
| 016 | DISCOVER FINANCIAL SERVICES / P.O. BOX 8003 HILLIARD, OH 43026 | 5,755.97 | 87.3900% | Unsecured |
| 017 | DISCOVER FINANCIAL SERVICES / P.O. BOX 8003 HILLIARD, OH 43026 | None | 87.3900% | Not Filed .00 |
| 018 | DR RICHARD CORDERO / 59 CRESCENT STREET BROOKLYN, NY 11208-1515 | None | 87.3900% | Unsecured |
| 019 | ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480 | 2,137.64 | 87.3900% | Unsecured |
| 020 | GENESEE REGIONAL BANK / F/K/A LYNDON GUARANTY BANK 3380 MONROE AVE. / ROCHESTER, NY 14618 | | | DirectPay 76,300.71 |
| 021 | HSBC BANK USA / P.O. BOX 4215 BUFFALO, NY 14273-4215 | 9,447.80 | 87.3900% | Unsecured |
| 022 | ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480 | 6,812.31 | 87.3900% | Unsecured |

United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

IN RE: DAVID G DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

SSN #1: XXX-XX-3894
SSN #2: XXX-XX-0517

MOTION TO ALLOW CLAIMS

Pursuant to 11 U.S.C. 704(5), the trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

| Claim # | Name and Address of Creditor | Amount | Forgive % | Classification |
|---------|---|------------|-----------|------------------|
| 023 | ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480 | 19,272.56 | 87.3900% | Unsecured |
| 024 | ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480 | 3,931.23 | 87.3900% | Unsecured |
| 025 | CITI CARDS / PO BOX 20363 ATTN: BK DEPT / KANSAS CITY, MO 64195-0363 | 3,970.30 | 87.3900% | Unsecured |
| 026 | CITI CARDS / PO BOX 20363 ATTN: BK DEPT / KANSAS CITY, MO 64195-0363 | None | 87.3900% | Not Filed .00 |
| 027 | WELLS FARGO FINANCIAL NY INC / 4137 121ST STREET URBANDALE, IA 50323 | 980.22 | 87.3900% | Unsecured |
| 028 | THE RAMSEY LAW FIRM / P.O. BOX 201347 ARLINGTON, TX 76006 | None | 87.3900% | Unsecured |
| 029 | GULLACE & WELD / 500 FIRST FEDERAL PLAZA ROCHESTER, NY 14614 | None | 87.3900% | Unsecured |
| 030 | BECKET AND LEE LLP / P.O. BOX 35480 NEWARK, NJ 07193 | None | 87.3900% | Unsecured |
| | Total | 101,922.68 | | |

CHRISTOPHER K WERNER, ESQ
BOYLAN, BROWN, ET AL
2400 CHASE SQUARE
ROCHESTER, NY 14604-0000

9,948.00

Debtor's Attorney

Your Trustee has examined the claims and recommends to the Court that they be deemed allowed for the amounts claimed, payable in the manner classified subject to the provisions of the plan and other Court orders.

WHEREFORE, the Trustee prays that the foregoing claims be allowed as set forth above.

/s/ George M. Reiber

George M. Reiber
Standing Chapter 13 Trustee

NOTICE

At Rochester, NY

PLEASE TAKE NOTICE that the above claims are allowed as recommended by the Trustee and payable as provided by the debtor's plan. The debtor and debtor's attorney of record are hereby advised that written application for modification of this notice must be made within 30 days from the date of the certificate of mailing of this notice. The motion to allow claims is deemed approved without a separate order of this Court, absent a written application for modification.

CERTIFICATE OF SERVICE

CLERK /s/ Paul R. Warren

The undersigned hereby certifies that a copy of the Notice was sent electronically or by ordinary US Mail, postage prepaid on _____ to the debtor and attorney for the debtor.

/s/

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

JOHN M. WALKER, JR.
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

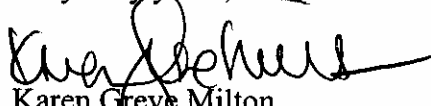
September 16, 2005

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

Dear Dr. Cordero:

I am responding to your communication of September 6, 2005 regarding your second supplement to comments against the reappointment of Bankruptcy Judge John Ninfo. As you were advised in my previous letter of August 5, 2005, members of the bar and the public were invited to submit comments for consideration by the Court of Appeals concerning this reappointment. The Judges of the Court of Appeals considered all submissions which were filed timely within the public comment period. However, that period expired on March 30, 2005. Henceforth, we will no longer accept your comments regarding this matter; we will no longer keep them on file; we will simply discard them.

Very truly yours,


Karen Greve Milton
Circuit Executive

KGM/ek