

Proposed Subpoena

1nov10

[Text identifying key information and evidence and thus enabling authorities and other professionals to assess the underlying complaint and pinpoint its investigation;
http://Judicial-Discipline-Reform.org/DANY/9DrRCordero-NYCDACVance_11nov10.pdf
http://Judicial-Discipline-Reform.org/DANY/10DrRCordero_subpoena_1nov10.pdf]

Case no.

New York County District Attorney's Office

Cyrus R. Vance, Jr.
District Attorney
1 Hogan Place
NY, NY 10013

Subpoena for Information and Evidence

1. Upon consideration of a complaint filed with the New York County District Attorney's Office, the District Attorney exercises his power to investigate or act upon the complained-about conduct under applicable laws and rules, including, but not limited to, the Rules of Professional Conduct¹ (Rules or Rule #), the NYS Public Officers Law, and issues this Subpoena to demand the information and evidence as set forth below.

Table of Contents

| | |
|--------------------------------------------------------------------------------------------------------------------------|----|
| A. Duty To Comply With, and Addressees of, The Subpoena..... | 2 |
| B. Subject Matter of The Subpoena..... | 6 |
| C. Instructions For Producing Information and Evidence..... | 7 |
| D. Information and Evidence In General, Production, and Certification | 11 |
| E. Particular Information and Evidence To Be Produced | 13 |
| 1. Financial affairs | 13 |
| 2. Minutes, transcripts, and recordings | 15 |
| 3. Court orders | 17 |
| 4. Documents entered on dockets and publicly filed | 18 |
| 5. Monitoring of, or interference with, communications through email accounts, websites, or electronic equipment..... | 20 |

¹ 22 NYCRR 1200; <http://www.courts.state.ny.us/rules/jointappellate/index.shtml>

A. Duty To Comply With, and Addressees of, The Subpoena

2. A person named below and any other person who possesses information or evidence concerning the subject matter of this Subpoena or must deal with it is referred to herein as a concerned person.
3. The District Attorney demands that a concerned person respond to this Subpoena, as is his or her duty to do pursuant to law, including, but not limited to, 22 NYCRR 1022.19(d)(1)(iv) and Rule 8, which provides thus: [emphasis added]

RULE 8.3: Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer **shall report** such knowledge to a tribunal or **other authority empowered to investigate or act upon such violation**.
- (b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to **respond to a lawful demand for information** from a tribunal or other authority empowered to investigate or act upon such conduct.

RULE 8.4: Misconduct

A lawyer or law firm shall not:

- (a) violate or attempt to violate the Rules of Professional Conduct, **knowingly assist** or induce another to do so, or do so **through the acts of another**;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (f) **knowingly assist a judge** or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- [(g) on discrimination]
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

4. Attorneys included among the concerned persons are the following ^{endnote 1}

1) Tracy Hope Davis
(incumbent) 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
<http://www.justice.gov/ust/r02/index.htm>

- 2) Diana G. Adams, Esq.
- 3) Deirdre A. Martini, Esq.
- 4) Carolyn S. Schwartz, Esq.

Former U.S. Trustees for Region

- 5) Kathleen Dunivin Schmitt, Esq.
Assistant United States Trustee
Office of the United States Trustee
100 State Street, Room 609
Rochester, NY 14614
tel. (585)263-5812, fax (585)263-5862
<http://www.justice.gov/ust/r02/rochester.htm>
- 6) Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
1039 Monroe Avenue
Rochester, NY 14620
tel. (585)244-1070; fax (585)244-1085
kengor@rochester.rr.com
<http://www.gordonandschaal.com/aboutus.html>
- 7) George Max Reiber, Esq.
Chapter 13 Trustee; and
- 8) James W. Weidman, Esq.
Attorney for Trustee George Reiber
Winton Court
3136 Winton Road S., Suite 206
Rochester, NY 14623-2928
tel. (585)427-7225; fax (585)427-7804
trustee13@roch13.com
- 9) William E. Brueckner, Esq.
Attorney for Trustee Kenneth Gordon in *In re Premier Van Lines, Inc.*, 01-20692, WBNY;
at the time at:
Ernstrom & Dreste, LLP
2000 Winton Road South
Building One, Suite 300
Rochester, NY 14618-3922;
now at:
Underberg & Kessler
300 Bausch & Lomb Place
Rochester, NY 14604
tel. (585)258-2892, fax (585)258-2821
wbrueckner@underbergkessler.com
<http://www.underbergkessler.com/Attorneys/Detail/?ID=78>
- 10) Michael J. Beyma, Esq.

- Underberg & Kessler, LLP
300 Bausch & Lomb Place
Rochester, NY 14604
tel. (585)258-2890; fax (585)258-2821;
mbeyma@underbergkessler.com, &
assistant breed@underbergkessler.com
<http://www.underbergkessler.com/Attorneys/Detail/?ID=30>
- 11) Karl S. Essler, Esq.
Attorney for David Dworking and
Jefferson Henrietta Associates
Principal, Fix Spindelman Brovitz & Goldman, P.C.
295 Woodcliff Drive, Suite 200
Fairport, NY 14450
tel. (585)641-8000, ext. 242; fax (585)641-2702;
kessler@fixspin.com; <http://fixspin.com/>
<http://fixspin.com/attorneys/karl-s-essler/>
 - 12) David D. MacKnight, Esq.
Attorney for James Pfuntner
Lacy, Katzen, Ryen & Mittleman, LLP
The Granite Building, 2nd Floor
130 East Main Street
Rochester, NY 14604-1686
tel. (585)324-5724; fax (585)269-3047
dmacknight@lacykatzen.com
<http://lacykatzen.com/bio-dmacknight.aspx>
 - 13) Raymond C. Stilwell, Esq.
Attorney for David Palmer and Premier
Adair Law Firm, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585)419-9000, fax (585)248-4961
[http://www.adairlaw.com;](http://www.adairlaw.com/)
rcstilwell@adairlaw.com
 - 14) Christopher K. Werner, Esq. and
 - 15) Devin Lawton Palmer, Esq.
Bankruptcy Attorneys for the DeLanos
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300; fax (585)232-3528
cwerner@boylanbrown.com
dpalmer@boylanbrown.com
<http://www.boylanbrown.com/attorneys.aspxn>

5. Other persons, who may or may not be attorneys, and entities included among the concerned persons are the following:

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>a) Bonadio & Co., LLP Corporate Crossings 171 Sully's Trail, Suite 201 Pittsford, NY 14534-4557 tel. (585)381-1000; fax (585)381-3131 http://www.bonadio.com/Profile/Locations/</p> <p>b) Ms. Bonsignor Court Reporter Alliance Shorthand 183 East Main Street, Suite 1500 Rochester, NY 14604 tel. (585)546-4920</p> <p>c) David Gene and Mary Ann DeLano 1262 Shoecraft Road Webster (and Penfield, if different), NY 14580</p> <p>d) the DeLanos' children, Jennifer and Michael</p> <p>e) David Dworkin Warehouse Manager and/or officer Jefferson Henrietta Associates 415 Park Avenue Rochester, NY Simply Storage tel. (585)442-8820; LLD Enterprises tel. (585)244-3575; fax (716)647-3555</p> <p>f) Ms. Melissa L. Frieday Contracting Officer for court reporters U.S. Bankruptcy Court Olympic Towers, 300 Pearl Street, Suite 250 Buffalo, NY 14242 tel. (716)362-3200, fax (716)551-5103</p> <p>g) Manufacturers & Traders Trust Bank (M&T) 255 East Avenue Rochester, NY 14604 tel. (585)258-8207, fax (585)325-5105 Customer Service tel. (800)724-2440; http://mandtbank.spatialpoint.com/PrxInput.aspx</p> <p>h) David J. Palmer Owner of Premier Van Lines, Inc.</p> | <p>Tax ID: 16-1542181 1829 Middle Road Rush, NY 14543 tel. (585)292-9530</p> <p>formerly doing business at: 10 Thruway Park Drive West Henrietta, NY 14586</p> <p>i) James Pfuntner 2130 Sackett Road Avon, NY, 14414</p> <p>j) Auctioneer Roy Teitsworth 6502 Barber Hill Road Geneseo, NY 14454 tel. (585)243-1563, fax (585)243-3311; www.teitsworth.com; http://www.auctionzip.com/NY-Auctioneers/13102.html</p> <p>k) Bankruptcy Judge John C. Ninfo, II, and all other judges of this court: U.S. Bankruptcy Court 1220 U.S. Courthouse 100 State Street Rochester, NY 14614 tel. (585)613-4200; http://www.nywb.uscourts.gov/</p> <p>l) any and all current and former members of the staff of Judge Ninfo or his Bankruptcy Court, including, but not limited to:</p> <ol style="list-style-type: none">1) Case Administrator Paula Finucane2) Ms. Andrea Siderakis Assistant to Judge Ninfo courtroom tel. (585)613-4281; fax (585)613-42993) Case Administrator Karen S. Tacy4) Deputy Clerk in Charge Todd M. Stickle tel. (585)613-4223, fax (585)613-42425) Clerk of Bankruptcy Court Paul R. Warren, Esq.6) Court Directory: |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

http://www.nywb.uscourts.gov/rochester_court_directory_11004.php

- m) U.S. District Judge David G. Larimer (Ret.) and all other judges of this court:

U.S. District Court
2120 U.S. Courthouse
100 State Street, Rochester, N.Y. 14614
tel. (585)613-4000, fax (585)613-4035
<http://www.nywd.uscourts.gov/mambo/>

- n) any and all current and former members of the staff of Judge Larimer or his District Court, including, but not limited to:

- 1) Appeals Clerk Peggy Ghysel
- 2) Former Clerk of Court Rodney C. Early, Esq.

- o) The Judges of the Court of Appeals for the Second Circuit (CA2), including, but not limited to:

- 1) Judge Gregory W. Carman, of the U.S. Court of International Trade, sitting by designation on the *DeLano* case
- 2) Judge Peter W. Hall
- 3) Chief Judge Dennis Jacobs
- 4) Judge Robert A. Katzmann
- 5) Judge Debra Ann Livingston
- 6) Judge James L. Oakes
- 7) Judge Reena Raggi
- 8) Former Judge Sonia Sotomayor
- 9) Judge John M. Walker, Jr.
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY, 1007
Main tel. (212)857-8500
Clerk of Court tel. (212)857-8585
<http://www.ca2.uscourts.gov/>

- p) any and all members of the CA2 judges' and CA2's staff, including, but not limited to:

- 1) Former Acting Clerk of Court Thomas Asreen
- 2) Deputy Clerk Donnell Bolden
- 3) Deputy Clerk Patricia Chin-Allen
- 4) Acting Motions Staff Attorney Elizabeth Duwe
- 5) Chief Deputy of the Clerk of Court Fernando Galindo
- 6) Staff Attorney Lisa Greenberg
- 7) Senior Motion Attorney Arthur Heller, Esq.
- 8) Former Clerk of Court Roseann B. MacKechnie
- 9) Case Manager Siomara Martinez
- 10) Circuit Executive Karen Greve Milton
- 11) Supervisory Staff Attorney Catherine D. Minuse, Esq.
Catherine_Minuse@uscourts.gov
fax (212)857-8684
- 12) Agency Team Supervisor Donna Morgan-Steele
Donna_Morgan_Steele@ca2.uscourts.gov
- 13) Clerk of Court Catherine O'Hagan Wolfe
- 14) Deputy Clerk Lynette Rodriguez
- 15) Deputy Clerk Robert Rodriguez
- 16) Calendar Deputy Clerk Ana Vargas
- 17) Agency Team Case Manager Lian Yeh
Lian_Yeg@ca2.uscourts.gov
Direct tel. (212)857-8562, Team tel. (212)857-8544; fax (212)857-8547
- 18) Motions Staff Attorney Tracy W. Young
- 19) Court Directory
<http://www.ca2.uscourts.gov/clerk/navfile/s/contact.htm>

6. An officer with authority to execute this Subpoena is hereinafter referred to as the District Attorney.

B. Subject Matter of The Subpoena

7. The subject matter of this Subpoena includes, but is not limited to:

- a) the specific information or evidence demanded hereunder;
- b) the complained-about conduct, including, but not limited to, fraud; bankruptcy fraud; toleration of or participation in a bankruptcy fraud scheme; racketeering and corrupt enterprise; concealment or wrongful disposition of assets; wrongful hiring of bankruptcy professionals; wrongful payment or sharing of fees; wrongful trusteeship; violation of fiduciary or official duty; wrongful influencing a judge; bribery; perjury; conflict of interests; wrongful docketing of case documents; wrongful transmission of the record from one court to an appellate court; tampering with the preparation and filing of a transcript; ex-parte contacts; bias, prejudice, partiality toward court insiders and against outsiders; arbitrariness; violation of discovery right by denying *every single document* requested and thus cover up wrongdoing; wrongful exclusion of the movant's whole testimony against self-interest under oath in court in order to grant the movant's motion; abuse of process to strip an opposing party of standing in the case and thereby prevent him from requesting production of documents incriminating court insiders and officers in a bankruptcy fraud scheme and its cover-up; abuse of judicial power; denial of due process; and any violation of the Rules or any other provision of law, whether the complained-about conduct was engaged in, or any such violation was committed by, the complained-against persons or other persons;
- c) the following cases, their progeny, and the parties thereto:
 - 1) *In re Premier Van Lines, Inc.*, 01-20692, WBNY, (*Premier*);
http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_15jan10.pdf
 - 2) *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, (*Pfuntner*);
http://Judicial-Discipline-Reform.org/dockets/2Pfuntner_02-2230_15jan10.pdf
 - 3) *Richard Cordero v. Kenneth Gordon, Esq.*, 03-cv-6021L, WDNY;
http://Judicial-Discipline-Reform.org/dockets/3Gordon_03cv6021_15may6.pdf
 - 4) *Richard Cordero v. David Palmer*, 03-mbk-6001L, WDNY;
http://Judicial-Discipline-Reform.org/dockets/4Cordero_v_Palmer_03mbk6001L_19may3.pdf
 - 5) *In re Premier Van*, 03-5023, CA2;
http://Judicial-Discipline-Reform.org/dockets/5Premier_03-5023_CA2_15may6.pdf

- 6) *Richard Cordero v. Kenneth W. Gordon, Trustee, et al.*, 04-8371, SCt;²
http://Judicial-Discipline-Reform.org/dockets/6TrGordon_04-8371_SCt.pdf
- 7) *In re David and Mary Ann DeLano*, 04-20280, WBNY, (*DeLano*);
http://Judicial-Discipline-Reform.org/dockets/7DeLano_04-20280_WBNY_20jan9.pdf
- 8) *Cordero v. DeLano*, 05-cv-6190L, WDNY;
http://Judicial-Discipline-Reform.org/dockets/8DeLano_05cv6190_WDNY_27oct6.pdf
- 9) *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2;
http://Judicial-Discipline-Reform.org/dockets/9DeLano_06-4780_CA2_20jan9.pdf
- 10) *Dr. Richard Cordero v. David and Mary Ann DeLano*, 08-8382, SCt³
http://Judicial-Discipline-Reform.org/dockets/10DeLano_08-8382_SCt_6feb10.pdf

8. A reference to *Pfuntner* or *DeLano* includes its progeny, respectively, as reasonably applicable to obtain production of information and evidence as a means to investigate or act upon the complained-about conduct.²

C. Instructions For Producing Information and Evidence

9. A concerned person shall:
 - a) understand a reference to a person named herein to include any and all members of such person's staff, entity, partnership, group, or organization, whether incorporated or unincorporated;
 - b) comply with the instructions stated herein and complete such compliance within 14 days of being served with this Subpoena unless a different deadline for compliance is stated in [10¶16](#) (= page 11, paragraph 16 herein);
 - c) deem himself or herself served with this Subpoena whether service is made directly on him or her or on his or her current or last known attorney;
 - d) compute any period of time for compliance with this Subpoena from the day after the day on which that person was served or deemed under applicable New York State law to have been served, excluding Saturdays, Sundays, and legal holidays under such law;
 - e) be held responsible for any non-compliance and subject to the continuing duty to comply with this Subpoena within the day each day after the applicable deadline is missed, under

² For the relation of *Pfuntner* and *DeLano* to *Premier*, see [GC:17§B](#) of the complaint.

pain of being named the subject of a disciplinary or contempt proceeding.

10. A concerned person shall produce to the District Attorney upon his demand and volunteer to him:

- a) information concerning evidence herein identified, including, but not limited to, its author, existence, nature, condition, use, actual or likely whereabouts, person who is, is believed to be, is likely to be, or could be in possession or control of, or have access to, it;
- b) information and evidence without passing judgment on its degree of relevance or lack thereof relative to the subject matter of the Subpoena in recognition of the fact that the relevance of a piece of information or evidence may only become apparent in the broader context of information or evidence already gathered or yet to be gathered by the District Attorney; and
- c) information and evidence in application of the principle of honest compliance effort, i.e., “If in doubt, produce the information and evidence to the District Attorney and disclose the doubt”.

11. A concerned person shall with respect to evidence herein demanded produce it, produce information about it, and issue a certificate, as defined in 10§15, to the District Attorney whenever a reasonable person would who:

- a) acts in good faith, or with due diligence, or competently, or in an official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of a person in such official or fiduciary capacity;
- b) reasonably believes that at least part of such evidence is herein demanded;
- c) produces the information or evidence demanded and discloses any doubt as to whether any part thereof is relevant; or
- d) believes that another person with an adversarial interest would want such information, evidence, or certificate or would find it of interest to the end of ascertaining whether a person or entity:
 - 1) is a holder or an identifier, as defined in 8§12 and 9§13, respectively; or
 - 2) has committed, covered up, or tolerated a violation of the Rules or any other applicable law, or engaged in any complained-about conduct;

12. A concerned person who with respect to any evidence herein demanded has possession or control of, or access to, it is hereinafter referred to as a holder and shall on behalf of the District Attorney:

- a) produce the original or a true, correct, and complete copy thereof together with a certificate, as defined in 10¶15;
- b) if not complying for a legitimate reason under law with clause a) of this paragraph, certify that such holder holds the evidence and acknowledges the duty under this Subpoena to:
 - 1) hold it in a secure place, which the holder shall name;
 - 2) ensure its chain of custody; and
 - 3) produce it without delay once the legitimate reason no longer justifies non-compliance;

13. A concerned person who with respect to any evidence herein demanded knows its actual, likely, or possible whereabouts is referred to hereinafter as an identifier and shall on behalf of the District Attorney:

- a) identify the evidence of which the identifier knows the actual, likely, or possible whereabouts;
- b) name such whereabouts,
- c) identify the actual, likely, or possible holder of such evidence by stating his or her known, likely, or possible name, physical and electronic addresses, and telephone and fax numbers;
- d) send to the District Attorney a true, correct, and complete copy of such evidence or of any secondary evidence that concerns such evidence and that directly or indirectly was received from, or generated by, the actual, likely, or possible holder of such evidence.

14. A concerned person shall produce all the parts of each piece of evidence herein demanded that state as to each transaction covered by such piece of evidence or, if information as to each transaction is not available, then as a set of such transactions:

- a) the time, place, amount, and currency or currency equivalent of each such transaction;
- b) the rates, including but not limited to, the normal, delinquent, introductory, preferential, promotional, special, and exchange rates, applied to the transaction;
- c) the description of the goods, goods seller, service, and service provider concerned by each transaction;
- d) the source or recipient of funds or the person or entity that made any charge or claim for funds;
- e) the opening and closing dates of the piece of evidence;
- f) the payment due date of the amount owing and such amount concerning each transaction;

- g) the good or delinquent standing of the account, agreement, or contract dealt with in the piece of evidence;
- h) the beneficiary of any payment;
- i) the surety, codebtor, or collateral for each transaction; and
- j) any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the piece of evidence.

15. A concerned person shall certify in an affidavit or an unsworn declaration subscribed under penalty of perjury as provided for under 28 U.S.C. §1746 or equivalent New York State law (hereinafter collectively referred to as a certificate), with respect to each piece of evidence produced that:

- a) it has not been the subject of any addition, deletion, correction, or modification of any type whatsoever; and
- b) it is the whole of the piece of evidence and consists of both all the parts requiring its production and all other parts without regard to their degree of relevance or lack thereof relative to the Subpoena for production; or
- c) the certificate required under clauses a) and b) of this paragraph cannot be made with respect to any part or the whole of any piece of evidence and the reason therefor and attach the available evidence to the certificate.

16. A concerned person shall produce evidence demanded herein pursuant to the following timeframes measured from the time the Subpoena is served on such person as provided for under ¶9c), d), e) supra:

- a) within 14 days with respect to evidence that a concerned person has possession or control of, or access to, if at home or other permanent or temporary dwelling; in the office or place of work or business; in a land, sea, or air vehicle; in a security box or storage place; or equivalent place;
- b) with respect to evidence that both does not fall within the scope of clause a) of this paragraph and must be requested from a third party (or parties) that has, is likely to have, or possibly has possession or control of, or access to, it:
 - 1) within 14 days send a request for such evidence to such third party and send a copy of such request to the District Attorney;
 - 2) within 10 days of receiving either such evidence or any communication concerning such request, send the evidence or a true, correct, and complete copy thereof to the

District Attorney and, if such communication is not in writing, commit it to writing and send the resulting written communication to the District Attorney;

- 3) proceed to obtain such evidence from the third party as a reasonable person would who with due diligence makes a good faith and proactive effort to comply with this Subpoena , including, but not limited to:
 - i) applying to a court of competent jurisdiction for an order of production addressed to such third party;
 - ii) issuing a subpoena under Rule 45 of the Federal Rules of Civil Procedure (FRCP) or equivalent state law provision;
 - iii) proceeding under the discovery rules of FRCP or equivalent state rules.
- c) within 14 days explain in writing to the District Attorney the concerned person's legitimate inability under law to comply with clauses a) and b) of this paragraph and continue to make an effort as described in clause b.3) of this paragraph to obtain and send to the District Attorney the evidence demanded.

D. Information and Evidence In General, Production, and Certification

17. Evidence means information that already is or can be caused to be contained in a physical object and that relates to the subject matter of this Subpoena.
18. Information is the message that tells one entity something about another entity. It includes knowledge in the mind of a person that can be conveyed to, and received by, another person.
19. Evidence identified with particularity or in general in this Subpoena is to be understood broadly to include a physical object that holds information in any form and format about something related to the subject matter of the Subpoena and can convey knowledge about it directly to a human being or indirectly through a machine.
20. The information may be in the form of text, symbols, graphics, data, clip art, pictures, sound, or video; the format may be handwritten, print, digital, electronic, or otherwise; and the physical object may be any of the following or similar objects, any of which may be referred to as a document when it contains information:
 - a) paper, carton, other paper pulp product; cloth, fabric, plastic, and similar materials;
 - b) graphic or photographic paper, photo or movie film, microfilm, and equivalent;
 - c) a removable storage device, such as a floppy disk; data tape; CD, DVD, whether single or

double layered, Blue Ray, and mini disk; external hard disk; memory flash, stick, chip, or card; electronic memory strip, such as found on a plastic card, whether credit, debit, gift, identity, security, medical card and similar information-holding card;

- d) fixed storage device, such as an internal hard disk of a computer, server, mainframe, or recorder box;
- e) an audio or video cassette, tape, or disk, such as used in a tape recorder, camcorder, telephone answering machine; surveillance or security system or device; phone switchboard or PBX; or central, control, or base unit that communicates with outside units, clients, and in-bound callers;
- f) a wireless handheld digital device, such as an iPod, iPad, Blackberry, Palm, and smartphone.

21. A concerned person from whom evidence is demanded herein and who has only or also information about it shall cause that information to be contained in the physical object, such as those listed in [11§20](#), that is reasonably calculated to be the best means of conveying it to the District Attorney.

22. A concerned person that has evidence is referred to herein as evidence producer, whether such person:

- a) is only in a position as a matter of fact rather than as a matter of law to produce such evidence but has not produced it yet;
- b) is in the process of producing such evidence; or
- c) has already produced such evidence.

23. Evidence includes information qualified by the evidence producer as:

- a) information believed by the evidence producer to be a fact;
- b) information reasonably believed by the evidence producer to be true but not known to be a fact;
- c) information qualified by the evidence producer as known to be false, likely to be false, or possibly false;
- d) information qualified by the evidence producer as hearsay, regardless of its admissibility in court.

24. Evidence may be produced in the form of:

- a) a written statement or affidavit composed to respond to this Subpoena;
- b) an object that already exists at the time the evidence producer becomes aware that it

contains evidence;

- c) an oral communication, such as a conversation, interview, deposition, testimony, or hearing, if such form of production is acceptable to the District Attorney; otherwise, it must be caused to be contained in a physical object, as described in 11¶19.

25. A reference herein to a specific piece of evidence includes the source evidence from which such piece was derived through addition, deletion, merger, update, modification, correction, translation, transformation from one form to another, or rearrangement for inclusion in a database, or otherwise. Conversely, a demand for evidence that is the source from which other evidence was derived includes such derivative evidence. In either case, the circumstances of such derivation must be stated.

E. Particular Information and Evidence To Be Produced

26. A concerned person shall produce to the District Attorney the following and reasonably similar information and evidence:

1. Financial affairs

27. Evidence of any payment, compensation, or transfer of value, whether in cash or in kind and for any reason whatsoever, or offer, promise, or contingent arrangement for such payment, compensation, or transfer by any partner, officer, any other employee, service provider, or person in any way and to any degree related to Underberg & Kessler, LLP, [GC:51¶111; 3¶10) supra] to U.S. Bankruptcy Judge John C. Ninfo, II, WBNY, since January 1, 1992, to date or in future.

28. The documents that during the preparation for, and the course of, their bankruptcy proceedings until their discharge and thereafter, if related to such proceedings, were made available directly or indirectly:

- a) by David Gene and Mary Ann DeLano or their children, Michael David and Jennifer, to Christopher Werner, Esq., Devin Lawton Palmer, Esq., any other members or employee of Boylan, Brown; Trustee George Reiber, Assistant U.S. Trustee Kathleen Dunivin Schmitt, U.S. Trustees for Region 2 Deirdre A. Martini and Diana G. Adams; any other panel or official trustee; Judge Ninfo and District Judge David Larimer and any other judge or court staffer;
- b) by David Palmer to Raymond C. Stilwell, Esq., Trustee Kenneth Gordon, U.S. Trustee

Trudy Nowak, U.S. Trustee for Region 2 Carolyn Schwartz, and any other person mentioned by name or capacity in clause a) of this paragraph.

29. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Premier* and *Pfuntner*, regardless of the source, up to the date of compliance with this Subpoena, whether such documents relate generally to the bankruptcy petition of the DeLanos or Mr. Palmer or his former moving and storage company, Premier Van Lines, Inc., (Premier) or its successor; or particularly to the investigation of whether either or both of them committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation.
30. The financial documents in either or both of the names of:
 - a) David Gene and Mary Ann DeLano
 - b) David Palmer and Premier and
 - c) third parties but concerning a financial matter under the total or partial control of either or both of them, respectively, whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's.
31. The dates of the documents referred to in this [13§E.1](#) are:
 - a) in the case of the DeLanos, since January 1, 1975, to date; and
 - b) in the case of Mr. Palmer, since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier to date.
32. The financial documents referred to in this [13§E.1](#) include the following:
 - a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at, or issued by, M&T Bank and any other entity, whether banking, financial, investment, commercial, or otherwise, in the world;
 - b) the unbroken series of documents relating to the purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, by either or both of the DeLanos and Mr. Palmer/Premier, respectively, or by either or both of the DeLanos' children with funds totally or partially provided or secured by either or both of the DeLanos, including, but not limited to:
 - 1) real estate, including but not limited to the home and surrounding lot at 1262

Shoecraft Road, Webster (and Penfield, if different), NY 14580;

- 2) Premier, any similar moving or storage company, or other business, whether incorporated or not incorporated;
- 3) Premier's warehousing space at the warehouses at:
 - i) 2130 Sackett Road, Avon, NY, 14414, owned by Mr. James Pfuntner;
 - ii) Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607;
 - iii) 10 Thruway Park Drive, West Henrietta, NY 14586
- 4) moving and storage equipment, including, but not limited to, vehicles, forklifts, crates, padding and packaging material; and
- 5) personal property, including any vehicle, mobile home, or water vessel;
- c) mortgage documents;
- d) loan documents;
- e) title documents and other documents reviewing title, such as abstracts of title;
- f) prize documents, such as lottery and gambling documents;
- g) documents relating to any service, wherever in the world such service was, is being, or may be received or provided; and
- h) documents concerning any and all loans to or from each of the DeLanos' children, including, but not limited to, college expenses, such as tuition, books, transportation, room and board, and any loans extended or grant made by a government, a private entity, a relative, or any other person or entity for the benefit of the children and their education or the purchase or rental of a dwelling, regardless of whose name appears on the documents as the loan borrower or grant recipient.

2. Minutes, transcripts, and recordings

33. The minutes, transcript, stenographic packs and folds, audio tape, and any other recording of the status conference and pretrial hearing in *Pfuntner* requested by Trustee Schmitt on December 10, 2002, and held before Judge Ninfo on January 10, 2003.
34. The transcript and stenographic packs and folds of the hearings held before Judge Ninfo:
 - a) in *Pfuntner* on:

| | | |
|----------------------|-------------------|---------------------|
| a. December 18, 2002 | d. April 23, 2003 | g. July 2, 2003 |
| b. February 12, 2003 | e. May 21, 2003 | h. October 16, 2003 |
| c. March 26, 2003 | f. June 25, 2003 | i. any other date |

b) in *DeLano* on:

- | | | |
|--------------------|----------------------|----------------------|
| a. March 8, 2008 | d. August 25, 2004 | g. November 16, 2005 |
| b. July 19, 2004 | e. December 15, 2004 | h. any other date |
| c. August 23, 2004 | f. July 25, 2005 | |

35. Trustee Schmitt and Trustee Reiber or their respective successors shall within 10 days of this Subpoena arrange for, and produce:
- a) the audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. James Weidman;
 - b) its transcription on paper and as a searchable PDF file on a CD; and
 - c) the video tape shown at the beginning of such meeting and in which Trustee Reiber appeared providing the introduction to it;
36. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, made by Court Reporter Ms. Bonsignor of Alliance Shorthand, and kept by Trustee Reiber, shall be produced by him or his transferee on paper and as a PDF file on a CD.
37. The recordings, transcripts, minutes, and memoranda of any other conversation, meeting, interview, examination, discussion, or conference that in manner, whether in person or by phone or videoconference, was approved, organized, held, requested, or attended, by Judge Ninfo or his representative, Trustee Schmitt, Trustee Reiber, or any other member of the U.S. Trustee Office or private trustee concerning any or all of the DeLanos, David Palmer, Premier, David Dworkin, M&T Bank officers, Dr. Richard Cordero, Esq., or Jefferson Henrietta Associates, regardless of whether any or all of them participated in or attended it in whatever manner.
38. The original stenographic packs and folds on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim against them in their bankruptcy, which was held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available upon demand to the District Attorney.
39. The statement reported in entry 134 of the docket of *DeLano* (7¶c)7) to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read and the stenographic packs and folds used by the reporter to record it.

3. Court orders

40. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including, but not limited to, the following:

a) in *DeLano*:

- 1) July 26, 2004, for production of some documents by the DeLanos;
- 2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;
- 3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;
- 4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;
- 5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;
- 6) August 8, 2005, ordering M&T Bank to pay part of Mr. DeLano's salary to Trustee Reiber;
- 7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons";
- 8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos' debt repayment plan;
- 9) November 22, 2005, denying Dr. Cordero's motion to revoke the confirmation of the DeLanos' debt repayment plan;
- 10) Notice of January 24, 2007, releasing Mr. DeLano's employer, M&T Bank, from the obligation to make any further payments to Trustee Reiber.
- 11) February 7, 2007, discharging the DeLanos after completion of their plan;
- 12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinder of creditors from any attempt to collect any discharged debt, the closing of the DeLanos' estate, and the release of

their employer from the order to pay the Trustee;

b) in *Pfuntner*:

- 1) December 30, 2002, dismissing Dr. Cordero's cross-claims against Trustee Gordon for defamation as well as negligent and reckless performance as trustee;
- 2) February 4, 2003, transmitting to District Judge David Larimer, WDNY, the record in a non-core proceeding and findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero's application for entry of default judgment against David Palmer;
- 3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court that the default judgment not be entered by the District Court;
- 4) February 18, 2003, denying Dr. Cordero's motion to extend time to file notice of appeal;
- 5) July 15, 2003, ordering that a "discrete hearing" be held in Rochester on October 23, 2003, followed by further monthly hearings;
- 6) October 16, 2003, Disposing of Causes of Action;
- 7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
- 8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
- 9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
- 10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

4. Documents entered on dockets and publicly filed

41. The Bankruptcy Clerk shall produce certified copies of the following documents referred to on the docket of *Premier*, 01-20692, WBNY, or connected to that case:
 - a) Documents entered on the docket:
 - 1) the monthly reports of operation for March through June 2001, entered as entries no. 34, 35, 36, and 47;
 - 2) the reports for the following months until the completion of the liquidation of Premier;

- 3) the court order closing that case, which is the last but one entry, but bears no number;
 - 4) the court order authorizing the payment of a fee to Trustee Gordon and indicating the amount thereof, which is the last docket entry, but bears no number.
- b) Documents that are only mentioned in other documents in *Premier*, but not entered themselves anywhere:
- 1) the court order authorizing payment of fees to Trustee Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;
 - 2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
 - 3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
 - 4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
 - 5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
 - 6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.

42. Judge Ninfo's and Judge Larimer's annual financial disclosure reports since 1992, required to be filed publicly under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (Appendix 4 in West publications) shall be obtained from the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600, for the purpose of:

- a) comparing them with their salaries, made a public matter by 5 U.S.C. §5332, The General Schedule, Schedule 7–Judicial Salaries, and other declared and otherwise discovered sources of income;
- b) determining plausibility and compliance with the disclosure requirements; and
- c) facilitating asset tracking as necessary in the context of the Subpoena's subject matter.

5. Monitoring of, or interference with, communications through email accounts, websites, or electronic equipment

43. Every concerned person and any other person contacted, approached, questioned, interviewed, or examined in connection with this Subpoena or its subject matter shall state any information and produce any evidence to the District Attorney regarding:

- a) any discussion or conversation, whether the person participated in it or otherwise came to know about it by whatever means, about
 - 1) its participants, date, place, and who initiated or called for it;
- b) any plan, attempt, opportunity, action, means, or capacity, regardless of whether known ever to have been used or of its degree of actual or potential success,
- c) to monitor, record, filter, reroute, delay, interfere with, prevent or delay access to or receipt of, or block
 - 1) the purpose, date, frequency, executioner(s), target(s) of any such action and the person(s) who authorized it;
- d) any communication through, or the operation of, any mail service, email account, website, electronic equipment, including, but not limited to, computers, phones, or fax machines
- e) of any person named in 2¶4 and 4¶5 above, or any party to any case listed on 6¶7c; and
- f) the use that would, was, will, or may be made of any such communication.

for the New York County District Attorney,

Date

¹ The information and evidence, whether specifically pertaining to the cases in question or generally related to the relations among the officers and insiders and the functioning of the courts dealing with those cases, known or likely to be in possession of the persons and the members of the entities listed on 2¶4 and 4¶5 are described in, or can be inferred from, either the Statement of Facts of the Complaint(GC:14§III) or the documents of the main cases, found in the *DeLano_record* and *Pfuntner_record* files, both of which discuss the *Premier* case(Gi:134¶¶d-g). These files collect all the “Exhibits” accompanying the various briefs and motions in those cases. Cf. 6¶7c). The Statement has many references to the pages, paragraphs, sections, and footnotes of the documents in the record.

² Cf. http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_SCt_3oct8.pdf

³ Cf. http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCt.pdf