Dr. Richard Cordero

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March 19, 2004

STATEMENT OF FACTS

Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**

The Hon. John M. Walker, Jr., Chief Judge

of the Court of Appeals for the Second Circuit

addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers

to the Circuit Judge eligible to become the next chief judge of the circuit

On August 11, 2003, Dr. Richard Cordero filed a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. The wrongful and biased acts included Judge Ninfo's and other court officers' failure to move the case along its procedural stages. The instances of failure were specifically identified with cites to the FRCivP. They have not been cured and the bias has not abated yet (5, infra) [1].

Far from it, those failures have been compounded by the failure of the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, to take action upon the complaint. Indeed, six months after the submission of the complaint, which as requested (11, infra) was reformatted and resubmitted on August 27, 2003 (6, 3, infra), the Chief Judge had still failed to discharge his statutory duty under §351(c)(3) to "**expeditiously**" review the complaint and notify the complainant, Dr. Cordero, "by written order stating his reasons" why he was dismissing it. He had also failed to comply with §351(c)(4), which provides that, in the absence of dismissal, the chief judge "shall **promptly**…(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under the paragraph". (emphasis added)

Consequently, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint (1, infra). To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4 (4, infra). One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty.

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, Pfuntner v. Gordon et al, docket no. 02-

[1] Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, infra), a copy of the document is there and here too.

2230, which was brought and is pending before Judge Ninfo. The facts underlying this evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, infra). The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, infra). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give

him a copy of his written objections.

Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman's conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the territory of the Second Circuit and which they defend by engaging in non-coincidental,

intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there– who would that be?- to find out what "the local practice" is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of "the local practice" so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant's presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he "shall **promptly**…(C) provide written notice to…**the judge** or magistrate whose conduct is the subject of the complaint of the action taken". (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge's failure to act were proved correct, it would establish that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero's February 2 status inquiry letter.

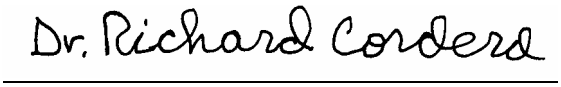
Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

waste of effort[2], time[3], and money[4], and inflicting upon him tremendous emotional distress[5] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[6] and dismiss the facts[7] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[8], Judge Larimer[9], court personnel[10], trustees[11], and local attorneys and their clients[12], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take 'prompt and expeditious action' by taking action belatedly. His failure is a consummated wrong and his 'prejudicial conduct' has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero's experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI's interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.



March 19, 2004

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Brooklyn, NY 11208

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[2] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[3] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[4] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[5] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[6] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[7] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[8] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[9] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[10] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[11] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[12] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D. **[Opening Brief=A:1301; Reply Brief=A:1511; Mandamus Brief=A:615]**

APPENDIX: COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

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

INSTRUCTIONS:

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

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

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

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

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

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

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

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

Address: 59 Crescent Street
Brooklyn, NY 11208

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

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

Name: Hon. John M. Walker, Jr, Chief Judge

Court: Court of Appeals for the Second Circuit

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

[X] Yes [ ] No

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

Court: Court of Appeals for the Second Circuit

Docket number: 03-8547

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

[ ] Yes [X] No

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

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

[X] Yes [ ] No

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

docket no. 02-2230 in the U.S. Bankruptcy Court for the Western District of NY

Its appeal to the Court of Appeals for the Second Circuit bears docket no. 03-5023

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

An original and three copies of my statement of facts, dated March 19, 2004, and addressed to the Circuit Judge eligible to become the next chief judge of the circuit, accompanies this form together with one separate volume of supporting . evidentiary documents.

EITHER

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

[X] I declare under penalty of perjury that:

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

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

Dr. Richard Cordero

(signature)

Executed on March 19, 2004

(date)

OR

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

[ ] I swear (affirm) that--

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

TABLE OF DOCUMENTS

SUPPORTING THE COMPLAINT UNDER 28 U.S.C. §351

of March 19, 2004

AGAINST CA2 CHIEF JUDGE JOHN M. WALKER, JR.,

by

Dr. Richard Cordero

CONSISTING OF DOCUMENTS GROUPED IN THREE SETS AND REFERRED TO BY:

plain number
E-number ♣
or A-number

I. ATTACHED TO THE COMPLAINT

♣E-#=exhibit containing the Statement of Facts supporting Dr. Cordero's original complaint against Judge Ninfo set forth in his letter of August 11, 2003, to CA2 Clerk Roseann MacKechnie (C:1). A-=Appendix supporting Dr. Cordero's opening brief of July 9, 2003, in *In re Premier Van et al.*, no. 03-5023, CA2; as updated to support that complaint it consisted of pages A-1-507. Those pages are found mostly with the same page numbers as the A:# pages in the A files in the A 1-2229 folder on the accompanying CD.

II. IN A SEPARATE VOLUME

A. Appendix Documents Produced up to the Bankruptcy Court Order entered on December 30, 2002

B. Appendix Documents since the Notice of January 9, 2003, of Appeal from the Order of the Bankruptcy Court

1) Motion to Dismiss Notice of Appeal in District Court

2) Motion to Extend Time to File Notice of Appeal

3) Transcript of Hearing

4) Default judgment against David Palmer

♦ These documents are *also* listed here to highlight their thematic relation. Their main listings appear in the correct place by the criterion of page number.

5) Trip to Rochester for inspection of storage containers

C. Appendix Documents since the Appeal to the Court of Appeals for the Second Circuit

♦ See footnote above.

Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):	Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
DAVID G DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580 AKA: Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	January 27, 2004	077-32-3894 091-36-0517

Individual debtors must provide picture identification and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):	Bankruptcy Trustee (name and address):
CHRISTOPHER K WERNER, ESQ BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM
Location: U.S. Trustees Office, 6080 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004
For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM
Location: U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:	Website: http://www.nywb.uscourts.gov
U.S. Bankruptcy Court 100 State St. Rochester, NY 14614	Clerk of the Bankruptcy Court: PAUL R. WARREN DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

020304.0027.63.00111358.023 0420280.018 .3.021 146

EXPLANATIONS

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specificied amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.

---Refer To Other Side For Important Deadlines and Notices---

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy
case no. 04-20280

Objection
to Confirmation of
the Chapter 13
Plan of Debt Repayment

---

1. Dr. Richard Cordero, as a party in interest, objects on the following grounds to the confirmation of the proposed plan in the above-captioned bankruptcy case. Consequently, the plan should not be confirmed. Cf. B.C. §§1324 and 1325(b)(1).

I. The bankruptcy of a loan officer with superior knowledge of the risks of being overextended on credit card borrowing warrants strict scrutiny

2. Mr. David DeLano is a loan officer of a major bank who in his professional capacity examines precisely that: loans and borrowers' ability to repay them. Thus, he has imputed superior knowledge of what being overextended or taking an excessive debt burden means and of when a borrower approaches the limit of his ability to pay. Hence, he was aware of the consequences of his own incurring such excessive credit card debt at the very high interest rate that they attract. His conduct may have been so knowingly irresponsible as to be suspicious.
3. This is particularly so since the DeLanos jointly earned in 2002 $91,655, well above the average American household income. What is more, last year their income went up considerably to $108,586. Yet, their cash in hand and in their checking and savings accounts is only $535.50 (Schedule B, items 1-2). What did Loan Officer DeLano do with his earnings?
4. Likewise, of all the money that they borrowed on credit cards and despite the monthly payments that they must have made to them over the years, they still owe 18 credit card issuers $98,092.91. However, they declare their personal property in the form of goods, the only property that could possibly have been bought on credit cards after excluding their pension and profit sharing plans (Schedule B, item 11), to be only $9,945.50. Where did the goods go and what kind of services did they enjoy through credit card charges so that now they should have so little left to show for the $98,092.91 still owing to their 18 credit card issuers?
5. These figures and facts were set forth by Loan Officer DeLano and his wife themselves with the legal assistance of their bankruptcy filing attorney. Their clash is deafening. Consequently, it is reasonable to conclude that their petition to have their debts discharged in bankruptcy must be strictly scrutinized to determine whether it has been made in good faith and free of fraud. Cf. B.C. §1325(a)(3).

II. The plan fails to require the DeLanos' best effort to repay creditors

6. The DeLanos have declared their current expenditures, including monthly charges of $55 for cable TV, $23.95 for Internet access, and $107.50 for recreation, clubs, and magazines. In addition, they indicate $62 per month for cellular phone "req. for work", which is certainly not the same as 'required by employers'. These are expenditures for a comfortable life with all modern conveniences, but they consume income that is "not reasonably necessary to be expended". Cf. B.C. §1325(b)(2). Indeed, the DeLanos intend to go on living unaffected by their bankruptcy and have used the figure of $2,946.50 current expenditures as their living expenses requirements to be deducted from the projected monthly income of $4,886.50 (Schedules J and I).

7. But that is not enough for them.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's current unemployment benefits run out in June (Schedule I)
$3,757.50	net monthly income
-2,946.50	to maintain their comfortable current expenditures (Schedule J)
$811.00	actual disposable income

8. Yet, the Delanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. Is there a reason for this?

9. Without any further explanation, the plan provides that for the last 6 months $960 will be paid monthly. This shows that the current expenditures can be reduced or that the DeLanos can project an increase in income 31 months ahead of time.

10. The bottom line is that all the DeLanos will pay under the plan is $31,335 despite their debt to unsecured creditors of $98,092.91 (Schedule F). However, this does not mean that unsecured creditors will receive roughly 1/3 of their claims and forgo interest, but barely above 1/5, for "unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors" (Chapter 13 Plan 4d(2)).

11. It is fair to say that this plan makes the unsecured creditors bear the brunt of the DeLanos' bankruptcy while they continue living on their comfortable current expenditures. What is more, or rather, less, is that the plan does not make any provision whatsoever to fund Dr. Cordero's contingent claim. If Dr. Cordero should prevail in court against Mr. DeLano, where would the money come from to pay the judgment? Is Mr. DeLano making himself judgment proof?

12. By contrast, the DeLanos make proof of their goodwill toward their son. They made him a loan of $10,000, which he has not begun to pay and which they declare of "uncertain collectibility" (Schedule B, item 15). There is no information as to when the loan was made, whether it was applied to buy an asset or the son has any other assets which the trustee can put a lien on or take possession of, or whether there is any other way to collect it. Nor is there any hint of where the DeLanos, who have in cash and in their bank accounts the whole of $535.50, got

$10,000 to lend to their son. To allow the son not to repay the loan amounts to a preferential transfer. This is all the more so because their son is an insider. Cf. B.C. §101(31)(A)(i). Therefore, the DeLanos' dealings with him must be examined with strict scrutiny for good faith and fairness.

13. It follows that the plan fails to show the DeLanos' willingness to put forth their best effort to repay their creditors, while they spare their comfortable standard of living as well as their son.

III. An accounting is necessary to establish the timeline of debt accumulation and the whereabouts of the goods bought on credit cards in order to determine the good faith and fraudless nature of a bankruptcy petition by Loan Officer DeLano

14. It is reasonable to assume that Mr. DeLano, as a loan officer, have access to the reports of credit reporting bureaus and, more importantly, that he knows how to examine them to determine the risk factor and solvability of a current or potential borrower. Likewise, bank lenders, including the 18 credit card issuers to whom the DeLanos still owe more than $98,000, regularly report to the credit reporting bureaus their cardholders' borrowing balances. They also check their cardholders' reports to assess their total debt burden and repayment patterns in order to determine whether to allow their continued use of their cards or to cancel them.

15. Thus, it is important to find out whether any or all of these 18 credit card issuers requested and examined the DeLanos' credit reports, such as those produced by Equifax, TransUnion, and Experian, and raised any concerns with the DeLanos about their total debt burden. This investigation is warranted because the DeLanos have described 14 credit card claims as "1990 and prior Credit card purchases" (Schedule F). Consequently, there has been ample time for them to have been warned about their total debt burden, not to mention for Loan Officer DeLano to have on his own realized its risks. Otherwise, how does he deal with his Bank's customers in similar situations? These facts beg the question: Is there a history of credit card issuers' announced bankruptcy and of a bankruptcy that the DeLanos were waiting to announce shortly before retirement (bottom of Schedule I)? The answer to this question affects directly the determination of the good faith of the DeLanos' bankruptcy petition.

16. In the same vein, for years the credit card issuers have had the duty and the means to find out, and must have been aware, that the DeLanos' credit card borrowing gave cause for concern. If they took no steps or took only inappropriate ones to secure repayment and even failed to stop the DeLanos from accumulating still more credit card debt, then they must bear some responsibility for this bankruptcy. As parties contributing to the DeLanos' indebtedness, they should be placed in a class of unsecured creditors different from and junior to that of Dr. Cordero, who has nothing whatsoever to do with the DeLanos' bankruptcy. Cf. B.C. §1322(b)(1)-(2). Yet, Dr. Cordero stands the risk of being deprived of any payment at all on a judgment that he may eventually recover against Mr. DeLano for his wrongful conduct precisely as a loan officer. Cf. Pfuntner v. Gordon et al, docket no. 02-2230.

17. In addition to drawing up the DeLanos' timeline of credit card debt accumulation, it is necessary to examine the DeLano's monthly credit card statements for the period in question to establish on what goods and services they spent what amount of money of which more than $98,000 still remains outstanding…plus they carry a mortgage of $77,084.49 on a house in

which their equity is only $21,415.51. (Schedule A) This is particularly justified since the DeLanos claim that they have barely anything of any value, a mere $9,945.50 worth of goods. (Schedule B). Where did all that borrowed money go?!

18. The timeline and nature of the DeLanos' credit card use will make it possible to figure out whether there must be other assets and the repayment plan is not in the best interest of creditors so that consideration must be given to:

    a. a conversion of the case to one under Chapter 7; Cf. B.C. §§1307(c) and 1325(a)(4);
    b. an extension of the plan from three to five years; Cf. B.C. §§1322(d); or
    c. dismissal for substantial abuse and bad faith under the equitable powers of the court to consider the motives of debtors in filing their petitions; Cf. B.C. §§1307(c) and 1325(a)(3).

IV. Trustee's duty to investigate debtor's financial affairs and provide requested information to a party in interest

19. Under B.C. §§1302(b)(1) and 704(4), the Trustee has the duty "to investigate the financial affairs of the debtor". Additionally, B.C. §§1302(b)(1) and 704(7) require him to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". To discharge these duties so that the interested parties may be able to make an informed decision as to what is in the best interest of creditors and the estate, the Trustee should investigate the matters discussed above, which in brief include the following:

20. Conduct an accounting based on the DeLanos' monthly credit card statements covering the period of debt accumulation. Find out how, when, and who became aware of the DeLanos' risky indebtedness and alerted them to it and with what results.

21. Determine the items and value of the DeLanos' personal property and the whereabouts and value of the goods purchased on credit cards.

22. Find out whether the DeLanos applied to M&T Bank or any other bank for a consolidation loan; if so, what was the response and, if not, why?

23. Determine what expenses are not reasonably necessary to maintain or support the DeLanos. Cf. B.C. §§1325(b)(2) and 584(d)(3).

24. State whether the DeLanos commenced making payments within 30 days of filing the plan. Cf. B.C. §§1302(b)(5) and 1326(a)(1).

25. Establish the circumstances of the DeLanos' $10,000 loan to their son and its alleged uncertain collectibility.

V. Provisions that any modified plan should contain

26. The DeLanos have shown that they do not know how to manage money in spite of the fact that Mr. Delano is a bank loan office. Therefore, their current and future income should not be allowed to be paid to them. Rather, the plan should provide for its submission to the trustee's supervision and control for his handling as is necessary for the execution of the plan. Cf. B.C. §1322(a). Whether under the plan or the order confirming it, the trustee should be the one who makes plan payments to creditors. Cf. B.C. §1326(c). Consequently, the DeLanos' current and

future employers and any entity that pays income to them should be ordered to pay all of it to the trustee. Cf. B.C. §1325(c).

27. All the DeLanos' disposable income should be applied to make payments under the plan. Cf. B.C. §1325(b)(1)(B). All income not reasonably necessary to be expended should be recovered from the DeLano's current expenditures and made available for payment to the creditors. Cf. B.C. §1325(b)(2).

28. The plan should provide for the payment of Dr. Cordero's claim. Cf. B.C. §1325(b)(1)(A).

VI. Notice of claim and request to be informed

29. Dr. Cordero gives notice of his claim to compensation for all the time, effort, and money that the Delanos have through their bankruptcy petition forced him to spend in order to protect his claim, and all the more so if it should be determined that the DeLanos did not incur that debt or file their petition in good faith and free of fraud.

30. Dr. Cordero requests that notice be given to him of every act undertaken in this case.

March 4, 2004

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

OUTLINE
of the oral argument delivered by

Dr. RICHARD CORDERO
Appellant pro se

on December 11, 2003

I. One issue determines all the others

1. Whether **the integrity of the judicial process** was injured when the district and bankruptcy judges and their staff of administrative officers so **repeatedly disregarded the law, rules, and facts** pertaining to this case as to reveal their participation in a **pattern of** non-coincidental, intentional, and coordinated **acts of wrongdoing**.

2. Those acts are **all to Dr. Cordero's detriment**, the only non-local and pro se party, and to the benefit of the local parties, whose attorneys and trustees are well known to the judges and their staffs.

3. Those acts of wrongdoing have **materialized in decisions on appeal** here. Because of the courts' and their staffs' **disregard of legality,** their decisions are **unlawful** as a matter of law**.** Because they are **tainted by bias and prejudice,** they are **contrary to due process.**

4. The decisions should be **rescinded** and the case should be **remanded** to a court unfamiliar with the case for an impartial **trial by jury**.

II. The appealed decisions resulted from such unlawfulness and bias

A. Timeliness of appeal from dismissal of cross-claims against Trs. Gordon:

1. his **negligent and recklessness** liquidation of Premier, the storage company

2. his **defamatory and false statements** about Dr. Cordero

B. Denial of Dr. Cordero's application for **default judgment** against Palmer

III. Summary statement of facts

1. Dr. Cordero **paid** storage and insurance **fees** since 1993

2. Defendants lied to him about his property's location and safety

3. Dr. Cordero applied to J. Ninfo for review of Trustee Gordon's performance

4. The Trustee defamed Dr. Cordero to dissuade Judge from review

5. Pfuntner refused to release property, sued for administrative & storage fees

IV. Injury to the integrity of the judicial system & this Court as its steward

A. Judicial officers & parties **carved fiefdom out** of circuit's territory

1. they apply the **law of the locals**, not based on cases or law, but on

a) personal relations and b) fear of retaliation

B. Circumstances for close **personal relations** to emerge and rule

1. **proximity & frequent contacts** a. only three judges in NYWBkr b. same lawyers appear frequently c. Pacer: Trs Gordon's 3,000+ cases d. AUST's office in court building, and Trs. Gordon has mail box there e. floor above J. Ninfo is J. Larimer f. friendship replaces law 1) no need for disclosure/discovery 2) no legal basis for motions/decisions 3) if case cited, no textual analysis	2. **fear of retaliation** in next case a. in 9 hearings other parties never raised objection b. take without challenge what judge assigns to preserve his goodwill c. interdependency breeds wrongdoing 3. Fiefdom doesn't take seriously CA2: trump card in their pocket: they will prevail if case remains in their court with no jury

V. Indicia of wrongdoing should prompt this Court to investigate

C. Where are the accounts of Premier's assets and professionals?

1. Trustee Gordon: in docket 01-20692 [A-565]

a. **listed assets** on July 23, 2002 [entry 94]

b. **declared Asset Case** July 24 [entry 95]

c. moved August 28 to appoint Roy **Teitsworth as auctioneer** [entry 96]

d. **notice** of September 26 [entry 98] to **abandon** known **and newly discovered assets…Why!?**

2. Whatever Trustee Gordon did with **storage containers:**

a. **affected their contents** belonging to Premier's clients

b. if **containers removed**, the contents' **whereabouts** became **indeterminate**

c. altered storage conditions could **void insurance contracts**

d. he had duty **to give notice** to clients but failed to: Why?

1) was any gain to be derived & shared with others?

2) does he **care only for** profitable cases in his huge pool? [A-238-9]

3) was he reckless and negligent? All issues of fact preventing dismissal.

3. Storage **contracts with monthly fees** were assets of Premier estate

a. who valued their stream of future income and how?

b. what did M&T Bank do with proceeds of storage containers auction?

4. Why did J. Ninfo **refuse** to **default** David Palmer **but discharge** his company?

D. CA2 needs to investigate to uncover & eliminate wrongdoing

3. scope of suspect activity exceeds what litigant can investigate or discover;

4. benefits for judicial system & public at large from investigation:

a. respect for legality in court and decisions and for ethical behavior

b. integrity of judicial proceedings dispensing justice, not pursing own gain

c. clients represented by lawyers zealously advocating their interests

d. just and fair trials that earn the **public's confidence** in the courts

E. Joint investigation with FBI guided by *Follow the money!*

1. CA2 **can't** merely ask judges for report and **expect** them to send **mea culpa**

2. should review hearings transcripts checked against their **stenographic tapes**

3. conduct statistical comparison of outcome of cases in fiefdom and inter-districts

4. interrogate judges, clerks, accountants, auctioneers & buyers, creditors, etc.

5. obtain accounts they were supposed to submit and do **forensic accounting**

6. CA2 needs **experience** & resources of **FBI** to undertake this investigation & **follow the money** from estate assets to financial institutions and elsewhere

VI. Relief

A. In light of the participation by officers of the court in

1. a **pattern of** non-coincidental, intentional, and coordinated acts of **disregard of laws**, rules, and facts, and

2. their **bias and prejudice** toward Dr. Cordero,

it **cannot reasonably be expected** that Dr. Cordero will receive **a fair trial** at the hands of **Judges Ninfo and Larimer** with the assistance of their staffs and the support of their friendly trustees and lawyers.

B. Therefore, Dr. Cordero respectfully requests that this Court:

1. rescind all decisions taken by them& disqualify Judge Ninfo;

2. remove this case in the interest of justice under 28 USC §1412 to a court

a. unfamiliar with the case, unrelated to the parties, and roughly equidistant from all the parties, which can be

b. expected to conduct a fair and impartial **jury trial**, such as

c. the federal court for the **Northern District** of New York in **Albany**;

3. that **this Court with** the assistance of the **FBI launch** a full **investigation** of the members of the **fiefdom** of Rochester to

follow the money to the source of the motive that led these parties into wrongdoing and bring them **back into the fold of legality** so as to restore the integrity of the judicial system under this Court's stewardship;

4. that for all the painstaking work of **legal research and writing** that Dr. Cordero, a non-practicing lawyer, has done for well over a year he **be awarded attorney's fees**, for it should offend justice that those who lost his property, took him for a fool, wasted his time, effort, and money and showed so little respect in what they submitted to this Court or by submitting nothing should also take his tremendous amount of conscientious legal work for free as their ultimate mocking windfall. The equities in this case should not allow that to happen.

Respectfully submitted under penalty of perjury,

on December 11, 2003

Dr. Richard Cordero

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tel. (718) 827-9521

Main Papers in *In re Premier Van Lines*, dkt. no. 03-5023, with the numbers of the pages where they appear in the Appendix [A:#]						
	Dr. Cordero's **Cross-claims** against Trustee Gordon, November 20, 2002		Dr. Cordero's Motion to **Extend time** to file notice of appeal, January 27, 2003		Dr. Cordero's Application for **Default Judgment** against David Palmer, Dec. 26, 2003	
1.	Dr. Cordero	70, 83, 88	Dr. Cordero	214	Dr. Cordero	290
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3.	Dr. Cordero	Brief in Opposition, 143	J. Ninfo	Decision denying motion to extend, 240	Clerk of Court Warren	Entry of default, 303
4.	J. Ninfo	Dismissal Decision, 151	Dr. Cordero	Motion for relief of denial, 246	J. Ninfo	Recommendation denying default, 304
5.	Dr. Cordero	Notice of Appeal 153	Trustee Gordon	Referral to previous submission, 257	Dr. Cordero	Letter and motion to enter default, 311, 314
6.	Trustee Gordon	Motion to Dismiss appeal, 156	J. Ninfo	Decision denying motion for relief, 259	J. Larimer	Decision denying entry of default, 339
7.	Dr. Cordero	Opposition to dismissal of notice 158	Dr. Cordero	Notice of Appeal to CA2, 429	Dr. Cordero	Motion for rehearing of denial, 342
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13.	Dr. Cordero	Notice of Appeal to CA2, 429				

Court of Appeals
for the Second Circuit

EVIDENTIARY DOCUMENTS
supporting a complaint

UNDER 28 U.S.C. §351 ABOUT

The Hon. John M. Walker, Jr.,
Chief Judge
of
THE COURT OF APPEALS
FOR THE SECOND CIRCUIT

addressed under Rule 18(e) of the Rules of
the Judicial Council of the Second Circuit
Governing Complaints against Judicial Officers

to the Circuit Judge eligible to become the next chief judge of the circuit

submitted on
March 19, 2004
by

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc

Statement of relief sought:

1. Given Chief Judge Walker's failure to comply with his statutory and regulatory duty, under both 28 U.S.C. §351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers, respectively, to take any required action at all, let alone 'promptly and expeditiously', in the more than seven months since Dr. Cordero submitted a complaint about Bankruptcy Judge John C. Ninfo, II, for having "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" by disregarding the law, rules, and facts when issuing orders now on appeal in this Court, in particular, and in handling the case, in general,
2. the Chief Judge himself has engaged in such prejudicial conduct and has in effect condoned such disregard of legality so that he cannot reasonably be expected to have due regard for law and rules when considering the pending petition for panel rehearing and hearing en banc or when otherwise dealing with this case.
3. Consequently, Chief Judge Walker should recuse himself from any such consideration.

MOVING PARTY: Dr. Richard Cordero Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: March 22, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION FOR CHIEF JUDGE JOHN M. WALKER, JR.,
TO RECUSE HIMSELF FROM *IN RE PREMIER VAN et al.*
AND THE PENDING PETITION FOR
PANEL REHEARING AND HEARING EN BANC

In re PREMIER VAN et al. case no. 03-5023

RICHARD CORDERO
Third party plaintiff-appellant
v.
KENNETH W. GORDON, Esq.
Trustee appellee
DAVID PALMER,
Third party defendant-appellee

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. On August 11, 2003, Dr. Cordero filed with the Clerk of this Court a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. Those wrongful and biased acts included Judge Ninfo's failure to move the case along its procedural stages, the

instances of which were identified with cites to the FRCivP. To no avail, for there has been a grave failure to act upon that complaint.

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****

I. The Chief Judge's failure to comply with duties imposed on him by law and rules shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts, such as deciding the petition for panel rehearing and hearing en banc

A. The Chief Judge has a duty under law and rules to handle the complaint 'promptly and expeditiously'

2. Those failures have not been cured yet and the bias has not abated either. Hence, Judge Ninfo has engaged and continues to engage "in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Such conduct provides the basis for a complaint under 28 U.S.C. §372.

3. Dr. Cordero's complaint about Judge Ninfo relied thereupon. After being reformatted and resubmitted on August 27, 2003, it invoked the similar provisions found now at 28 U.S.C. §351.

4. Subsection (c)(1) thereof provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief

judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge **shall** transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge **shall promptly**-(A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added). The statute requires 'prompt and expeditious' handling of such a complaint and even imposes the obligation so to act specifically on the chief judge of the circuit.

5. Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules of the Second Circuit is

that action will be taken expeditiously. The Circuit's chief judge is not only required to enforce those Rules, but as its foremost officer, he is also expected to do so in order to set the most visible example of conduct in accordance with the rule of law.

B. The Chief Judge has failed to take action in more than seven months and would not even keep, let alone answer, a complaint status inquiry

6. Nevertheless, over seventh months have gone by since Dr. Cordero submitted his complaint about Judge Ninfo, but the Chief Judge of the Second Circuit, the Hon. John M. Walker, Jr., has failed to take the action required of him by statute and rules in connection therewith, let alone notify Dr. Cordero of any action taken by him 'promptly and expeditiously'.

7. Far from it! Thus, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4. One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt

with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

C. The Chief Judge failed to appoint a special committee

8. Likewise, there is evidence that Chief Judge Walker has failed to comply with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to members of the judicial council concerning this matter. The replies of those that have been kind enough to write back show that they did not know anything about this complaint, much less have knowledge of the Chief Judge appointing any special committee or of any committee recommendations made to them.

D. The Chief Judge is member of the panel that failed even to discuss the pattern of wrongdoing

9. There is still more. The pattern of wrongdoing and bias at the bankruptcy and district courts has materialized in more than 10 decisions adopted by either Judge Ninfo or his colleague upstairs in the same federal building, the Hon. David G. Larimer, U.S. District Judge. Dr. Cordero challenged those orders in an appeal in

this Court bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted the decisions with bias and prejudice against Dr. Cordero and denied him due process. Yet, the order of January 26, 2004, dismissing the appeal was adopted by a panel including the Chief Judge. It does not even discuss that pattern, not to mention determine how wrongdoing may have impaired the lawfulness of the orders on appeal.

10. If a judge can be disqualified for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60 (1988), then the appearance of one of the worst forms of impropriety, that is, perverting judicial judgment through partiality, must be sufficient to at the very least be recognized and considered in any decision. Disregarding bias and prejudice in the process of judicial decision-making that vitiate any alleged substantive grounds for the resulting decision allows the process to become a farce. The Chief Judge, in addition to his responsibility as the chief steward of the integrity of that process in this Circuit, had a statutory duty to act upon a complaint that the process that issued the appealed orders was perverted through a pattern of disregard of legality and of commission of wrongdoing. Yet, the Chief Judge too disregarded the complaint.

E. The Chief Judge failed to bear his heavier responsibility arising from his superior knowledge of judicial wrongdoing and its consequences on a person, and from his role as chief steward of the integrity of the courts

11. In so disregarding his duty, the Chief Judge bears a particularly heavy responsibility, for he knows particularly through a complaint transmitted under statute and rule to him for his consideration, as well as generally through all the papers filed by Dr. Cordero and transmitted to the panel, that Judge Ninfo's and others' targeted misconduct and systemic wrongdoing have inflicted upon Dr. Cordero irreparable harm for a year and a half by causing him enormous expenditure of time, effort, and money in, among other things, legal research and writing as well as traveling, aggravated by tremendous emotional distress. Yet, the Chief Judge has knowingly allowed the case to be remanded and thereby permitted Dr. Cordero to be the target of further abuse. Worse still, such abuse is likely to be rendered harsher by a retaliatory motive and more flagrant by the Chief Judge's failure to take any action on the complaint, let alone condemn the complained-about abuse, which may be construed as his condonation of it…

12. by the Circuit's Chief Judge!, the one reasonably expected to ensure that the foremost business of Circuit courts must be the dispensation of justice through fair and just process. But instead of doing justice and being seeing doing justice, the Chief Justice is seen to be not only blind to the commission of injustice

through the disregard of laws and rules at the root of justice by those whom he is supposed to supervise, but also to be insensitive to its injurious consequences on a party…no! no! on Dr. Cordero, a person, a human being whose life has being disrupted in very practical terms by such injustice while his dignity has been trampled underfoot by so much disrespect and abuse.

13. However, if the person suffering those consequences is of no importance, for the human 'element' is not a part of the machinery of appellate decision making, where only the mechanics of judicial process matters and justice is but a by-product of it, not its paramount objective, then one is entitled to insist that at least the rules of that process be 'observed', that is, that they be applied and be seen to be applied. Chief Judge Walker has failed to apply the rules.

II. By disregarding law and rules just as have done the judges that issued the appealed orders, the Chief Judge has an interest in not condemning the prejudicial conduct that he has engaged in too, whereby he has a self-interest in the disposition of the petition that reasonably calls into question his objectivity and impartiality

14. Chief Judge Walker has failed to comply in over seven months with the duty to take specific action imposed upon him by law and rule, and that despite the insistent requirement that he act 'promptly and expeditiously'. Moreover, since he is deemed to know what the law and rules require of him, it must be conclusively stated that he has intentionally failed to comply. Thereby the Chief

Judge himself "has [knowingly] engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Worse still, he has caused that prejudice by engaging in the same conduct complained about Judge Ninfo, who has acted in his judicial capacity with disregard for the law, rules, and facts. Since both the Chief Judge and Judge Ninfo would hold themselves, and their positions require that they be held, to be reasonable persons, who are deemed to intend the reasonable consequences of their acts and omissions, then both of them must be deemed to have intended to inflict on Dr. Cordero the irreparable harm that would reasonably be expected to result from their failure to comply with their duties under law and rule.

15. Their having engaged in similar conduct has grave implications for the disposition of the pending motion for panel rehearing and hearing en banc as well as any further handling of this case. This is so because Dr. Cordero's petition is predicated, among other grounds, on the unlawfulness of the appealed orders due to Judge Ninfo's and Judge Larimer's participation in a pattern of disregard of the rule of law and the facts in evidence. Therefore, the Chief Judge can reasonably be expected to base his decision, not on law and rules, which he has shown to be capable of disregarding even when they charge him with specific duties, but rather on the extra-judicial consideration of not condemning his own conduct. That constitutes a self interest that compromises

his objectivity. Consequently, the Chief Judge cannot be reasonably expected to be qualified to examine impartially, let alone zealously, and eventually find fault with, conduct that he himself has engaged in.

III. Relief requested

16. Therefore, Dr. Cordero respectfully requests that the Chief Judge, the Hon. John M. Walker, Jr., recuse himself from any direct or indirect participation in any current or future disposition of In re Premier Van Lines, docket no. 03-5023, beginning with the pending petition for panel rehearing and hearing en banc.

Respectfully submitted on,

March 22, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

March 24, 2004

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

Re: *Judicial Conduct Complaint*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your complaint.

Please use the Official Complaint Forms enclosed. The Complaint Form is a document separate from the Statement of Facts. They should not be attached to each other. The Statement of Facts must be no more than five pages (five sides). The Statement of Facts must be on the same sized paper as the Official Complaint Form.

Please do not a table of contents to the Statement of Facts.

The exhibits must be mentioned in the Statement of Facts. Rule 2(d) states that "Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears."

The exhibits should clearly be marked exhibits.

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

Sincerely,
Roseann B. MacKechnie, Clerk of Court

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

Enclosures

Dr. Richard Cordero

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

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

March 24, 2004

Judge Dennis Jacobs
Circuit Judge at the U.S. Court of Appeals, 2d Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Judge Jacobs,

Last Monday, March 22, I submitted a judicial misconduct complaint "addressed…to the Circuit Judge eligible to become the next chief judge of the circuit", who is the one to whom it should be transmitted when the judicial officer complained-about is the Chief Judge, as provided by this Circuit's Rules Governing Complaints under 28 U.S.C. §351. What happened thereafter is worth bringing to your attention, for this incident should be taken into account in deciding how to deal with that complaint and in determining whether the incident and all the similar ones that have occurred in *this* Court are only a reflection of the degree of care and capacity of the clerks or rather part of a pattern of wrongful acts. [C:271]

Indeed, at the In-Take Room 1803, I showed the deputy clerk behind the counter four copies of a complaint like the one following this page as well as a separate volume of "Evidentiary Documents". I asked to speak with Ms. Patricia C. Allen, who is the only deputy clerk in the whole of this Court to handle such a filing. So if she is on vacation –as she was last August 11, 2003, when I submitted the initial complaint- or on medical absence –as she will be this Thursday 25 and Friday 26- nobody else can examine for conformity or process a complaint. Hence, it is left untouched until her return, never mind that §351 and the Governing Rules require that such complaints be handled 'expeditiously and promptly' given that judicial misconduct impairs the integrity of the courts' just and fair process of dispensing justice. I was told that Ms. Allen was unavailable. I filed the complaint. I also tendered to the clerk for filing five individually bound copies of a motion for something else in my appeal, docket no. 03-5023, each with the required Information Sheet on top. [C:302; cf. C:324]]

Today, Wednesday 24, two days later, that docket still did not show that the motion had been entered. That got me concerned about the complaint too, although I know that complaints are not entered on the same docket. So I called Ms. Allen to find out whether she had inspected and approved the complaint…but not even its transmission to her had occurred! At my request, she called the In-takers at Room 1803. However, none of them knew anything about my complaint. I asked that she have them search for it while I waited on the phone. Eventually, everything that I had filed on Monday was found on another floor and brought to her. Everything had been sent to the case manager on the claim that the Statement of Facts and the Evidentiary Documents belonged to the motion. This means that not only did the clerks ignore my conversation with them about they being a complaint for Ms. Allen, but they failed to read the *second* line of the heading:…**Setting forth a COMPLAINT** UNDER 28 U.S.C. §351…", never mind that in bold letters it states "…**addressed** under… **to the Circuit Judge eligible to become…**".Was this an oversight or was their sight on a different target? [C:302]

Ms. Allen herself found that heading most confusing and said that it would of course be interpreted as a statement of facts in support of the motion. As to the cover page of the Evidentiary Documents…forget'a 'bout it! I had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint; (see a copy of that cover page at 26, infra). She found so objectionable that I had not titled it Exhibits that she said that she would return it to me for correction. Eventually I managed to persuade her to just write in that word and keep it. But Ms. Allen found the complaint so incurably unacceptable that she refused to transmit it to you and will instead return to me the four copies for me to reformat and resubmit them. Her objections are the following:

1. The misconduct form is not on top, 'so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?' My suggestion that one might read the heading got me nowhere.
2. The complaint form was the wrong one, for its title refers to §372 rather that §351. I said that was the form that I received in connection the first complaint back in August; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes clear. It was all to no avail. [C:276, 321]
3. My complaint has a table of documents, but complaints have no such thing. [C:279]
4. A major issue was that I put documents with the Statement of Facts as well as in the separate bound volume, 'What for?! You can't do that!' I explained that those are documents created since my first complaint back in August and are clearly distinguished by a plain page number, while documents accompanying my August complaint were referred to as E-page number (E as in Exhibit) or A-page number (A as in Appendix). All that was of no significance. [C:279§§I & II]
5. An obvious defect was that I had bound the complaint, but a complaint must not be bound; rather, it must be stapled or clipped. I indicated that Rule 2 of the Rules Governing Complaints does not prohibit binding. Moreover, I pointed out that FRAP 32(a)(3) provides that "The brief must be bound in any manner that is secure…and permits the brief to lie reasonably flat when open." However, my reasoning by analogy was lost on Ms. Allen. So I went for the practical and said that I could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. 'No!, Dr. Cordero, if the Rules do not say that you can do something, then you can't do it! It is that simple'.

These are the unacceptable features on account of which Ms. Allen refused to send the complaint on to you. Instead, she will return the four Statements for me to redo them and resubmit them to her for inspection. So on Monday I will have to go to the Court to bring her the reformatted copies, for if when I personally took the complaint there last Monday its copies ended up lost until I asked that the clerks searched for them two days later, can you imagine where they could end up if I mailed them, no to mention how much longer it would take to reach you after being "processed"? It is of no concern the extra time, effort, and money that Ms. Allen causes me to waste, let alone the aggravation, to comply with the written rules and 'the way things are done with complaints', which I must find out the hard way.

Therefore, I respectfully submit to you these questions:

1. Did Ms. Allen violate FRAP Rule 25(4), which provides that "The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule** or **practice**?" (emphasis added)
2. Did Ms. Allen handle my complaint as she normally does any other or as part of a pattern of coordinated acts targeted on me? In this context, the following should be considered:
    a. The docket of my appeal no. 03-5023, stated and still states even today, that it was the district court's decisions that were dismissed, thus giving me the misleading or false impression that I had prevailed and did not have to start preparing my petition for rehearing. [A:1009]
    b. FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the clerk **must** serve on all parties a copy of the opinion…", (emphasis added). Yet, the order of January 26 was not mailed to me on that date of entry, so that on January 30, I had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to me. It was postmarked February 2; as a result, it was a week after entry when I could read that in reality it was my appeal that had been dismissed, not the district court decisions appealed from. [A:876; cf. A:507];
    c. The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and I did not receive it until March 1, so that I ended up having the same little amount of time in which to scramble to prepare the petition by the new deadline of March 10. [A:879, 881, 1010]
    d. The petition for panel rehearing and hearing en banc that I filed on March 10 was not docketed until I called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks' normal level of performance or did somebody not want me to file the petition? [A:885]
    e. Cf. Opening Brief: 11.3; 11.4; 15.6; [A:1301]]
    f. Cf. Petition for Writ of Mandamus: 25.K and 26.L; [A:615]
    g. Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge; next in this file. [C:271]

How many elements are needed to assess the care and capacity of the clerks of the Court or to detect a pattern of wrongful acts? What degree of solidarity or coordination is there between the clerks of this Court and those of the bankruptcy and district courts in Rochester?

Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

March 25, 2004

The Hon. Robert D. Sack
Circuit Judge at the U.S. Court of Appeals, 2d Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Judge Sack,

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

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

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

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

sincerely yours,

Dr. Richard Cordero

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

March 29, 2004

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

Re: *Judicial Conduct Complaint*

Dear Mr. Cordero:

Your letter of March 25, 2004, addressed to Judge Robert D. Sack, relating to Judicial Conduct Complaint 03-8547 has been forwarded to this office.

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

Very truly yours,

Roseann B. MacKechnie

Roseann B. MacKechnie

cc: Honorable Robert D. Sack

COMPLAINT FORM

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

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

INSTRUCTIONS:

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

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

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

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

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

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

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

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

Address: 59 Crescent Street
Brooklyn, NY 11208-1515

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

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

Name: Hon. John M. Walker, Jr., Chief Judge

Court: Court of Appeals for the Second Circuit

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

[X] **Yes** [ ] **No**

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

Court: Court of Appeals for the Second Circuit

Docket number: 03-8547

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

[ ] **Yes** [X] **No**

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

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

[X] **Yes** [ ] **No**

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

docket no. 02-2230 in the U.S. Bankruptcy Court for the Western District of NY

Its appeal to the Court of Appeals for the Second Circuit bears docket no. 03-5023

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

An original and three copies of my statement of facts, dated March 19, 2004,

EITHER and addressed to the Circuit Judge eligible to become the next chief judge of the circuit, accompanies this form together with one separate volume of exhibits.

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

[X] I declare under penalty of perjury that:

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

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

Dr. Richard Cordero

signature)

on March 19, 2004, on the section 372 form

(date)

and on March 28, 2004, on the section 351 form

OR

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

[ ] I swear (affirm) that--

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

Court of Appeals
for the Second Circuit

EXHIBITS

Evidentiary documents supporting a **complaint**

UNDER 28 U.S.C. §351 **ABOUT**

The Hon. John M. Walker, Jr.,
Chief Judge
of
THE COURT OF APPEALS
FOR THE SECOND CIRCUIT

addressed under Rule 18(e) of the Rules of
the Judicial Council of the Second Circuit
Governing Complaints against Judicial Officers

to the Circuit Judge eligible to become the next chief judge of the circuit

submitted on
March 19, 2004
by

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

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

March 29, 2004

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

Re: *Judicial Conduct Complaint*

Dear Mr. Cordero:

I am returning the attachment to the revised Statement of Facts which we received today. These pages are duplicates of pages 1-25 of your Exhibits ("Evidentiary documents supporting a complaint Under 28 U.S.C. § 351 About the Hon. , . . . ").

Please note that your newest Complaint will be filed as expeditiously as possible. When we file the complaint, we will send you a letter of confirmation which will include the docket number assigned to that case.

Very truly yours,

Roseann B. MacKechnie

Enclosures

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

March 30, 2004

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

Re: *Judicial Conduct Complaint*, 04-8510

Dear Mr. Cordero:

We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004.

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

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

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

By: _____
Patricia Chin-Allen, Deputy Clerk

C:326 Clerk Allen's acknowledgment of 3/29/4 of Dr. Cordero's complaint v CJ Walker & notice of filing it as 04-8510

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[C:327-336 reserved]

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re Premier Van et al.**

Motion for: Leave to Update the Motion For the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case With Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal

Statement of relief sought: Dr. Cordero respectfully requests that:

I. Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing and hearing en banc or any future proceeding in this case;

II. the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

III. the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:
1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
2. caused him to waste his time, effort, and money, and inflicted on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

IV. launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

V. order that the TOC and pages 1-25 (below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

MOVING PARTY: Dr. Richard Cordero, Movant Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: N/A

Court-Judge/Agency appealed from: Bankruptcy J. Ninfo, District J. Larimer, and Chief J. Walker

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: N/A

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: April 18, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. case no. 03-5023

MOTION FOR Leave to Update the Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case with recent evidence of a tolerated pattern of disregard for law and rules further calling into question the Chief Judge's objectivity and impartiality to judge similar conduct on appeal

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1. "The bucket stops with me" is short for taking responsibility for what subordinates do. Herein is evidence of how clerks all the way to the top have made so many mistakes and repeatedly disregarded the law and rules with the consistent effect of hindering the submission of a complaint about the Hon. John M. Walker, Chief Judge. Their conduct forms a pattern of non-coincidental, intentional, and coordinated wrongful activity that is being engaged in under the Chief Judge's stewardship of this Court. He must take responsibility for having at the very least tolerated the formation of such pattern and its injurious effect on the Court's business and claim on public trust. Disregard for legality and facts by the lower courts is precisely the attitude that has determined their orders on appeal. Thus, by his own tolerance of disregard for legality among his subordinates, the Chief Judge can reasonably be expected to lack objectivity and impartiality to assess the facts and eventually find and condemn the same conduct that the lower courts have tolerated, encouraged, and participated in. Hence, he should recuse himself.

Table of Contents

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I. Statement of Facts describing a repeated effort by clerks to hinder the submission of Dr. Cordero's complaint about the Chief Judge

2. Last March 22, Dr. Cordero showed the receiving clerk in In-Take Room 1803 a misconduct complaint about Chief Judge Walker under 28 U.S.C. §351 and this Circuit's Rules Governing Complaints thereunder (referred to hereinafter as Rule #); (i-25, below; see the Table of Contents, M-22, below). He also submitted a separate volume titled "Evidentiary Documents" (26, below). He asked to speak

with Deputy Clerk Patricia Chin Allen. After the clerk phoned her, she told him that Clerk Allen was unavailable. He filed the complaint.

A. This Court bottlenecks the processing of all misconduct complaints through Clerk Allen, thus disregarding the 'promptness' requirement

3. Dr. Cordero asked for Clerk Allen because when on August 11, 2003, he filed the original complaint about the Hon. John C. Ninfo, II, and other officers in the bankruptcy and district courts in Rochester, he was told that Clerk Allen is the only clerk in the whole of this Court to handle such filings. Since on that occasion she was said to be on vacation for two weeks, nothing happened with the complaint until her return. Likewise on this occasion, Clerk Allen subsequently told Dr. Cordero that she would be on medical leave on March 25 and 26 and that nobody else in the Court could examine for conformity or process his complaint until she came back on Monday 29.

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit's Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts' integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence,

intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness requirement. It reveals the Court's attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks' handling of Dr. Cordero's complaint, in particular.

B. Dr. Cordero also filed a motion and the clerks misplaced the complaint with it, thus delaying the complaint's handling

5. So it happened that on Monday 22, Dr. Cordero also tendered to the clerk for filing five individually bound copies of a motion for something else in his appeal from the Rochester courts' decisions, docket no. 03-5023. Each copy was clearly identified as a motion by an Information Sheet bound with and on top of it.

6. Two days later, on Wednesday 24, that docket still did not show any entry for the motion. That got Dr. Cordero concerned about the complaint too, although he knows that complaints are not entered on the same docket. So he called Clerk Allen to find out whether she had reviewed and accepted the complaint. He found her, but she did not know anything about his misconduct complaint because none had been transmitted to her! At his request, she called the In-takers. However, none knew anything about it either. He asked that she have them search for it while he waited on the phone. Eventually, everything that he had filed on Monday was found on another floor with the case manager for the motion's case. The explanation offered was that the complaint's Statement of Facts and separate

volume of "Evidentiary Documents" were thought to belong to the motion!

7. That explanation presupposes that all the clerks in the In-Take Room forgot Dr. Cordero's conversation with them about his wanting to file a complaint, his request that they call Clerk Allen to review it while he was there, and his asking whether anybody else could review it since she was unavailable. Moreover, it presupposes that all those who handled it from the In-Take Room to the motions team failed to read the *second* line of the complaint's heading laid out thus (i, below):

STATEMENT OF FACTS
Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**
The Hon. John M. Walker, Jr., Chief Judge
of the Court of Appeals for the Second Circuit
addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers
to the Circuit Judge eligible to become the next chief judge of the circuit

8. For her part, Clerk Allen herself found that heading most confusing and said that 'it would of course be interpreted as a statement of facts in support of the motion', never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Documents"…forget'a 'bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But

she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four copies for him to reformat and resubmit them. Her objections were the following:

a) The misconduct form was not on top, 'so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?' Dr. Cordero's suggestion that one might read the heading got him nowhere.

b) The complaint form was the wrong one, for its title refers to §372 rather that §351. Dr. Cordero said that was the form that he had received in connection with the original August 11 complaint; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes apparent; all to no avail. Both forms appear at M-23 and v-a, below, so that the Court may try to find any difference, let alone one significant enough to justify refusal of the complaint.

c) The complaint had a table of contents, but 'complaints have no such thing!'.

d) A major issue was Dr. Cordero's inclusion of documents with the Statement of Facts and with the separate bound volume, 'What for?! You can't do that!' He explained that those are documents created since his August com-plaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accompanying the opening brief) or E-# (E as in Exhibit, which was the title of a separate

volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume accompanying the March complaint the different title “Evidentiary Documents” was used). Subtleties of no significance to Clerk Allen.

e) An ‘obvious’ defect was that Dr. Cordero had bound the complaint, but ‘a complaint must not be bound; rather, it must be stapled or clipped!’ He indicated to Clerk Allen that Rule 2 does not prohibit binding. Moreover, FRAP 32(a)(3) provides that “The brief must be bound in any manner that is secure…and permits the brief to lie reasonably flat when open.” However, Dr. Cordero’s reasoning by analogy was lost on Clerk Allen. So he went for the practical and said that he could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. ‘No!, Dr. Cordero, if the Rules do not say that you can do something, then you can’t do it! It is that simple’.

9. These are the ‘unacceptable’ features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to

comply with her unwritten arbitrary demands to implement 'the way things are done with complaints', which he had to discover the hard way after complying with the written Rules, whether on point or applied by analogy.

C. Clerk Allen's March 24 letter imposes meaningless arbitrary requirements

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

1. Clerk Allen requires the separate volume to be marked "Exhibits"

11. Although Clerk Allen had told Dr. Cordero that she would write in the word "Exhibits", she wrote in her cover letter that "Exhibits should clearly be marked exhibits". As a result, Dr. Cordero had to unbind the volume of 85 documents, reformat the cover page to include the word "Exhibits" prominently enough so that she would see it, reprint it, and rebind the volume of several hundred pages.

12. However, this Circuit does not require anywhere that the documents accompanying a misconduct complaint be marked "Exhibits". Rule 2(d) reads thus:

> **(d) Submission of Documents**. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court's judges never deemed appropriate to impose? Why should a clerk

be allowed to in the Court's name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges, as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be 'confused' because they too are incapable, as the clerks allegedly were, to read past the first line and see:

EVIDENTIARY DOCUMENTS
supporting a complaint
UNDER 28 U.S.C. §351 ABOUT
The Hon. John M. Walker, Jr.,
Chief Judge
of…

14. Did Clerk Allen show that she lacks the capacity even to read and apply the Rules literary, let alone in an enlightened way given their underlying objective within their context, or was she following instructions to give Dr. Cordero a hard time to dissuade him from resubmitting the complaint or at least delay its acceptance?

2. Clerk Allen requires that the Complaint Form not be attached to the Statement of Facts, thereby flatly contradicting Rule 2(b)

15. In her March 24 letter Clerk Allen also wrote thus:

> The Complaint Form is a document separate from the Statement of Facts. They **should not be attached** to each other. *The Statement of Facts must be on the same sized paper as the Official Complaint Form.* (emphasis added)

16. However, Rule 2(b) expressly provide the opposite:

> (b) Statement of Facts. A statement **should be attached** to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. *The statement should not be longer than five pages (fives sides), and the paper size should not be larger than the paper the form is printed on.* (emphasis added)

17. The phrase in bold letters shows how Clerk Allen, by contradicting precisely what the Rules provide, faulted Dr. Cordero, who had bound a Complaint Form to each of the original and three copies of his Statement of Facts.

18. Yet, Clerk Allen followed her Rules-contradicting sentence with an accurate restatement of the next sentence of the Rules regarding paper size for the Statement of Facts; both sentences are in italics here. The contiguity of this pair of sentences in Clerk Allen's letter indicates that when she quoted them she was reading the Rules, which sets forth these sentences successively. It cannot be said realistically that Clerk Allen just read the first sentence incorrectly but the next one correctly. This follows from the fact that she is the only clerk in the whole Court through whom all misconduct complaints are bottlenecked. Thus, when Dr. Cordero submitted his about the Chief Judge, Clerk Allen's top boss, she did not have to consult the Rules for the first time ever. She must know them by heart.

19. To say Clerk Allen made a mistake the first time she read the Rules to apply them to the first complaint she ever handled and has carried on that mistake ever since would be to indict her competence and that of her supervisor. But if that were the case, then the track record of all the misconduct complaints that she has ever handled must show that every time a complainant correctly submitted a Statement of Facts with the Complaint Form attached to it, she refused acceptance and required that the complainant detach them and resubmit them detached.

20. If so, what for!? If she keeps the original Form for the Court's record, what does

she do with the copies if it is not to send them to the judges to whom she sends the Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

D. Clerk Allen requires that no table of contents (TOC) be attached to the Statement of Facts

21. Rule 2(h) reads thus "(h) No Fee Required. There is no filing fee for complaints of misconduct or disability". That provision has the purpose and effect of facilitating the submission of such complaints by removing the hurdle of a fee. Hence, on whose authority does Clerk Allen, in handling such complaints, raise hurdles in blatant disregard for the letter as well as the spirit of the law and its Rules?

22. Clerk Allen raised another such hurdle when she wrote, "Please do not [sic] a table of contents to the Statement of Facts"? There is no provision whatsoever entitling her to make such requirement. And a requirement it was, for when Dr. Cordero resubmitted the original and three copies of the Statement each with a TOC, Clerk Allen removed and mailed the TOCs back to him! (para. 30 below)

23. For those who can reason by analogy, the justification for a TOC has its legal basis in Local Rule 32(b)(1)(B). It requires that the Appendix to an appeal brief contain "A detailed table of contents referring to the sequential page numbers".

24. For its part, Rule 2 provides as follows:

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in

> checking the facts, such as the presence of a court reporter or other witness and their names and addresses.
>
> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

25. The justification for a TOC also has a practical basis. The complaint about the Chief Judge is predicated on his failure to deal with the complaint about Judge Ninfo. Between them they refer to 85 documents and use three formats of page numbers to identify the specific pages of those documents where relevant material appears, to wit, a simple number #, E-#, or A-#. Under those circumstances, it is reasonable to assume that the next eligible chief judge and the investigators will find a TOC a most useful research device. This is particularly so because there is only one copy of the separate volume of documents. Hence, a TOC attached to each of the four copies of the Statement of Facts and providing the 'names and addresses' of 85 'witnessing' documents allows those readers to read the titles of the documents to get an overview of the kind of supporting evidence available and then decide whether they want to request the separate volume for consultation.

26. It should be noted that Clerk Allen quoted verbatim Rule 2(d). This means that she understands the concept of authority for what she requires. So on whose authority does she require that for which she lacks any written authority in law or rule?

E. Clerk Allen fails to meet with Dr. Cordero as agreed to review the reformatted complaint

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

28. It is part of the character of people who make arbitrary decisions to be unreliable and not keep their word. Clerk Allen once more wasted Dr. Cordero's time by making him come to meet her in the Court so early in the morning for nothing. Except that from her point of view, it was not for nothing. By avoiding meeting him and reviewing the complaint while he was there, Clerk Allen gave herself another opportunity to delay the acceptance.

29. And so she did, for when Dr. Cordero returned home late in the afternoon, there was a message recorded by Clerk Allen asking that he call her. By that time it was too late. They spoke on the phone the following morning. She said that he had left blank the question of whether there was an appeal in that Court. He explained to her that the appeal did not relate to the complaint about the Chief Judge. She said that there was an appeal anyway, but that she would write it in.

30. However, she said that she had to send back to him the original and three copies of the Statement of Facts because he had added to each a table of contents (TOC) and 25 pages that were duplicative of the first 25 pages in the separate volume of documents (vi and 1-25, below). He told her that not only had she not written in her March 24 letter anything about not attaching documents to the Statement, but also those pages contain documents created since the original complaint of August 11. It was to no avail. She would return the Statement copies so that he could remove the TOC and pages 1-25 from each because otherwise she would have to make copies also of the TOC and those pages when she copied the Statement for all the judges. Dr. Cordero asked her not to send them back once more, but rather remove whatever she wanted and file the complaint without any more delay. She said that she would have to cut the plastic ring combs (like the one binding these pages). He gave her permission to do so. A couple of days later four sets of TOCs and pages 1-25 were delivered by mail to Dr. Cordero. A cover letter signed by Clerk of Court Roseann B. MacKechnie stated that pages 1-25 were being returned because they were duplicates of those in the Exhibits. (M-27, below)

31. So Clerk Allen, with Clerk MacKechnie's approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by

the Rules adopted by this Court's judges?! Moreover, why does Clerk Allen have to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

II. Legal provisions violated by Clerk Allen and her superiors who approved or ordered her conduct

32. Clerk Allen sent Dr. Cordero a letter dated March 30, 2004, stating that "We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004". (M-28, below) This means that the complaint was not filed on March 22 when he first submitted the Statement of Facts and "Evidentiary Documents" volume and had them time stamped. So if he had not given in to the clerks' arbitrary form requirements, they would not have filed it. Yet, clerks not only lack authority to refuse to file a paper due to noncompliance with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

> The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule** or **practice**. (emphasis added)

33. Likewise, the Local Rules were adopted by a majority of the circuit judges as provided under FRAP Rule 47(a)(1)) and the clerks are there simply to apply them, not to add to or subtract from them on their whims. People that rely on those rules and make a good faith effort to comply with them, have a legal right to expect and require that clerks respect and apply them. That expectation is reasonable for it arises from the specific legal basis referred to above as well as

others that determine the general working of the rules of procedure.

34. Thus, FRAP 32(e) provides that "Every court of appeals must accept documents that comply with the form requirements of this rule," whereby it prohibits those courts from refusing acceptance due to non-compliance with its local rules. On the contrary, FRAP goes on to provide that "By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule", whereby it states a policy choice in favor of acceptance of documents even if non-complying, as opposed to a policy of non-acceptance due to non-compliance. The logic of that policy makes it inadmissible for clerks to impose unwritten form requirements that they come up with arbitrarily, let alone to refuse acceptance due to non-compliance with such requirements. Consequently, for clerks to refuse acceptance of a complaint because its Statement of Facts has attached to it a TOC and some documents, regardless of whether they duplicate those in the separate volume of Exhibits, constitutes a per se violation of the Rules' policy to facilitate rather than hinder the filing of documents.

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no

authority to disregard the law or the rules, but rather the obligation to show the utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

36. Hence, when clerks disregard the law or rules, whether on a folly of their own or on their superiors' orders, they render themselves liable for all the waste of effort, time, and money and all the emotional distress that they intentionally inflict on others. Indeed, the infliction is intentional because a person is presumed to intend the reasonable consequences of her acts. When clerks force filers to redo what they have done correctly to begin with and to correct proper-form mistakes, which do not provide grounds for refusal to file, they can undeniably foresee the waste and distress that they will inflict on those filers. Here they have inflicted plenty.

A. A long series of acts of disregard for legality reveals a pattern of wrongdoing that has become intolerable

37. Enough is enough! The clerks' tampering with Dr. Cordero's right to file a misconduct complaint is only the latest act of disregard for rights and procedure by judges and other court officers to Dr. Cordero's detriment. Here is a sampler:

    a) The January 26 order on Dr. Cordero's appeal, docket no. 03-5023, stated, and stills does, that it was the district court's decisions that were dismissed, thus giving him the misleading or false impression that he had prevailed and did not have to start preparing his petition for rehearing.

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the

clerk **must** serve on all parties a copy of the opinion…", (emphasis added). Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

c) The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and Dr. Cordero did not receive it until March 1, so that he ended up having the same little amount of time in which to scramble to prepare, as a pro se litigant, the petition by the new deadline of March 10.

d) The motion for panel rehearing and hearing en banc that he filed on March 10 was not docketed until he called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks' normal level of performance or did somebody not want Dr. Cordero to file the petition?

e) Dr. Cordero's original letter and four copies, dated February 2, 2004, to Chief Judge Walker asking for the status of his August 11 complaint about Judge Ninfo, was refused by Clerk Allen and returned to him immediately with her letter of February 4, 2004. (1 and 4, below)

f) Cf. Instances of disregard for law, rules, and facts in the Rochester courts. (Opening Brief, 9.C, 54.D; Petition for a Writ of Mandamus 7.B-25.K)

g) Cf. Rochester court officers' disregard for even their obligations toward this Court. (Petition for a Writ of Mandamus, 26.L);

h) Cf. Motion of August 8, 2003, for recusal of Judge Ninfo and removal of the case to the U.S. District Court in Albany. (A-674 in the Exhibits)

i) Cf. Motion of November 3, 2003, for leave by this Court to file updating supplement of evidence of bias. (A-768 in the Exhibits)

j) Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge, and describing the egregious disregard of legality by Judge Ninfo and the trustees in Rochester on March 8, 2004 (i-v, below).

38. How many acts of disregard of legality are needed to detect a pattern of wrong-doing? How much commonality of interests and conduct permit to infer coordination between officers of this Court and those of the Rochester courts? When will so much frustration of reasonable expectations, legal uncertainty, and abuse *ever stop and I get just and fair process under the law!?* The line is drawn here!

III. Relief sought

39. Is there any circuit judge who cares and will do the right thing no matter who gets in the way? In that hope, Dr. Cordero respectfully requests that:

a) Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing

and hearing en banc or any future proceeding in this case;

b) the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

c) the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:

   1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
   2. caused Dr. Cordero to waste his time, effort, and money, and inflicted on him emotional distress;
   3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

d) launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

e) order that the TOC and pages 1-25 (vi and 1-25, below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

Respectfully submitted on

April 18, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

Table of Exhibits

of the Motion of April 18, 2004
for Leave to Update the Motion of March 22, 2004
for C.J. Walker to Recuse Himself from *In re Premier Van et al.*
by
Dr. Richard Cordero

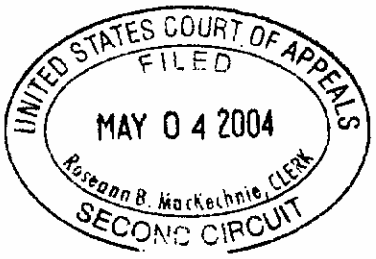
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc

Docket No. 03-5023

In re: Premier Van Lines



Movant:
Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	/___/	/___/
Consent obtained from adversary (ies)?	/___/	/___/
Is oral argument desired?	/___/	/___/

ORDER

Before: Hon. John M. Walker, Jr., *Chief Judge*, Hon. James L. Oakes,
Hon. Richard C. Wesley, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

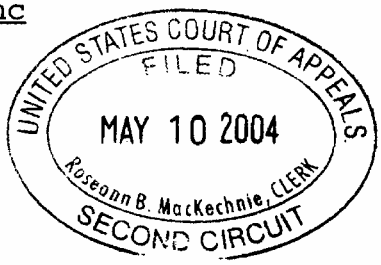
MAY - 4 2004
Date

Arthur M. Heller
Motions Staff Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc



AMENDED ORDER

In re: Premier Van Lines

Docket No. 03-5023

Movant:
Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	/___/	/___/
Consent obtained from adversary (ies)?	/___/	/___/
Is oral argument desired?	/___/	/___/

ORDER

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

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

MAY 10 2004
Date

Arthur M. Heller
Motions Staff Attorney

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
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OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: May 31, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re PREMIER VAN et al. case no. 03-5023

Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

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Dr. Richard Cordero states under penalty of perjury as follows:

1. Last March 22 and subsequently on April 18, Dr. Cordero filed two related motions, namely:

    1. Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc (21, infra)

    2. Motion for leave to Update the motion for the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case with Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules further Calling into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal (33, infra)

2. These motions were predicated on 28 U.S.C. §455(a) and laid forth reasons based on facts and law why the Hon. John M. Walker, Jr., Chief Judge of this

Court, should recuse himself from the pending rehearing and hearing an banc and from considering any other matter therein.

3. Nevertheless, on May 4, an order captioned "Recusal of Chief Judge Walker from petition for rehearing and petition for rehearing en banc", signed by Motions Staff Attorney Arthur M. Heller, and amended on May 10, stated merely that "It is hereby ordered that the motion be and it hereby is denied". (55 and 56, infra).

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I. Why the Chief Judge has a duty either to disqualify himself upon the reasonable questioning of his impartiality or to state his arguments why the questioning is not reasonable so that the self-disqualification obligation has not attached

4. Section 455(a) provides that a federal judge "**shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (emphasis added). Thus, the law lays on judges a statutory obligation to disqualify themselves if the stated condition is met.

5. That condition is that "his impartiality might **reasonably** be questioned." (emphasis added). Hence, it suffices that reasons –not evidence, let alone proof- questioning the judge's impartiality be presented for the self-disqualification obligation to attach.

6. This means that §455(a) relies on a rule of reason. The standard by which that rule is to be applied is implicit in the section's language, for it requires only the possibility that the judge's impartiality "**might** reason-ably be questioned". The verb "might" lies, of course, at the bottom of the modal continuum of might>may>could>can>must>ought to. This grammatical choice of the §455(a) legislators conveys their choice of the legal standard by which the sufficiency of the reasons is to be assessed: as it were, by a preponderance of persuasiveness.

7. Applying the rule of reason under this standard, the questioning is "evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its

appearance", *Liteky v. United States,* 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994); not how it appears from the subjective standpoint of the judge internally assessing his feelings toward a litigant or her legal position, but rather "from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances" enabling her to conduct an 'objective inquiry', *In re Drexel Burnham Lambert, Inc.,* 861 F.2d 1307, 1309 (2d Cir. 1988).

8. "Objective" here means that what matters in the impartiality inquiry is how the judge, as its object, appears to the reasonable observer, rather than how the judge, as a subject, assesses it personally. This follows from the Supreme Court's statement that, "The goal of 28 USC §455(a)…is to avoid even the appearance of partiality…created even though no actual partiality exists because the judge (1) does not recall the facts, (2) actually has no interest in the case, or (3) is pure in heart and incorruptible." *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847; 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988).
9. Hence, the rule of reason is applied to a §455(a) questioning to preserve the appearance of the judge's impartiality, rather than to ascertain the reality of his lack of it. Since the section's purpose calls for a low threshold for the rule's application, it follows that the questioning is reasonable when it is more likely than not to persuade of the judge's lack of impartiality. Hence, the section's

language and purpose support the correctness of the standard of preponderance of persuasiveness to assess the sufficiency of the reasons for questioning the judge's impartiality. It is a standard easy to satisfy that cuts in favor of the reasonableness of the questioning.

10. Section 455(a) is so phrased as to allow the questioning to be done by the judge himself to begin with. This Court recognized that in *United States v. Wolfson,* 558 F.2d 59; 1977 U.S. App. LEXIS 13096 (2d Cir. 1977), note 11, where it stated that "Section 455 is a self-enforcing provision that is directed towards the judge, but may be raised by a party." The judge's foremost obligation is no longer a "duty to sit" on an assignment, *In Re: International Business Machines,* 618 F.2d 923, at 929 (2d Cir. 1980); rather, it is to preserve even the appearance of impartiality for the "purpose of promoting public confidence in the integrity of the judicial system"; id. *Liljeberg*.
11. If by a preponderance of persuasiveness the facts and circumstances available to the judge yield reasons that persuaded him of the possibility that his impartiality "**might** reasonably be questioned", the consequence is inescapable: he "shall disqualify himself", for the self-disqualification obligation has attached.
12. Once that obligation attaches, the judge must not wait until a litigant or another person actually questions his impartiality. If he has reasons that persuade him that it might be, then, even though his impartiality has not yet been questioned

by another person, the judge has the obligation to disqualify himself sua sponte.

13. It follows that the self-disqualification obligation attaches with even more strength when an observer is the person who questions the judge's impartiality, for the questioning has evidently proceeded from a possibility that might occur to a fact that has occurred. Consequently, once an observer has questioned the judge's impartiality, the only concern left is whether the questioning might persuade a reasonable person of the judge's likely lack of impartiality. If no inquiry is conducted or no determination is made, the easily meet standard of preponderance of persuasiveness weighs in favor of a reasonable questioning that attaches the self-disqualification obligation. The judge has no discretion but he "**shall** disqualify himself" and "his failure to disqualify himself [is] a plain violation of § 455(a)", id. *Liljeberg*.

14. The only way for the judge not to find himself under such obligation is for him to argue that the questioning of his impartiality is not reasonable and that, as a result, the self-disqualification obligation has not attached. That he can only do, of course, by stating his arguments therefor.

15. The obligation to state those arguments is all the more evident the more prominent the judge is whose impartiality has been questioned, lest he claim that the higher the judge's visibility or station in the judicial hierarchy, the higher above the law he is so that not even a statute can place on him the obligation to

disqualify himself despite his impartiality having in fact been questioned. A judge that shows such contempt for the law as to put below his feet an obligation that the law places on him, despite the obligation being unambiguous and critically important for the judicial systems that he serves and the public that must trust it and him, breaches his oath of office to "administer justice without respect to persons…and…faithfully and impartially **discharge** and perform **all duties** incumbent upon me as [judge] **under the** Constitution and **laws** of the United States", 28 U.S.C. §453, (emphasis added). He thereby forfeits his right to apply the law just as he loses any right to require others to show respect for the law and him.

II. The reasons presented in the motions to question the Chief Judge's impartiality satisfied the standard of preponderance of persuasiveness and caused the self-disqualification obligation to attach

16. Among the reasons on which the motions of March 22 and April 18 (21 and 33, infra) urged the Chief Judge to disqualify himself are these:

a) On August 11, 2003, a judicial misconduct complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, as well as District Judge David Larimer and their administrative staff in their courts in Rochester, was filed with Chief Judge Walker under 28 U.S.C. §351 et seq. and this Circuit's Rules Governing such complaints. (57 and 62, infra) Those law and rules impose on the chief

judge of the circuit the obligation to handle the complaint "promptly" and "expeditiously". (63, infra) The promptness obligation is all the more categorical and non-discretionary because both §351 and the Governing Rules state that the gravamen of the complaint is that the complained-about judge "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". (emphasis added) That statement unequivocally makes expeditious action an essential obligation of the conduct of judges as well as a key element of the application of the law. For its part, the promptness obligation is justified by the need both to protect the complainant from a judge's misconduct and to safeguard the trust of the public at large in the integrity of the judicial system. But disregarding their welfare and general interest, to date, ten months later!, Chief Judge Walker has still not dealt with the complaint at all. Not even additional grounds for complaint arising in the meantime and expectedly brought to his attention have made him aware of the urgency of the situation enough to cause him to comply with his statutory and regulatory obligations. (67-69, infra) The Chief Judge's failure to discharge them shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts. Thus, his conduct provides the basis for the well-grounded fear that in his participation in deciding the pending petition in this case for panel rehearing and hearing en banc the Chief Judge

can likewise disregard legality so as to apply extrajudicial considerations, including personal interests, and, given his preeminent position not only in this Court, but also in the Circuit, influence others to do the same.

b) Through such disregard of his obligations under §351 and the Rules, and by at least tolerating his own administrative staff to engage in a pattern of non-coincidental, intentional, and coordinated disregard of law and rules (33, infra), the Chief Judge engaged in the same conduct, namely, a pattern of non-coincidental, intentional, and coordinated disregard of law, rules, and facts that Judges Ninfo and Larimer together with their administrative staff engaged in. Thereby the Chief Judge condoned their conduct and called into question his impartiality to condemn the very disregard for legality in which he engaged. Such questioning is all the more reasonable in light of the fact that the Chief Judge is a member of the panel that dismissed the appeal from those judges' orders without even discussing how their pattern of disregard for legality and bias for the local parties and against Dr. Cordero, the only non-local, tainted their orders and rendered them null and void.

c) By disregarding the precise statutory and regulatory obligation to deal with the misconduct complaint "promptly" and "expeditiously", the Chief Judge intentionality subjected the complainant to the reasonable consequences of his acts, that is, to suffering at the hands of the complained-about judges and

administrative staff further loss of effort, time, and money, as well as additional emotional distress (cf. 69-70, infra) and deprivation of his constitutional right to due process before an unbiased judge. (Cf. *William Bracy v. Richard B. Gramley, Warden*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (noting that due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case). In order to avoid providing a basis for his own liability, the Chief Judge now has a personal interest in neither condemning their prejudicial conduct nor referring the case to the FBI. Such referral has been requested for the FBI to investigate, among other things, how bankruptcy fees in *thousands of open cases per trustee*, including cases obviously undeserving of relief under the Bankruptcy Code, may be driving the pattern of wrongdoing among judges and their administrative staff. (70 and 71, infra) Evidence obtained by the FBI could reveal the motive for bias and support the claim of its resulting harm. Consequently, Chief Judge Walker's self-interest in the disposition of every aspect of this case reasonably calls into question his objectivity and impartiality and causes his self-disqualification obligation to attach.

17. Applying the standard of preponderance of persuasiveness to the above-stated reasons upon which Chief Judge Walker's impartiality 'might be questioned',

those reasons appear persuasive enough to cause "an objective, disinterested observer fully informed of the[se] underlying facts [to] entertain significant doubt that justice would be done absent recusal", *United States v. Lovaglia,* 954 F.2d 811, 815 (2d Cir. 1992). Hence, the self-disqualification obligation has attached upon the Chief Judge.

18. These impartiality-questioning reasons and the obligation deriving from the "shall disqualify himself" command would spur a judge respectful of the law to disqualify himself or state his arguments why the obligation has not attached. But the Chief Judge slapped this reasonable questioning away with the hand of a staffer penning a mere "denied". It cannot honestly be said that by merely doing that, the Chief Judge was paying respect in action to the principle that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done"; *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923).

19. The only thing that such "denied" undoubtedly did and may have been intended to do was slap Dr. Cordero's face. Indeed, he complained in his appeal precisely that District Judge Larimer, in his first two orders, made gross and numerous mistakes of fact and disregarded his obligation to provide a legal basis for the onerous requirements that he imposed on Dr. Cordero without making even a passing reference to the latter's legal and factual arguments for the relief requested, whereby Judge Larimer showed that he had not even read Dr.

Cordero's motions and thus, had responded ex parte to Judge Ninfo's recommendations. Then in his subsequent two orders, Judge Larimer disregarded his obligation as a judge to be seen doing justice through the application and explanation of the law and instead gave two offhand and lazy strokes of the pen to write a mere "The motion is in all respects denied", for which he did not have to even see the motions…though at least he signed his own orders. (cf. paras. 9-11, Rehearing petition of March 10, 2004)

20. The Chief Judge did not do even that, limiting himself contemptuously to a mere "denied" penned by a staffer to slap away the reasons for his disqualification presented in two motions that he did not even have to see. That the only error corrected by the amended denial order was precisely in the name of one of the judges is not reassuring as to who saw, read, and decided what. (55 and 56, infra) Such slap does no justice where arguments for not abiding by the "shall disqualify himself" command are required. That mere "denied" also slaps in the face the Supreme Court's principle of "preserving both the appearance and reality of fairness," which "'generat[es] the feeling, so important to a popular government, that justice has been done'"; *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980).

III. The Court must disqualify the Chief Judge upon his failure to disqualify himself or state his arguments that the obligation to do so has not attached

21. A reasonably prudent and disinterested person faced with the criticism of lacking impartiality would naturally want to dispel it by providing reasons why it is unfounded. The urge to do so would be greater if the person is a judge charged with lack of impartiality, for then what is at stake is not only his fairness, but also his professional integrity and effectiveness. Section 455(a) still raises the stakes because it automatically attaches on the judge the obligation that he "**shall** disqualify himself" upon his impartiality being reasonably questioned. The section does not accord him any margin of discretion to determine any other appropriate reaction. The judge can only argue the non-attachment of the obligation because the questioning is so unreasonable that it does not meet even the low threshold of the preponderance of persuasiveness standard.

22. The above-stated reasonable questioning of Chief Judge Walker's impartiality caused that obligation to attach to him. Therefore, for the Chief Judge to slap away that obligation without bothering to provide any arguments demonstrates that the he has neither factual nor legal grounds to rebut such questioning, but instead puts himself above the law to escape that obligation.

23. However, if the Chief Judge did have such arguments, he could not skip stating them just to save his effort and time or out of contempt for a pro se movant or

one who dared question his impartiality. By the preponderance of persuasiveness standard the questioning was reasonable and the self-disqualification obligation attached. The Chief Judge could not merely have the motions "denied": He had to argue against the obligation ever attaching. He owed to the law, to the Movant, and to the public at large a statement of arguments why he would stay on the case, not despite the self-disqualification obligation, but because of its absence; otherwise, he had to disqualify himself, for "Quite simply and quite universally, recusal [i]s required whenever 'impartiality might reasonably be questioned'", id, *Liteky,* 510 U.S. 540.

24. The Chief Judge also owed those arguments to the Supreme Court so as to enable it to assess on appeal the legal basis and analysis that he relied upon in deciding not to recuse himself. From nothing but a "denied" slapped by a staffer, how are the Justices to determine whether Chief Judge Walker meant that the he did not want to read the motions, had no time to waste writing a memorandum, has a cavalier attitude toward his statutory obligations, treated dismissively a mere pro se litigant, or clearly abused his discretion by failing to recognize that a fiat does not rise above the level of arbitrariness to appear as an act of justice until it ascends from a controversy on a stable platform of precedent and sound reasoning?

A. Justice Scalia's law-abiding reactions to motions for his recusal

25. In this context, it is illustrative to contrast the Chief Judge's slapped denial and Justice Scalia's two examples of respect for the law and his duty as a judge to promote public confidence in both his integrity and the judicial process. In one instance, Justice Scalia was confronted with a motion filed by Sierra Club for his self-disqualification because the Justice had spent several days duck hunting with Vice President Cheney, who was a named party in a case asking the Supreme Court whether broad discovery is authorized under the Federal Advisory Committee Act (FACA), 5 U. S. C. App. 1, §§1 *et seq*., so as to determine whether the Vice President, as the head of the Task Force gathering information to advise the President on the formulation of a national energy policy, was responsible for the involvement of energy industry executives in the Task Force's operations. Justice Scalia denied the motion, but only after stating his arguments in detail in a memorandum; *Cheney v. U.S. District Court for the District of Columbia,* 541 U.S. ___ (2004).

26. Justice Scalia showed equal respect for his obligation to avoid even the appearance of lack of impartiality in another case, which challenged the "one nation under God" phrase in the Pledge of Allegiance as a violation of the Establishment Clause of the 1st Amendment. There Appellant Michael Newdow moved for the Justice to recuse himself because his impartiality might

reasonably be questioned after the Justice commented at a Religious Freedom Day event, before reading the briefs and knowing the facts in a case that he would likely hear, that the Ninth Circuit's decision finding a violation was based on a flawed reading of the Establishment Clause; *Newdow v. United States*, App. No. 03-7 in the Supreme Court, September 5, 2003. In that case, Justice Scalia, before writing any argument concerning the questioning of his impartiality, immediately announced his self-disqualification; *Elk Grove Unified School District v. Newdow,* 540 U. S. ___ (cert. granted, Oct. 14, 2003).

27. When the Chief Judge of this Circuit, the preeminent judicial officer herein, has his impartiality questioned, he too has the obligation either to put forth his arguments why the questioning thereof is not reasonable or to disqualify himself. If he fails to acquit himself of either obligation, those judges of this Court who still hold sufficient respect for the law not to put themselves above it or allow anybody else to do so, regardless of his station in the judiciary or in society at large, must enforce the obligation that has attached to the Chief Judge by disqualifying him from the case. Only by taking such action can those judges attest to their belief that "Justice must satisfy the appearance of justice", *Offutt v. United States,* 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954), and that having a mere "denied" slapped on two reasonable disqualification motions satisfies neither justice nor them. Either they believe in those words and act to

fulfill their lofty mission as judges dispensing justice according to law or they must admit that they simply administer another system for disposing of vested interests, theirs and others, where justice and respect for the law do not just appear, but rather are mere shams.

IV. Relief requested

28. Therefore, Dr. Cordero respectfully requests that:

a) Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;

b) in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;

c) this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

Respectfully submitted on,

May 31, 2004

Dr. Richard Cordero

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V. Table of Exhibits

accompanying the motion of May 31, 2004,
for Chief Judge Walker either to state his arguments for denying
the motions that he disqualify himself from considering
the pending petition for panel rehearing and hearing en banc
or disqualify himself
and failing that for the Court of Appeals to disqualify him therefrom
by
Dr. Richard Cordero

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by USPS on the following parties copies of my motion for a statement of arguments from the Chief Judge of the Court of Appeals for the Second Circuit or for his disqualification from the case.

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May 31, 2004
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Excerpt from the Request that the FBI open an investigation into the link between the pattern of non-coincidental, intentional, and coordinated disregard for the law, rules, and facts in the U.S. Bankruptcy and District Courts for the Western District of New York and the money generated by the concentration in the hands of individual trustees of thousands of open cases, including cases patently undeserving of relief under the Bankruptcy Code

May 31, 2004

by **Dr. Richard Cordero**

IX. A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith

1. Pacer is the federal courts' electronic document retrieval service. The information that it provides sheds light on why trustees may be quite unwilling and unable to spend any time investigating the bankruptcy petitions submitted to them by debtors to establish the reliability of their figures and statements. When queried with the name George Reiber, Trustee, -the standing Chapter 13 trustee in the Western District of New York- it returns this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, Pacer comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end thus:

Table 1. Illustrative row of Pacer's presentation of Trustee George Reiber's 3,909 *open* cases in the Bankruptcy Court

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

2. Trustee Reiber has 3,909 *open* cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink in the left cell that can call that case to step up to the screen for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added; §2-2.1. of the Trustee Manual). By the way, JCN after the case number in the left cell stands for John C. Ninfo, the judge before whom the case has been brought.
3. Trustee Reiber is the trustee for the DeLano case (section X, infra). For him "meaningful distribution" under the DeLanos' debt repayment plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).
4. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. However, increasing the base would require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life, such as a golden pot retirement. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2)). "Mmm…not good!"
5. The obvious alternative is "never investigate anything, not even patently suspicious cases. Just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover." Of necessity, such a scheme redounds to the creditors' detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor only to get what was owed them to begin with.
6. Have U.S. Trustees contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty "to investigate the financial affairs of the debtor" (11 U.S.C. §§1302(b)(1) and §704(4)) and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (§704(7))?

7. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate debtors' financial affairs, ever more debtors with ever less deserving cases for relief under the Bank-ruptcy Code go ahead and file their petitions. What is worse, as people with no debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed with the required fee…or perhaps 'fees'?

X. A case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for approval by the bankruptcy court

8. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (case 04-20280; 28, infra). The figures in its schedules and the surrounding circumstances should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber (section 0, supra) and Attorney James Weidman (11-12, supra) were about to submit its repayment plan to the court for approval when Dr. Richard Cordero, a creditor, objected in a five page analysis of the figures in the schedules. Even so, the Trustee and his attorney vouched for the petition's good faith. Let's list the salient figures and circumstances:
9. The DeLanos incurred scores of thousands of dollars in credit card debt,
10. at the average interest rate of 16% or the delinquent interest rate of over 23%,
11. carried it for over 10 years by making only the minimum payments,
12. have ended up owing $98,092 to 18 credit card issuers listed in Schedule F,
13. owe also a mortgage of $77,084,
14. have near the end of their work life an equity in their house of only $21,415,
15. declared earnings in 2002 of $91,655 and in 2003 of $108,586,
16. yet claim that after a lifetime of work their tangible personal property is only $9,945,
17. claim as exempt $59,000 in a retirement account,
18. claim another $96,111.07 as a 401-k exemption,
19. make a $10,000 loan to their son and declare it uncollectible,
20. but offer to repay only 22 cents on the dollar without interest for just 3 years,
21. argue against having to provide a single credit card statement covering any length of

time ‘because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies’, even though the DeLanos must still receive every month the **monthly** credit card statement from each of the issuers of the 18 credit cards and as recently as last January they must have consulted such statements to provide in Schedule F their account number with, and address of, each of those 18 issuers, and

22. pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is *a 15 year bank officer!*, or rather more precisely, a bank **loan** officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay over the loan’s life, and who is still employed that capacity by a major bank, namely, Manufacturers and Traders Trust Bank. He had to know better!

23. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his “experience in banking”, from which he should have learned his obligation to keep financial documents for a certain number of years, pretend that he does not have them to back up his petition? Those are self-evident questions that have a direct bearing on the petition’s good faith. Did Trustee Reiber and Attorney Weidman ever ask them? How did they ascertain the timeline of debt accumulation and its nature if they did not check those credit card statements before approving the petition and getting it ready for submission to the court?

24. Until the DeLanos provide financial documents supporting their petition, including credit card statements, let’s assume arguendo that when Mr. DeLano lost his job at a financial institution and took a lower paying job at another in 1989, the combine income of his and his wife, a Xerox technician, was $50,000. Last year, 15 years later, it was over $108,000. Let’s assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and a home equity of merely $21,415!, and this does not begin to take into account what they already owned before 1989, let alone all their credit card borrowing. Where did the money go? Or where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?

25. Did Trustee Reiber and Attorney Weidman ever get the hint that the figures and circumstances of this petition just did not make sense or were they too busy with their other 3,908 cases and the in-take of new ones to ask any questions and request any supporting financial documents? How many of their other cases did they also accept under the motto “don’t ask, don’t check, cash in”? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?

26. For his part, Trustee Reiber is being allowed to hold on to the DeLanos' case to belatedly "investigate" it, which he is doing only because of Dr. Cordero's assertion of his right to be furnished with financial information about the DeLanos (para. 6, supra). Yet, not to replace the Trustee –as requested by Dr. Cordero- but rather to allow him to be the one to investigate the DeLanos now, disregards the Trustee's obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, who approved it for submission to the court, thereby rendering himself liable as his principal and casting doubt on his own proper handling of his other thousands of cases.

27. Indeed, if an egregious case as the DeLano's passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably give rise to the question of what kind of supervision the Trustee and his attorney have been receiving from the assistant and the regional U.S. trustees. From there the next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

28. What were they all thinking!? Whatever it was, from their perspective it is evident that the best self-protection is not to set in motion an investigative process that can escape their control and end up crushing them. This proves the old-axiom that a person, just as an institution, cannot investigate himself zealously, objectively, and reassuringly. A third independent party, unfamiliar with the case and unrelated to its players, must be entrusted with and carry out the investigation and then tender its uncompromising report to all those with an interest in the case.

XI. Another trustee with *3,092 cases* was upon a perform-ance and fitness to serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to him and a party and to uncritically writing their comments in an opinion that the Trustee for Region 2 would not investigate

29. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary

bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.

30. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge Ninfo did not investigate whether the Trustee had submitted to him false statement, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and in its depth to uncritically accepting at face value what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.

31. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.

32. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has *thousands* of cases. The statistics on Pacer as of November 3, 2003, showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases!

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court
compared with the number of cases of bankruptcy attorneys appearing there
https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

NAME	**# OF CASES AND CAPACITY IN WHICH APPEARING SINCE**					
	since	trustee	since	attorney	since	party
Trustee Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Trustee Kathleen D.Schmitt	09/30/02	9				
Attorney David D. MacKnight			04/07/82	479	05/20/91	6
Attorney Michael J. Beyma			01/30/91	13	12/27/02	1
Attorney Karl S. Essler			04/08/91	6		
Attorney Raymond C. Stilwell			12/29/88	248		

33. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section 0, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed, in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct?

34. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (1-5 and 11-12, supra). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.

35. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times on a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the following entries:

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

36. When locals must pay such respect to the judge, there develops among them a vassal-lord relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the Fiefdom of Rochester. Therein the law of close personal relationships rules.

37. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local who dared assert his rights against them under a foreign law, that is, the laws of Congress.

38. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came through to protect his vassal. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 33, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.

39. Are the local assistant U.S. trustee with her supervisory power and Trustee Gordon with his 3,092 cases and the money in a vassal-lord relationship to each other? Does the Region 2 Trustee know that a non-local has no chance whatsoever of turning the trustee into the subject of a "thorough inquiry" by the local U.S. trustee? Consequently, should she have investigated Trustee Gordon? What homage do local and regional U.S. trustees receive and what fief do they grant?

May 31, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr Richard Cordero

Has service been effected? Yes; proof is attached

ORDER

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

IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004
Date

FOR THE COURT:
Roseann B. MacKechnie, Clerk
by
Arthur M. Heller
Motions Staff Attorney.

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 28, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed September 24, 2004, dismissing your judicial conduct complaint.

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

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

The petition for review must be received in the Clerk's Office **no later than October 29, 2004.**

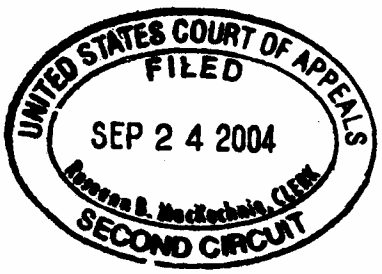
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re **Docket No. 04-8510**
CHARGE OF JUDICIAL MISCONDUCT

----------X

DENNIS JACOBS, Acting Chief Judge:

On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a circuit court judge of this Circuit ("the Judge") with misconduct.

Background and Allegations:

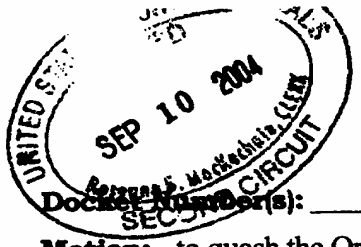
The Complainant alleges that in August 2003, he filed a judicial misconduct complaint against a United States bankruptcy court judge, alleging that the bankruptcy court judge was biased against him and had failed to "move [his] case along its procedural stages." The Complainant alleges that the Judge has failed to take any action on his judicial misconduct complaint.

Disposition:

The Complainant's judicial misconduct complaint was dismissed by order entered June 9, 2004. The instant complaint is therefore dismissed as moot. See 28 U.S.C. § 352(b)(2) (judicial misconduct proceeding may be concluded if "appropriate corrective action has been taken" or "action on the [judicial misconduct] complaint is no longer necessary because of intervening events"). The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

ORIGINAL

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

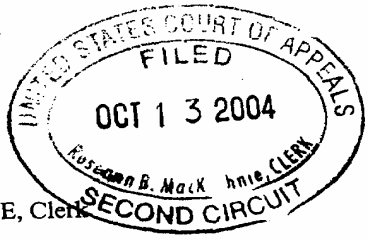
Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004



ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges**

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by
Arthur M. Heller, Motions Staff Attorney

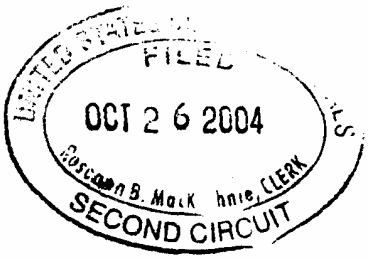
OCT 13 2004

* Hon. John M. Walker, Jr., Chief Judge, has recused himself from further consideration of this case. In accordance with Local Rule 0.14(b), the instant motion has been decided by the two remaining panel members.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie
CLERK

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



IN RE: PREMIER VAN LINES, INC. 03-5023

A petition for a panel rehearing and a petition for rehearing en banc having been filed herein by the cross and third party appellant Richard Cordero.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Roseann B. MacKechnie, Clerk
By: _____
Motion Staff Attorney

OCT 26 2004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion: To stay the mandate following denial of the motion for panel rehearing and pending the filing of a petition for a writ of certiorari in the Supreme Court

Statement of relief sought: That this Court:

1. stay the mandate;

MOVING PARTY: Dr. Richard Cordero
Movant Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 2, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

MOTION
to stay the mandate
following denial of the motion for panel rehearing
and pending the filing of a petition
for a writ of certiorari in the Supreme Court

Dr. Richard Cordero affirms under penalty of perjury as follows:

1. The Court in its order of October 26, 2004, denied Dr. Cordero's motion of March 10, 2004, for panel rehearing and hearing en banc of the dismissal of his appeal by the Court's order of January 26, 2004. Dr. Cordero intends to file a petition for a writ of certiorari in the Supreme Court.

I. Substantial questions that the certiorari petition would present

2. Where evidence has accumulated for more than two years that judges and other court staffers and attorneys in a U.S. bankruptcy and a U.S. district court have participated in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the detriment of one party, the sole non-local one, who resides in New York City and is also the sole pro se party, and to the benefit of the local parties, who are resident in Rochester, NY, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias[1] against that one party, here the Appellant[2], who duly raised the issue on appeal and in subsequent motions, where he provided further evidence of intervening events linking such wrongdoing to a bankruptcy fraud scheme[3]:

   a) Does it violate the Appellant's right to due process of law under the Fifth Amendment of

---

[1] *Liteky v. United States*, 510 U.S. 540, 551, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) (defining bias as a favorable or unfavorable predisposition so extreme as to display clear inability to render fair judgment).

[2] See pages 9 et seq. infra.

[3] See pages 27 et seq. and 47 et seq., infra.

the Constitution[4] and the right to equal protection of the laws[5] included in the due process clause[6] for the Court of Appeals not to have even addressed the issue in either its dismissal of the appeal –contained in a non-publishable summary order with no precedential value- or the denial of the motion for panel rehearing and hearing en banc –with a mere "DENIED" in an order without opinion- whereby the Court not only denies the appearance of justice[7], but thereby also knowingly subjects the Appellant on remand to further proceedings at the hands of those judges and others, who will with all reasonable certainty continue[8] to inflict upon Appellant further unjust and unfair treatment[9] in a mockery of process and cause him even more substantial harm to his wellbeing and enormous loss of money, effort, and time, all of which will be irreparable and unjustified?

b) Has the Court by not even taking cognizance of the mounting evidence of wrongdoing that would have led a reasonable and prudent person[10] to question the impartiality of the

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[4] *Johnson v. Mississippi*, 403 U.S. 212, at 216; 91 S. Ct. 1778, at 1780; 29 L. Ed. 2d 423; at 427, 1971 U.S. LEXIS 35 (1971) (trial before "an unbiased judge" is essential to due process). In re Murchison, 349 U.S. 133, 136 (1955) (the right to trial by an impartial judge is constitutionally mandated under the Due Process Clause).

[5] *Griffin v. Illinois*, 351 U.S. 12 at 19 (1956) (individuals have a fundamental right to a fair judicial process and to demand "equal justice").

[6] *In Hirabayashi v. United States*, 320 U.S. 81 (1943), Chief Justice Stone first cited Fourteenth Amendment equal protection decisions in a Fifth Amendment case. The discussion of the limitations on the states imposed by the equal protection clause of the Fourteenth Amendment led the Court in *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954), to deduct that "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." In *Washington v. Davis*, 426 U.S. 229, 239 (1976), it recognized that the Fifth Amendment has an equal protection component. Then the Court stated in *City of Cleburne, Texas v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985), that the equal protection doctrine requires "is essentially a direction that all persons similarly situated should be treated alike," a statement that is also applicable to Fifth Amendment analysis; see the cases cited therein showing that the discussion of the equal protection clause of the Fourteenth Amendment has gradually led to a germane Fifth Amendment equal protection doctrine.

[7] *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). In re Parr, 13 B.R. 1010, 1019 (E.D.N.Y. 1981) ("The Fifth Amendment's Due Process Clause will bar a trial where the appearance of justice is not satisfied.")

[8] *Liteky v. United States*, 510 U.S. 540, 548, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) ("what matters is not the reality of bias or prejudice but its appearance").

[9] *United States v. Schmeltzer*, 20 F.3d 610, 612 (5th Cir.) (a litigant "has a right to appeal free from fear of judicial retaliation for exercise of that right"), cert. denied, 513 U.S. 1041 (1994).

[10] *State v. Garner* (M0 App) 760 SW2d 893, appeal after remand (Mo App) 799 SW2d 950 (Where a judge's freedom from bias or his prejudgment of an issue is called into question, the inquiry is no longer whether he actually is prejudiced; the inquiry is whether an onlooker might on the basis of objective facts reasonably question whether he is so.) Cf. H.R. REP. NO. 1453, 93d Cong., 2d Sess. 1, 5, reprinted in 1975 U.S.C.C.A.N. 6351, 6351, 6355, reporting on the general

complained-about judges[11]; by not conducting an investigation of the judges and others participating in such wrongdoing; and even failing to fulfill its duty under 18 U.S.C. §3057(a) to report the case to the United States attorney, so that it has taken no action[12] to insure the integrity of the judicial and bankruptcy systems and officers in question, engaged in denial of justice to Appellant and thereby failed in its fundamental function under Article III within the framework of the Constitution of dispensing justice according to law?

II. Reasons why the Supreme Court may issue the writ of certiorari

3. Given recent statements of concern about judicial misconduct going unchecked and the concrete action taken to find its extent and effect, it is reasonable to contemplate that the Supreme Court may issue the writ of certiorari to take this case as a test case. Indeed, none other than Supreme Court Chief Justice William Rehnquist has appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act [28 U.S.C. §351 et seq.] Study Committee. Congress too has taken notice. The Chairman of the House of Representatives Committee on the Judiciary, F. James Sensenbrenner, Jr., welcomed the appointment of Justice Breyer and recognized the need for the study saying that "Since [the 1980s], however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."
4. Such perfunctory dismissals have compromised, as Justice Breyer's Committee put it in its news release after its first meeting last June 10, "The public's confidence in the integrity of the judicial branch [which] depends not only upon the Constitution's assurance of judicial independence [but] also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability". If the Justice and his colleagues put an effective complaint procedure at a par with the judiciary's constitutionally ensured independence, why then have chief judges and judicial councils treated

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judicial disqualification provision at 28 U.S.C. § 455 (1988) that the fundamental purpose behind the section's amendment in 1974 (Act of Dec. 5, 1974, Pub. L. No. 93-512, § 1, 88 Stat. 1609) was to "broaden and clarify the grounds for judicial disqualification" in order "to promote public confidence in the impartiality of the judicial process."

[11] *Aetna Life Insurance Co. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986) ("to perform its high function in the best way, 'justice must satisfy the appearance of justice.'").

[12] 28 U.S.C. Appendix (2004) Code of Conduct for United States Judges, Canon 3A(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer....(5) A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

complaints with so much contempt? Are they dispensing protection to each other in their peer system at the expense of those for whose benefit they took an oath to dispense justice?

III. Good cause for a stay of the mandate

5. If the mandate were to issue, it would expose Dr. Cordero to the resumption by Bankruptcy Judge John C. Ninfo, II, of the case and to suffering the concomitant wrongdoing and bias. No subsequent appeal would compensate Dr. Cordero for the further injustice, material loss, and tremendous aggravation that would thereby be inflicted upon him, who as a pro se litigant has already had his life disrupted by having to struggle for more than two years in this baffling Kafkian process conducted through disregard for legality and arbitrariness prompted by bias.
6. If after final judgment in the bankruptcy court and an appeal to the district court on the floor above in the same federal building in Rochester where the same group of officers participating in the same wrongdoing will determine a final judgment, Dr. Cordero still has the strength and the means to appeal to this Court and it reverses the lower court and removes the case to an impartial court to begin proceedings all over again, who will compensate Dr. Cordero for having to endure such travesty of justice? Nobody! The harm inflicted upon him by those with a vested interest in not allowing him to pierce the cover of the bankruptcy fraud scheme that provides the motive for wrongdoing and bias would be irreparable.
7. And how could he possibly find the emotional and material resources and the time to begin all over again in the removal court? By wearing him down justice will have been denied to him.

IV. Delay in notifying the denial of rehearing limited the time to respond

8. FRAP Rule 36(b) provides thus:

> On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion –or the judgment is no opinion was written, and a notice of the date when the judgment was entered.

9. Although the Court's order denying Dr. Cordero's motion for panel rehearing was entered on October 26, it was not mailed for days and consequently, it was not received until even later. As a result, Dr. Cordero had to scramble on Monday, November 1, and Tuesday, November 2, to prepare this motion to stay the mandate.
10. When Dr. Cordero called the Court on Monday, November 1, to bring this fact to its attention, Motion Attorney Arthur Heller and Supervisor Lucile Carr told him that the Court receives

many cases, that it is very busy, and that while it strives to proceed as required, it not always has the personnel to do so. If the Court fails to abide by its own rules, can it in all fairness hold litigants to the deadlines imposed on them? Can Dr. Cordero or for that matter any other litigant simply claim that he had too many other cases and was too busy to meet the deadlines and thereby get the Court to excuse his noncompliance and grant a time extension? Respect for rules can be demanded by a court of justice when it complies itself with those rules imposing obligations on it.

11. But this is by no means the first the time that this has happened. Indeed, in the same conversations with Mr. Heller and Ms. Carr on Monday, November 1, Dr. Cordero brought to their attention that the letter that upon authorization by Mr. Heller Dr. Cordero faxed to him on September 27, 2004, and of which he acknowledged receipt had not yet been docketed; just as the paper dated October 12, 2004, that Dr. Cordero personally filed in the In-Take Room 1803 on October 19, had not been filed yet. What is more, on Wednesday, October 27, Dr. Cordero brought to Mr. Heller's attention the matter of the non-docketing of the October 12 paper. Mr. Heller transferred Dr. Cordero to Mr. Andino, to whom he further explained this matter. Mr. Andino put Dr. Cordero on hold and after a few minutes Mr. Andino told him that his October 12 paper had been located and would be filed. But it was not. As of today, November 2, despite the conversation yesterday with Ms. Carr, neither of those two papers has been filed.
12. What is more, these instances of late notice and non-filing are by no means the first ones. On August 10, 2004, Dr. Cordero called Mr. Heller and recorded on his voice mail a message stating that he had signed on Monday, August 2, the Court's decisions on two motions, namely, for Chief Judge Walker to explain his denial of the motion to recuse himself or to recuse himself, and for declaratory judgment that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16. However, those decisions were mailed to Dr. Cordero only, on August 9, a whole week after being issued. Dr. Cordero stated that this was not the first time that such late notification had happened.
13. Indeed, it had happened with the notification of the dismissal of the notice of appeal of January 26, 2004, which caused Dr. Cordero to request and extension to file the motion for panel rehearing. The motion was granted but it too was notified late! so that Dr. Cordero derived very little benefit from it.
14. In fact, since the beginning of the proceedings in this Court, Dr. Cordero has had to endure these

procedural failures on the part of the Court. For proof, read:

a. Dr. Cordero's letter of May 24, *2003*, to Clerk of Court Roseann MacKechnie concerning the all important Redesignation of Items in the Record and Statement of Issues on Appeal of May 5, 2003; the Court's failure to file which could have led to the dismissal of Dr. Cordero's appeal;
b. Dr. Cordero's letter of July 17, *2003*, to Deputy Clerk Robert Rodriguez; on other occasions, Dr. Cordero has discussed on the phone similar docketing and noticing problems with Mr. Rodriguez;
c. Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this Court to launch an investigation;
d. Dr. Cordero's letter of June 19 2004, to the Hon. John M. Walker, Jr., Chief Judge, by failure to make publicly available the judicial misconduct orders in violation of Rule 17(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers;
e. Dr. Cordero's letter of June 30, 2004, to Chief Walker upon learning from Deputy Clerk of Court Fernando Galindo that the judicial misconduct orders and related materials, all but those of the last three years, had been shipped to the National Archives in Missouri!;
f. Dr. Cordero's letter of July 1, 2004, to Mr. Galindo to complain about Mrs. Harris, precisely the Head of the In-Take Room 1803, who when Dr. Cordero nodded as he tried to concentrate in the noisy reading room while reading the available misconduct orders warned him that 'if he fell asleep again, she would call the marshals on him'! Would you feel as an affront and a humiliation if the marshals came for you in public for threatening everybody in the reading and filing rooms with nodding!?

15. Given these acts of disregard for procedural rules by the Court and contempt for basic rules of civility and common sense, is it reasonable for Dr. Cordero to be very concerned that this motion may not be filed timely even after he scrambles to take it to the In-Take Room? Are these acts a reflection of the climate created by a Court that has not even taken cognizance of evidence of a pattern of wrongdoing by judges and others?

V. Relief sought

16. Therefore, Dr. Cordero respectfully requests that this Court:

a. stay the mandate under FRAP Rule 41(d)(2)(A) pending the petition for a writ of certiorari;

b. take a position on the matter discussed in section IV above.

Respectfully submitted on

November 2, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

VI. Table of Exhibits

Proof of Service

I, Dr. Richard Cordero, hereby certify that I served by United States Postal Service on the following parties copies of my motion to stay the mandate following denial of the motion for panel rehearing and pending the filing of a writ of certiorari in the Supreme Court:

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

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

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
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Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660; fax (585) 232-4791

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion: For the Court to state the names of the panel members that reviewed the motion for panel rehearing and hearing en banc

Statement of relief sought: That this Court:

1. state the names of the judges who denied the motion for panel rehearing given that the Court's Order of October 26 denying it states that it was denied "Upon consideration by the panel that decided the appeal". However, Dr. Cordero's motion of September 9 to quash an order of Judge Ninfo was denied by an Order of this Court of October 13, 2004, which states that "Hon. John M. Walker, Jr. Chief Judge, has recused himself from further consideration of this case". The Chief Judge was a member of the panel who denied the appeal as stated in the Court's Order of January 26, 2004;
2. state whether Chief Judge Walker participated in any way in the decision to deny the motion for panel rehearing and hearing en banc.

MOVING PARTY: Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	**OPPOSSING PARTY:** See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 3, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED DENIED.**

FOR THE COURT:
ROSEANN B. MacKechnie, Clerk of Court

Date: _____ By: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion: For the Court to report this case to the U.S. Attorney General under 18 U.S.C. §3057(a) for investigation

Statement of relief sought: That this Court:

1. Report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:

a) *Premier Van et al.*, dkt. no. 03-5023, in this Court;
b) Mr. Palmer's *Premier Van Lines* case, dkt. no. 01-20692, WBNY;
c) *Pfuntner v. Trustee Gordon et al.*, dkt. no. 02-2230, WBNY; and
d) *In re David and Mary Ann DeLano*, dkt. no. 04-20280, WBNY;

2. Address the report to U.S. Attorney General John Ashcroft with the recommendation that he appoint investigators who are unrelated to and unacquainted with any of the parties and who can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way;

3. Grant Dr. Cordero any other relief that is just and proper.

MOVING PARTY: Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	**OPPOSSING PARTY:** See no. 1, above.

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 8, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
Roseann B. MacKechnie, Clerk of Court

Date: _____ **By:** _____

C:404 Dr. Cordero's mtn of 11/8/4 for CA2 to report *Premier* to Att Gen under 18USC§3057(a) for investigation

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. **case no. 03-5023**

MOTION
for the Court to report this case to the U.S. Attorney General under 18 U.S.C. §3057(a) for investigation

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Dr. Richard Cordero affirms under penalty of perjury as follows:

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I. Judges' obligation to act on their reasonably grounded belief that an investigation should be had

1. Every United States judge is under an obligation to contribute to the integrity of the judicial system. This obligation flows, among others, from 18 U.S.C. §3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the

> United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…[emphasis added]

2. Judges remain under this obligation regardless of their disposition of an appeal or motion, and thus, regardless of whether they had jurisdiction over the appeal or a non-final order was the subject of the motion. It follows that they must fulfill that obligation independently of their attitude toward the particular appellant or movant before them, for the obligation is not so conditioned and, in any event, the benefit of fulfilling it inures to the general public. Indeed, judges enhance the public's trust in the importance of and respect for the rule of law when they care to act on their reasonable belief that a violation of federal law has been committed and report their grounds for such belief to the U.S. Attorney or his assistants for investigation.
3. In the case at hand there are reasonable grounds for such belief…and that is all the law requires a judge to have in order for him to make such report: not incontrovertible evidence of the commission of a crime; actually, no evidence at all is required, much less that each individual fact or circumstance of the case constitute a violation of the law. Indeed, §3057(a) does not require any violation of the law to be set out, but it is satisfied if the judge simply have "reasonable grounds for believing…that an investigation should be had". Certainly, the section does not demand the objectivity necessary to meet the standard of probable cause, but merely a subjective belief that rests on grounds that are reasonable.
4. That little is what the law requires of judges for a §3057(a) report to the U.S. Attorney, although given their legal training and experience, they could have been used as filters to assess the sufficiency of evidence to support an indictment and asked that they report only evidence that would survive at arraignment. What is more, judges have both authority to compel a person before them to answer questions and power to compel a litigant and even others to produce evidence and witnesses. Nevertheless, §3057(a) only requires judges to have a reasonably grounded belief in order to report that an investigation should be had. If that is all the law requires of judges, why should they impose any other requirement on a litigant, such as that his claims meet criminal evidence sufficiency standards, let alone that he submit concrete evidence that a crime was committed, before they would even consider granting a litigant's request for a §3057(a) report?

5. It would be all the more incomprehensible and unwarranted to impose a higher than the §3057(a) requirement on Dr. Cordero, for he has complained from the beginning –in the statement of issues on appeal of May 5, 2003, and the appeal brief of July 9, 2003- and since then in many of his papers submitted to this Court –as in his recent motion to quash of September 9, 2004, an order of Judge Ninfo- that the judges, trustees, parties, and debtors in this case have unjustifiably denied him the discovery and documentary evidence that he is entitled to. Nevertheless, Dr. Cordero has submitted to this Court detailed descriptions, supported by any documents available, of the many instances in which those people have disregarded legality, concealed or misrepresented the facts, and shown bias against him, the only pro se party and a non-local one to boot.
6. The low threshold set by §3057(a) to trigger a judge's obligation to report his belief in the need for an investigation is not an exception for the benefit of the judges to a normally higher requirement imposed on others. Rather, it is a means for the benefit of the public to satisfy the requirement that justice not only must be done, but must also be seen to be done. Hence, when judges do not have all the evidence to do justice, but have reason to belief that injustice may have been done by somebody's offense or violation of the law, they must ask for an investigation that may gather the necessary evidence for justice to be seen to be done.
7. When judges fail to acquit themselves of their §3057(a) reporting obligation and in so doing give even as little as the appearance of partiality, whether toward their peers or against a litigant, then they trigger another obligation: that of disqualifying themselves so as to make room for another judge that will do justice and be seen to do justice.
8. By contrast, for judges that want to acquit themselves of their §3057(a) reporting obligation, this case presents enough grounds from which their belief can reasonably arise that it should be investigated by the U.S. Attorney General. To that end, it should be sufficient for those judges to look in the most favorable light at the following statement of those grounds in order to see how the totality of circumstances support the belief that at least one offense, or even more offenses, may have been committed and warrant investigation. Where §3057(a) only requires judges to ask for an investigation, judges should not ask a private citizen to submit the results of an investigation.

II. The reasonable grounds for the belief that an investigation should be had

9. Such grounds have accumulated for over two years. They are contained or described in a file that now has more than 1,500 pages. Dr. Cordero's briefs, motions, and mandamus petition show how Judge Ninfo[1], Judge Larimer[2], court personnel[3], trustees[4], and local attorneys and their clients[5], have disregarded legality[6] and dismissed the facts[7] in order to protect the local parties and advance their self-interests. In the process, they have caused Dr. Cordero an enormous waste of effort[8], time[9], and money[10], and inflicted upon him tremendous emotional distress[11]. Of necessity, only some grounds can be mentioned here and then only as briefly as possible so as to maximize the chances that the judges will read this motion. Nevertheless, only a brief mention of those grounds should be needed, for the objective is not that the grounds establish a crime, let alone that each of them do so, but that all of them let judges of sound and impartial judgment use their common sense and knowledge of how the world goes to form the belief that something is wrong with these people and that an investigation should be had. Although these grounds are intertwined -just as are the activities of these people in the small federal building in which they work in Rochester- they can be grouped in a few categories:

   A. U.S. Bankruptcy Judge John C. Ninfo, II, and other court staff and officers in the Bankruptcy and District courts in Rochester have disregarded the law, the rules, and the facts so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party as well as a pro se one, and to the benefit of the local parties as to have engaged in a

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[1] **Judge Ninfo**: Opening Brief=OpBr-11.3; Appendix to OpBr=A-771.I; A-786.III.

[2] **Judge Larimer**: OpBr-16.7; Reply Brief-19.1; Mandamus Brief-10.D and 53.D; A-687.C.

[3] **court personnel**: OpBr-11.4; 15.6; 54.D; MandBr-14.1; 25.K-26.L; 69.F; A-703.F.

[4] **trustees**: OpBr-9.1; 38.B.; A-679.A

[5] **local attorneys and clients**: OpBr-18.8; 48.C; MandBr-53.3; 57.D; 65.3; A-691.D.

[6] **disregard for legality**: OpBr-9.2; 21.9 Mandamus Brief=MandBr-7.B; 25.A; MandBr-12.E; 17.G-23.J; A-684.B, 775.B; 6.I.

[7] **disregard for facts**: OpBr-10.2; 13.5; MandBr-51.2; 53.4; 65.4.

[8] **effort**: MandBr-55.2; 59.5; A-694.6.

[9] **time**: MandBr-60.6; 68.6; A-695.E.

[10] **money**: MandBr-8.C; A-695.E.

[11] **emotional distress**: MandBr-56.3; 61.E; A-690.3, 695.7.

[Opening Brief=A:1301; Appendix to OpBr≈A:# pages; Reply Brief=A:1511; Mandamus Brief=A:615]

pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias, including the new evidence of protecting from discovery debtors suspected of bankruptcy fraud, to the detriment not only of Dr. Cordero, but also of 20 other creditors.

B. David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents.

C. Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, held on March 8, 2004, and Trustee Reiber has since continued to fail his duty to investigate the DeLanos, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

D. The totality of circumstances afford reasonable grounds for the belief that these events coalesce into a bankruptcy fraud scheme, with the DeLano case as the proverbial tip of the iceberg, that is, a test case through which insight can be gained into the scheme's operation, extent, and participants.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing

10. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery in *Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al*, WBNY dkt. no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

11. By that time Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court.

a) Indeed, the statistics on PACER as of November 3, 2003[12], showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[13] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

b) Could you handle competently such an overwhelming number of cases, increasing at the rate of 1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or having tolerated Trustee Gordon's negligence and recklessness in this case…and in how many other of the Trustee's *thousands* of cases? There is a need to investigate whatever is going on between those two…and the others, for there are more.

12. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been removed or stolen!

a) Judge Ninfo would not compel Mr. Palmer to appear to answer Dr. Cordero's claims even

[12] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

[13] Id.

though Mr. Palmer's address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did Judge Ninfo need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? Their relation needs to be investigated…and the Judge's relation to other similarly situated debtors too.

13. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct the inspection, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both orders of discovery, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. Mac-Knight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero?
14. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides invaluable insight into what drives such bias and shapes the activity of the biased actors into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud

15. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004. That petition is available electronically at http://www.nywb.uscourts.gov/, going to PACER and typing its docket no. 04-20280. The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. Just consider the following salient values and circumstances:

a) Mr. DeLano has been a bank officer for 15 years!, or rather more precisely, a bank *loan* officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.
b) The DeLanos incurred scores of thousands of dollars in credit card debt;
c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;
d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;
e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;
f) owe also a mortgage of $77,084;
g) but have near the end of their work lives equity in their house of only $21,415;
h) in their 1040 IRS forms declared these earnings in just the last three fiscal years:

2001	2002	2003	total
$91,229	91,655	108,586	$291,470

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;
j) their cash in hand or on account declared in their petition was only $535;
k) the rest of their tangible personal property is just two cars worth a total of $6,500;
l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;
m) make to their son a $10,000 loan, which they failed to date but declare uncollectible …which may be a voidable preferential transfer;
n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest;
o) refused for months to submit any credit card statement covering any length of time to the point that Trustee Reiber moved on June 15 for dismissal for "unreasonable delay".

16. A comparison between the few documents that they first produced thereafter, that is, some credit card statements and Equifax reports with missing pages, with their bankruptcy petition and the court-developed claims register and creditors matrix called into question the petition's good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.
17. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, opposing Trustee Reiber's motion to dismiss. The DeLanos' response was swift: On July 19, they moved to disallow Dr. Cordero's claim. What an extraordinary move! given that:
    a) The DeLanos had treated Dr. Cordero as a creditor for six months;
    b) They were the ones who listed Dr. Cordero's claim in Schedule F, and for good reason, since;
    c) Mr. DeLano has known of Dr. Cordero's claim against him since November 200*2*, when Dr. Cordero brought him into the Pfuntner case as a third-party defendant because Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his moving and storage company, Premier Van Lines, which then went bankrupt!
18. Extraordinary indeed, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It forces up the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable?
19. Extraordinary but even more revealing is Judge Ninfo's reaction. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's objection is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 plan and that is relentlessly insisting on their production of financial documents that can show the bad faith of their petition and their concealment of assets, among other things.
20. But not Judge Ninfo. By his Order of August 30, 2004, he has suspended all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. That could take years!, as shown by the appeal from the Pfuntner case. Meantime and without any justification, the other 20 creditors of the DeLanos are injured because they cannot begin to receive payments under the debt repayment plan. But their interest is just as of little consequence to Judge Ninfo as is the general interest in determining whether Lending Industry Insider Mr. DeLano and Technically-oriented Mrs. DeLano have engaged in

bankruptcy fraud. Nevertheless, to determine whether these debtors submitted their petition "by any means forbidden by law" is the Judge's duty under 11 U.S.C. §1325(a)(3). Why Judge Ninfo disregarded his duty under the Bankruptcy Coder and to the general public in order to protect the DeLanos needs to be investigated.

21. By contrast, Judge Ninfo denied Dr. Cordero the protection to which he is entitled under the Code. Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow to happen, for if he allowed the DeLanos' case to go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because if the DeLanos were left unprotected and decided to talk, they could incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. To afford protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! The stakes must be very high indeed.
22. And not only for Judge Ninfo. Trustee Reiber too has from the beginning been protecting the DeLanos from incriminating themselves and others.

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

23. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004. Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, a trustee with 3,909[14] *open* cases, cannot be all the time where he should be.
24. This raises an important question for the investigators: Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney's Office and

[14] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the initial bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamping petitions? Something is not right here.

25. Actually, nothing is right here. Thus, at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the honesty of the DeLanos, and stated that their petition had been submitted in good faith.
26. But those were just words, for Trustee Reiber had not asked for any supporting document from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos, and only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time on, April 20, 2004, ask the DeLanos to submit documents.
27. A pro forma request, to be sure, for Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for having in hand and on account only $535 despite having earned in just the 2001-03 years $291,470!
28. What this shows is not appalling lack of understanding of how credit card fraud works, but rather Trustee Reiber's unwillingness to uncover evidence of bankruptcy fraud. The evidence shows that the Trustee has refused to hold an adjourned meeting of creditors for the DeLanos. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to

disallow Dr. Cordero's claim has been finally determined.

29. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot forbid to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo.
30. Trustee George Reiber moved on June 15 to dismiss the DeLanos petition "for unreasonable delay" in producing documents. In so doing, he is motivated by self-preservation, for if he were to investigate the DeLanos effectively, he would uncover evidence of fraud that would also incriminate him for his approval in the first place of a patently suspicious petition. That could lead to his being investigated to determine how many other cases among his 3,909 cases are also meritless or even fraudulent. But his concern is even more immediate, for if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini, he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate or have countenanced his failure to investigate needs to be investigated.

D. Reasonable grounds for believing that there is a bankruptcy fraud scheme

31. Taking the totality of circumstances from the above statement of facts –supported as need be by the detailed legal arguments presented by Dr. Cordero in his papers to this Court- there emerge reasonable grounds to suspect that these people are acting, not separately, but rather in a coordinated fashion in violation of the law. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many cases along the years that they have developed a modus operandi which disregards legality as well as the interests of those whom they deem not to be willing from a cost-effective viewpoint or able in terms of financial means and knowledge to defend their rights and oppose their abuse. They could not possibly have imagined that Dr. Cordero, a pro se, non-local, and non-institutional party, would not behave as their model predicted. Instead, Dr. Cordero has turned out to be a litigant who will not quit defending his rights and who in the process threatens to expose non-coincidental,

intentional, and coordinated wrongdoing: a bankruptcy fraud scheme.

32. The way in which such a scheme works here remains to be determined by investigators. But the incentive to engage in bankruptcy fraud is typically provided by money, that is, the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtors. That leaves a lot of money to play with, for it is not necessarily the case that the debtors do not have money.

33. As for a standing trustee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, after the trustee receives a petition, she is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that the debtor deserves bankruptcy relief from his debts, the trustee approves his debt repayment plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make them to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

34. If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed. Cf. 11 U.S.C. §326(b).

35. The trustee would be compensated for his investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he had no money and were bankrupt.

36. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004 according to PACER;
    b) approved the DeLanos' petition without ever requesting a single supporting document;
    c) chose to dismiss the case rather than subpoena the documents;
    d) has refused to trace the substantial earnings of the DeLanos'; and
    e) refuses to hold an adjourned meeting of creditors, where the DeLanos would be examined under oath, including by Dr. Cordero.
37. Moreover, there is something fundamentally suspicious when:
    a) a bankruptcy judge protects bankruptcy petitioners from having to account for $291,470;
    b) allows them to disobey his document production order with impunity, such as that of July 26, 2004, despite its being a watered down version of what Dr. Cordero had requested in his papers of July 9 and 19, 2004;
    c) before any discovery has taken place, prejudges in the DeLanos' favor in his order of August 30, 2004, that their July 19 motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case, although he is the only creditor that threatens to expose their bankruptcy fraud; and
    d) yet shields them from further process.
38. These facts and circumstances provide reasonable grounds for believing that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of the judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had.
39. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes all those that not only are their friends, but also those that are their acquaintances either because they work in the same building or live in the same small community. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation…starting by

subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a bankruptcy fraud scheme!

III. Relief requested

40. Therefore, Dr. Cordero respectfully requests that this Court:

a) Report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:
   1) *Premier Van et al.*, dkt. no. 03-5023, in this Court;
   2) Mr. Palmer's *Premier Van Lines* case, dkt. no. 01-20692, WBNY;
   3) *Pfuntner v. Trustee Gordon et al.*, dkt. no. 02-2230, WBNY; and
   4) *In re David and Mary Ann DeLano*, dkt. no. 04-20280, WBNY;

b) address the report to U.S. Attorney General John Ashcroft with the recommendation that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties and who can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way;

c) disqualify Judge Ninfo from these cases;

d) remove these cases to an impartial court for trial by jury before a judge unrelated to and unacquainted with any of the parties, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;

e) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on,

November 8, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

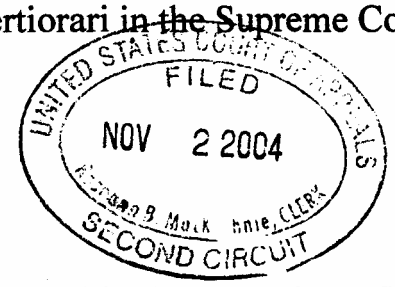
Dr. Richard Cordero
tel. (718) 827-9521

Nov 10,04

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion: To stay the mandate following denial of the motion for panel rehearing and pending the filing of a petition for a writ of certiorari in the Supreme Court



Statement of relief sought: That this Court:

1. stay the mandate;

MOVING PARTY: Dr. Richard Cordero
Movant Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of moving party:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: November 2, 2004

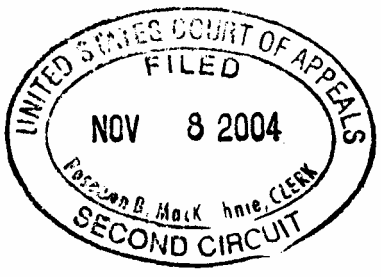
ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

NOV - 8 2004
Date



Arthur M. Heller
Motions Staff Attorney

C:420 CA2 order of 11/8/4 denying Dr. Cordero's motion to stay mandate after denial of his panel rehearing petition

Nov 10, 04

WDNY (Rochester)
03-CV-6031
CARIMER

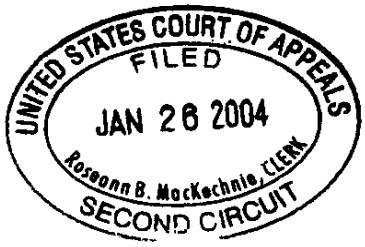
MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

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



PRESENT:

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

----------X

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

----------X

RICHARD CORDERO,
Third-Party-Plaintiff-Appellant,

v.

No. 03-5023

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

DAVID PALMER,
Third-Party-Defendant-Appellee.

----------X

APPEARING FOR APPELLANT: Richard Cordero, Brooklyn, NY

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

ISSUED AS MANDATE: 11-8-04

General Docket

US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

INDIV

CLOSED

Court of Appeals Docket #:03-5023-bk

Nsuit: 3422 STATUTES-Bkrup Appeals 801
In Re: Premier Van v. Palmer
Filed: 5/2/03

Appeal from: WDNY (ROCHESTER)

Case type information:
Bankruptcy
District Court

None

Lower court information:
District: 03-cv-6021

Trial Judge David G. Larimer
MagJudge:
Date Filed: 01/15/03

Date order/judgement: 3/27/2003
Date NOA filed: 4/25/2003

Fee status:Paid
Panel Assignment:

Panel: JLO JMW RAK 40 Foley Sq.
Date of decision 1/26/04

Prior cases: NONE

Current cases: NONE

Docket as of May 05, 2005 7:06 pm

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Official Caption 1/

Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party-Plaintiff - Appellant

v.

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KENNETH W. GORDON, Esq.,

Trustee - Appellee,

DAVID PALMER

Third-Party-Defendant - Appellee.

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Clerk,Bank Ct,RONY None	Clerk,Bank Ct,RONY n/a 68 Court St. U.S. Courthouse Buffalo , NY , 14202 716-846-4130
David Palmer Defendant-Appellee	David Palmer n/a 1829 Middle Rd. Rush , NY , 14543
Kenneth W. Gordon Trustee-Appellee	Kenneth W. Gordon n/a Gordon & Schaal LLP 100 Meridian Centre Blvd. Rochester , NY , 14618 585-244-1070

Richard Cordero
Third-Party-Plaintiff-App

Richard Cordero
n/a

59 Crescent St.
Brooklyn , NY , 11208
718-827-9521

Docket as of May 05, 2005 7:06 pm

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5/2/03 Note: This appeal was PRO SE when filed.

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G . Larimer, United States District Judge, RECEIVED. [03-5023]

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023]

5/2/03 Copy of notice of appeal and district court docket entries on behalf of Appellant Richard Cordero filed. [03-5023] "FeePaid #64514".

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023]

5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume.

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received.

Docket as of May 05, 2005 7:06 pm

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5/28/03 Scheduling order #1 filed. Record on appeal due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03 . Argument as early as week of 9/22/03.

5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03.

5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received.

6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received.

6/5/03 Record on appeal received in records room from team.

6/5/03 1st supplemental index on appeal filed.

6/13/03 Record on appeal received in records room from team.

7/14/03 Appellant Richard Cordero brief FILED with proof of service.

7/14/03 Appellant Richard Cordero appendix filed w/pfs. Number of volumes; 1.

8/11/03 Notice of appearance form on behalf of Kenneth W. Gordon, Esq., filed. (Orig in acco , copy to Calendar)

8/11/03 Appellee Kenneth W. Gordon MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due.

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8/19/03 Proposed for argument the week of 10/27/03.

8/25/03 Appellant Richard Cordero reply brief filed with proof of service.

9/16/03 Argument as early as week of 9/22/03.

9/30/03 Proposed for argument the week of 12/8/03.

10/20/03 Set for argument on 12/11/03 . [03-5023]

11/4/03 Appellant Richard Cordero motion to allow leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in it's order of October 23, 2003, denyig Dr. Cordero's request for a jury trial , which Dr. Cordero submitted to and is under consideration by this Court of Appeals FILED (w/pfs). [2471688-1]

11/6/03 Notice of Hearing Date from Appellant Richard Cordero received.

11/13/03 Order FILED GRANTING motion to allow"leave to introduce an updating supplement on the issue of the Bankrupt Court's bias against petition's evidenced in it's order of 10/23/03" [2471688-1] by Appellant Richard Cordero, endorsed on motion form dated 11/4/03(FOR THE COURT-AV).

11/13/03 Letter dated 11-5-03 from Kenneth W. Gordon, Esq. requestingpermission from the Court to waive oral argument. received

11/13/03 Notice to counsel re:order dated 12/11/03.

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11/24/03 Copy of Bankruptcy Court order dated 10-23-03 scheduling order in connection with the remaining claims of the plaintiff, James Pfunter, and the cross-claims, counter-claims and third-party claims of the third-party plaintiff, which has attached to it the following additional orders: 1) an October 16 , 2003 order denying and recusal and removal motions and objection of Richard Cordero to proceeding with any hearings and trial on 10-16-03; 2) An October 16, 2003 order disposing of cause of action; and an October 23, 2003 decision & order finding a waiver of a trial by jury from Hon. John C. Ninfo, II, Chief U.S. U.S. Bankruptcy Judge. received.

12/11/03 Case heard before WALKER, CH.J; OAKES, KATZMANN, C.JJ . (TAPE: CD date: 12/11/03)

12/11/03 Outline of the oral argument from Appellant

Richard Cordero received.

12/29/03 Appellant Richard Cordero motion to allow leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal, FILED (w/pfs). [2509028-1]

1/26/04 Order FILED GRANTING motion to allow by endorsed on motion dated 12/29/2003. "IT IS HEREBY ORDERED that appellant Cordero`s motion for leave to file a brief on issue raised at oral argument be and it hereby is Granted". Before Hon. JMW, JLO, RAK, CJS. Endorsed by Arthur M. Heller, Motions Staff Attorney.

1/26/04 Notice to counsel and pro se re: order dated 01/26/04 Granting motion for leave to file a brief on issue raised at oral argument.

1/26/04 Judgment filed; judgment of the district

court is Dismissed by detailed order of the court without opinion filed. (JMW)

1/26/04 Notice to counsel and pro se re: summary order dated 1/26/04.

2/9/04 Appellant Richard Cordero motion for extended time to file a petition for rehearing, filed with proof of service.

2/9/04 Appellant Richard Cordero motion for stay of mandate, filed with proof of service.

2/13/04 Order FILED REFERRING motion for extended time by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for extension of time to file petition for rehearing to Hon. JMW, JLO, RAK.

2/13/04 Order FILED REFERRING motion for stay by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for stay mandate to Hon. JMW, JLO, RAK.

2/23/04 IT IS HEREBY ORDERED that the motion for an extension of time to file a petitionn for

rehearing and to stay the mandate is GRANTED. The petition shall be filed by March 10, 2004 . Before Hon. JMW, JLO, RAK, CJ. Endorsed by Arthur M. Heller, Motions Staff Attorney.

2/26/04 Notice to counsel and pro se re: order dated 02/23/04.

3/10/04 Appellant Richard Cordero motion for leave to attach some entries of the Appendix to the petition for panel rehearing and hearing en banc, filed with proof of service.

INDIV

CLOSED

3/10/04 APPELLANT Richard Cordero, petition for rehearing and rehearing en banc, received.

3/11/04 Appellant Richard Cordero Petition for rehearing and petition for rehearing en banc filed with proof of service.

3/22/04 Appellant Richard Cordero motion for the Hon . Chief Judge Walker to recuse himself from this case and from considering the pending petition for panel rehearing and rehearing en banc, filed with proof of service.

3/22/04 Papers (Booklet) of Evidentiary Documents supporting a complaint from APPELLANT Richard Cordero, received.

3/23/04 Order FILED GRANTING motion for leave to file by Appellant Richard Cordero, endorsed on motion dated 3/10/2004. IT IS HEREBY ORDERED that the motion be and it hereby is GRANTED. Before Hon. Walker, Oakes, Katzmann. Endorsed by Arthur M. Heller, Motions Staff Attorney.

3/24/04 Notice to counsel and pro se re: order dated 03/23/04.

4/19/04 Appellant Richard Cordero -leave to update the motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case with recent evidence.....filed with proof of service.

5/4/04 Order FILED DENYING motion to recuse by Appellant Richard Cordero, endorsed on

motion dated 3/22/2004. "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED." Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Richard C. Wesley, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

INDIV

CLOSED

5/4/04 Notice to counsel and pro se re: order dated 05/04/04.

5/10/04 AMENDED order stating "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED," filed. Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Robert A. Katzmann, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

5/10/04 Notice to counsel and pro se re: amended order dated 05/10/04.

5/17/04 Appellant Richard Cordero motion for declaratory judgment that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16, filed with proof of service.

6/2/04 Appellant Richard Cordero motion to allow for the Hon. John M. Walker, Jr., Chief Judge , Either to state his arguments for denying the motions that he disqualify himself from considering the pending petition for panel rehearing and hearing en banc; and from having anything else to do with this case or disqualify himself and failing that for this court to disqualify the chief judge therefrom , filed with proof of service.

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion is DENIED, endorsed on motion dated 6/2/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW, Chief Judge, JLO, RAK, C.J.J.)

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion for declaratory judgment is denied, endorsed on motion dated 5/17/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW

, Jr. Chief Judge, JLO, RAK, C.J.J.)

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04.

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04 re: declaratory judgment.

9/10/04 Appellant Richard Cordero motion allow /to quash the Order of August 30, 2004 of WBNY J. John C. Ninfo, II, to sever claim from this case, filed with proof of service.

10/5/04 Copy of the letter dated 9-29-04 to Christopher K. Werner, Esq. from APPELLANT Richard Cordero, received.

10/13/04 Order FILED DENYING motion to quash order of August 30, 2004 of WBNY J.John C. Ninfo, II, to sever claim from this case by Appellant Richard Cordero, (JLO,RAK)

10/14/04 Notice to counsel (order dated 10-13-04)

10/18/04 Letter dated 10-12-04 from appellant pro se Cordero to George M. Reiber, Esq. received (copy to the Court)

10/26/04 Order FILED DENYING motion petition for rehearing and petition for rehearing en banc by Appellant Richard Cordero, (ah)

10/27/04 Notice to counsel (order dated 10-26-04)

11/2/04 Appellant Richard Cordero motion stay the mandate filed with proof of service.

11/2/04 Letter dated 10-20-04 from P. Finucane,

Deputy Clerk , U.S. Bankruptcy Court George M . Reiber, Esq. received (copy submitted by appellant pro se Cordero)

11/2/04 Letter dated 10-21-04 from appellant pro se Cordero to Kathleen Dunivin Schmitt, Esq. received (copy to the Court)

11/8/04 Order FILED DENYING motion stay the mandate by Appellant Richard Cordero, endorsed on motion dated 11/2/2004, (JLO,RAK)

11/8/04 Notice to counsel (order dated 11-8-04)

11/8/04 Judgment MANDATE ISSUED. CLOSED

11/9/04 Letter dated 10-27-04 from APPELLANT Richard Cordero, to Christopher K. Werner, Esq. Re: David and Mary Ann DeLano, Bkr. dkt no. 04-20280 received.

11/9/04 Copy of the Notice of Motion to enforced Judge Ninfo's order of 8-30,2004 submitted the the US Bankruptcy Court WDNY from APPELLANT Richard Cordero, received.

11/22/04 Acco received in records room from team. Number of Volumes: 2

11/30/04 Mandate receipt returned from the district court.

2/1/05 Notice of filing petition for APPELLANT Richard Cordero, dated January 27, 2005, filed. Supreme Court #: 04-8371.

4/4/05 Writ of Certiorari DENIED

INDIV

CLOSED

4/11/05 Record on appeal RETURNED to lower court. 2 vols.)

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