

IN THE
SUPREME COURT OF THE UNITED STATES

Dr. Richard Cordero, Petitioner

v.

David and Mary Ann DeLano, Respondents
docket no. 06-4780-bk in
the United States Court of Appeals
for the Second Circuit

and

James Pfuntner

v.

Trustee Kenneth Gordon et al.
sub nom. *In re Premier van*, docket no. 03-5023 in
the United States Court of Appeals
for the Second Circuit

**Petition for Rehearing
of an Order Denying
a Petition for a Writ of Certiorari**
to
The United States Court of Appeals
for the Second Circuit

April 23, 2009

by

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Table of Contents

I. “Violation of the Code of Conduct for U.S. Judges by even giving the appearance of impropriety diminishes public confidence in the judiciary and injures our system of government under law”, Canons 1 and 2.....	2511
II. The facts of this case bear “actual improprieties of violations of law, court rules [and] other specific provisions of this Code” and it would further ‘erode public confidence by irresponsibly and improperly’ failing to redress them (Commentary on Canon 2A)	2513
A. By denying <i>every single document</i> requested by Dr. Cordero, the judges disregarded his right to discovery and due process of law, and thereby their obligation under Canon 1 and its commentary that they “must comply with the law...constitutional requirements, statutes, other court rules and decisional law”	2514
B. CA2 committed “actual improprieties” by dismissing the appeal in a summary order that irresponsibly bore no relation to the applicable law or even the facts of the case and evaded the issue presented for its appellate review: a bankruptcy fraud scheme run by its bankruptcy appointee.....	2516
C. The judges have engaged in a “pattern of...violations of law and court rules” to protect the DeLanos and themselves from incrimination in a bankruptcy fraud scheme and secure their continued benefit from running it, which renders certiorari ‘supervision’, if not “disciplinary action appropriate” (Com. on Canon 1)	2518
III. ‘During these times when bankruptcy cases increased’ to 1,043,993 in FY08 but bankruptcy appeals in the court of appeals decreased to only 773, the Court must ‘address the challenge’ of ‘absence of effective oversight’ over bankruptcy courts that has led their judges to take advantage of the inability of millions of debtors and creditors to seek review of their rulings	2521
A. The Court should “maintain and enforce [the] high standards of conduct” of the Code by setting a clear example through their application to this case; otherwise, the Code is destined to be treated with the same contemptuous disregard as the Rules for Judicial Conduct and Disability Proceedings	2524
IV. Relief requested	2525

Authorities Cited

with active links at http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCt_rehear_23apr9.pdf

I. CODE OF CONDUCT FOR U.S. JUDGES

1. Code of Conduct for United States Judges -----2511, 2512, 2513, 2520, 2524
http://www.uscourts.gov/library/codeOfConduct/Revised_Code_Effective_July-01-09.pdf;
with useful bookmarks and the newsrelease of the Judicial Conference that adopted it
on March 17, 2009, http://Judicial-Discipline-Reform.org/docs/Code_Conduct_Judges_09.pdf

A. CANONS

2. Canon 1 -----2511, 2512, 2514, 2524, 2425
3. Canon 2: “the appearance of impropriety” -----2511, 2512, 2523

4. Canon 2A-----	2515, 2518
5. Canon 2B-----	2517
6. Canon 3A(1) -----	2516, 2517, 2520
7. Canon 3A(2) -----	2517, 2520
8. Canon 3A(4) -----	2518
9. Canon 3B(4) -----	2513, 2524
10. Canon 3C(1)(d)(iii) -----	2520

B. COMMENTARY ON CANONS

11. Commentary on Canon 1-----	2512, 2516, 2518, 2521, 2524, 2525
12. Commentary on Canon 2-----	2518
13. Commentary on Canon 2A -----	2512, 2513, 2518, 2521, 2523, 2524, 2525
14. Commentary on Canon 2B-----	2516
15. Commentary on Canon 3A(5)-----	2519
16. Commentary on Canon 3A(6)-----	2516

II. RULES FOR JUDICIAL CONDUCT AND DISABILITY PROCEEDINGS

17. Rules -----	2524, 2525
http://www.uscourts.gov/library/judicialmisconduct/jud_conduct_and_disability_308_app_B_rev.pdf ; and at http://Judicial-Discipline-Reform.org/docs/Rules_complaints.pdf with useful bookmarks and the newsrelease on the Judicial Conference's adoption of the Rules	

III. STATEMENTS BY JUSTICE, COURT OF APPEAL, AND CHIEF JUDGE

18. The Chief Justice’s 2008 Year-End Report on the Federal Judiciary, p.7 -----	2511, 2516, 2518
http://www.supremecourtus.gov/publicinfo/year-end/2008year-endreport.pdf	
19. CA2 Handbook, p.17 -----	2517
http://Judicial-Discipline-Reform.org/statistics&tables/CA2Handbook_9sep8.pdf	
20. US Judges revise policy to avoid ethical conflicts, by Mark Sherman, <i>The Washington Post</i> , March 17, 2009-----	2512
http://www.washingtonpost.com/wp-dyn/content/article/2009/03/17/AR2009031702312.html	

IV. STATISTICS OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

21. NEWS RELEASE: Judiciary Updates Code of Conduct; March 17, 2009 -----	2511
http://www.uscourts.gov/Press_Releases/2009/0309JudicialConf.cfm	
22. Workload of the Courts; The Third Branch, Newsletter of the Federal Courts, January 2009, Vol. 41, Number 1 (number of bankruptcy appeals in CAs)-----	2521, 2522
http://www.uscourts.gov/ttb/2009-01/article02.cfm?WT.cg_n=TTB_Jan09_article02_teaserTitle ; also at http://Judicial-Discipline-Reform.org/statistics&tables/caseload_SCt_report_08.pdf	
23. 2008 Judicial Business of the United States Courts, p.143-144, Table C-2.	

U.S. District Courts—Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit, During the 12-Month Period Ending September 30, 2007 and 2008 >p.144: Bankruptcy, Total -----	2522
http://www.uscourts.gov/judbus2008/JudicialBusinespdfversion.pdf ; and at http://Judicial-Discipline-Reform.org/statistics&tables/bkr_stats/bkpt_to_DisCts_08.pdf	
24. Id. >p.143:Total Cases-----	2523
25. NEWS RELEASE: Bankruptcy Filings Up In Calendar Year 2008 -----	2523
http://www.uscourts.gov/Press_Releases/2009/BankruptcyFilingsDec2008.cfm ; and at http://Judicial-Discipline-Reform.org/statistics&tables/bkr_stats/bkr_filings_CY08.pdf	
26. 2008 Judicial Business of the United States Courts, p.38-40, Table 12: Status of Article III Judgeship Positions -----	2524
http://www.uscourts.gov/judbus2008/JudicialBusinespdfversion.pdf ; judicial misconduct and disability complaint tables collected and subtotals added at http://Judicial-Discipline-Reform.org/statistics&tables/num_jud_officers/jud_officers_08.pdf	
27. 2008 Judicial Business of the U.S. Courts, <i>Annual Report of the Director</i> , pp.73-77 -----	2524
Table S-22A Report of Complaints Filed and Action Taken, October 1, 2007, Through May 10, 2008 http://www.uscourts.gov/judbus2008/tables/S22ASep08.pdf ;	
Table S-22B Report of Complaints Filed and Action Taken, May 11, 2008, Through September 30, 2008, http://www.uscourts.gov/judbus2008/tables/S22BSep08.pdf	
Tables for 1oct96-30sep08 collected and their data presented in graphic and tabular form at http://Judicial-Discipline-Reform.org/statistics&tables/jud_complaints/complaint_graphs_tables.pdf	

V. CASES

28. <i>In re David and Mary Ann DeLano</i> , 04-20280, WBNY -----	2513, 2516, 2520, 2525
29. <i>James Pfuntner v. Trustee Kenneth Gordon et al.</i> , 02-2230, WBNY -----	2513, 2520, 2525

VI. STATUTES

30. Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. 109-8, 119 Stat. 23, April 20, 2005, HR Report 109-31, -----	2523
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr031p1.109.pdf http://Judicial-Discipline-Reform.org/docs/BAPCPA_HR_109-31.pdf	
31. Bankruptcy Code -----	2515, 2519, 2523
32. Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351-364 -----	2524
http://Judicial-Discipline-Reform.org/docs/28usc351-364.pdf	
33. 11 U.S.C. §326(a) -----	2522
34. 11 U.S.C. §330(b) -----	2522
35. 11 U.S.C. §341 -----	2519, 2521
36. 11 U.S.C. §343 -----	2521
37. 11 U.S.C. §586(e)(1)(B) (ii)(I) -----	2522
38. 11 U.S.C. Chapter 7 -----	2513, 2522
39. 11 U.S.C. §704 -----	2521

40.	11 U.S.C. §704(a)(4, 7)	2522
41.	11 U.S.C. Chapter 11	2521
42.	11 U.S.C. §1106	2521
43.	11 U.S.C. Chapter 12	2522
44.	11 U.S.C. §1202	2521
45.	11 U.S.C. Chapter 13	2513, 2522
46.	11 U.S.C. §1301	2513
47.	11 U.S.C. §1302	2521
48.	11 U.S.C. §1325(a)(3)	2515
49.	28 U.S.C. §152(a)(1)	2517
50.	28 U.S.C. §158	2520
51.	28 U.S.C. §455(1)	2520
52.	28 U.S.C. §586(a)(7)	2521

VII. FRBkrP

53.	FRBkrP 1001	2519
54.	FRBkrP 7026 and 7034	2518
55.	FRBkrP 8002	2518
56.	FRBkrP 8006 and 8007	2518
57.	FRBkrP 9003	2518
58.	FRBkrP 9006	2518

VIII. FRCP

59.	FRCP 1	2519
60.	FRCP 4	2519
61.	FRCP 8(a)(2)	2519
62.	FRCP 26 and 34	2518
63.	FRCP 55	2519
64.	FRCP83(a)(1)	2519

IX. C.F.R.

65.	C.F.R. §58.6	2521
66.	C.F.R. §58.6(10)	2519, 2522

X. LOCAL RULE

67.	WDNY Local Rule 5.1(h)	2519
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During these times, when the Nation faces pressing economic problems, resulting in business failures, home foreclosures, and bankruptcy, and when Congress is called upon to enact novel legislation to address those challenges, the courts are a source of strength. They guarantee that those who seek justice have access to a fair forum where all enter as equals and disputes are resolved impartially under the rule of law. The Chief Justice's 2008 Year-End Report on the Federal Judiciary, pg. 7.
<http://www.supremecourtus.gov/publicinfo/year-end/2008year-endreport.pdf>

I, Dr. Richard Cordero, Esq., Petitioner, state under penalty of perjury as follows:

1. If those self-congratulatory words were meant to be a statement of facts, how can the Court reconcile them with the unconscionably long pattern of unfairness, partiality, and contempt for the law found in this case? (§17 infra) If they were meant to be a statement of intention, then the Court can realize such intention by reviewing this case to apply the standards of judicial conduct recently adopted by the Chief Justice and the judges under the Associate Justices' supervisory authority, to wit, the Code of Conduct for United States Judges; quashing the orders that denied production of *every single document* requested, so blatantly violative of discovery rights and due process of law, and issuing the proposed order (here at the back); or remanding this case to a court without a determined bias to protect itself, its bankruptcy system insiders, and its bankruptcy judicial appointee. It should not remand Petitioner to the same courts to suffer ever more unfairness, partiality, and contempt for the law. The strength of principled acts, even against its peers, not merely the sound of comforting words, is the real source of "Equal Justice Under Law".
 - I. **"Violation of the Code of Conduct for U.S. Judges by even giving the appearance of impropriety diminishes public confidence in the judiciary and injures our system of government under law", Canons 1 and 2**
2. On March 17, 2009, the Chief Justice and all the chief judges of the circuit and national courts together with representative district judges meeting in the Judicial Conference of the U.S. agreed that the notion of "appearance of impropriety" contained in the Code of Conduct for U.S. Judges

had to be reinvigorated together with others aimed at achieving one objective, which it expressed thus in Canon 1 and emphasized by rephrasing it as a recurrent theme throughout the Code:

CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. (emphasis added)

3. So in “the first substantial Code revision since 1992” (US:2508¶21 supra), the Conference provided thus:

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

COMMENTARY ON CANON 2A: An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety...Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

4. The fact that the Code will not be applicable to judges until July 1 is irrelevant, for this petition does not seek disciplinary action against any judge subject to it. Rather, it requests procedural redress for “a pattern of serious, intentional, and improper activity” (Commentary on Canon 1) by determining the merits of this rehearing petition on the basis of the Code’s standards of conduct and objective. They already enjoy wide consensus, for the top judges and representatives of the judiciary in the Judicial Conference adopted them “without disagreement”, according to the Chair of its Executive Committee, Chief Judge Anthony J. Scirica of the Third Circuit.¹ Judges that comply with the Code in advance of July 1 will not be in breach of any ethical or legal requirements; far from it, they will be adhering more strictly to them. In the same vein, this Court

¹ US Judges revise policy to avoid ethical conflicts, by Mark Sherman, *The Washington Post*, March 17, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/17/AR2009031702312.html>.

can decide that even in light of the Code's high standards and demanding objective the relief requested should be granted. In so doing, the Court will send a strong signal to those under its "supervisory authority" that the Code is meant to be applied and, in harmony with Canon 3B(4), provide them with guidelines on how to "take reasonable measures to ensure that they perform their duties timely and effectively" under the Code. (see also US:2521§III infra)

II. The facts of this case bear "actual improprieties of violations of law, court rules [and] other specific provisions of this Code" and it would further 'erode public confidence by irresponsibly and improperly' failing to redress them (Commentary on Canon 2A)

5. The "relevant circumstances [are] disclosed" in the record, e.g. **a)** Respondent DeLanos' bankruptcy petition (D:23); and the decisions below by **(b)** Bankruptcy Judge John C. Ninfo, II, WBNY, (D:3, 278, 327); **(c)** District Judge David G. Larimer, WDNY, (Add:1022, 1155; SApp:1501, 1609); and **(d)** the Court of Appeals, 2nd Circuit, in *In re David and Mary Ann DeLano*, 04-20280, WBNY, (US:2528 infra); **(e)** the case in which it originated, to wit, *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, which is pending before Judge Ninfo (D:272, 387; Add:719, 725, 731, 741, 749, 770, 785, 851, 1097); and **(f)** its progeny (CA:2001). Mr. DeLano and Dr. Cordero are parties to *Pfuntner*, respectively as third-party defendant and his impleading defendant. Upon filing for bankruptcy, they named Dr. Cordero among their unsecured creditors (D:40) and treated him as such for the following six months (US:2257¶14).
6. When they filed their bankruptcy petition, Mr. DeLano was already a 39-year veteran banker who was and remained employed by a major bank, M&T, precisely as a bankruptcy officer. Just in time for their retirement, he filed it under Chapter 13 "Adjustment of Debts of an Individual With Regular Income" (11 U.S.C. §1301 et seq.), thus avoiding liquidation under Chapter 7.
7. As a career-long banker and bankruptcy system insider, Mr. DeLano knew too much about official bankruptcy wrongdoing to be exposed to indictment for concealment of assets and filing

a perjurious petition. Once indicted, he would have deemed it in his interest to enter into a plea bargain agreement granting him some form of leniency or immunity for him and/or his wife in exchange for incriminating the judges, trustees, and lawyers that had enabled him to conceal assets as their retirement farewell gift to a fellow insider and his wife: Mr. DeLano would have exposed their participation in a bankruptcy fraud scheme.

8. Hence, Mr. DeLano was confident that he and his wife could risklessly file an intrinsically incongruous, implausible, and suspicious statement of financial affairs with Schedules A-J (US:2446§C), for the co-schemers would not dare challenge them. For instance, the DeLanos:

- a) earned \$291,470 in just the three years before the filing (D:47, 186-188), yet they claimed that they had ‘in hand and on account’ only \$535 (D:31)...which is a wink away from the soup kitchen, although they also declared that their monthly excess income after deduction of liberal monthly living expenses was \$1,940 (D:45); *which way is it?!*;
- b) received \$382,187 in a string of eight mortgages (SApp:1654 infra) although they declared only one real property, their home, in which they claimed equity of only \$21,416 and an outstanding debt of \$77,084 (D:30)...after making mortgage payments for 30 years!;
- c) declared \$98,092 in credit card debt, spread thinly over 18 credit cards (D:38) so that no issuer would have a stake high enough to warrant the cost of litigation, but they valued their household goods at only \$2,810 (D:31) -less than 1% of their earnings in the previous three years and less than their excess income in just two months- that was all they had to show after accumulating goods over their working lives of 30 years! Really?

(See the Statement of Facts in the petition for certiorari at US:2442§IX)

A. By denying *every single document* requested by Dr. Cordero, the judges disregarded his right to discovery and due process of law, and thereby their obligation under Canon 1 and its commentary that they “must comply with the law...constitutional requirements, statutes, other court rules and decisional law”

9. Neither the judges below nor the Justices (US:2340§VI, 2485) tried to make sense out of so much non-sense. They showed no interest in at least getting the facts straight as the basis that they needed to apply the Bankruptcy Code and to ‘resolve disputes’ over a petition thereunder. So they did not order the DeLanos to produce a single document in support of such an inherently suspicious petition for bankruptcy by a bankruptcy system insider. They let the non-sense stand and based their ruling on it. Does such conduct give the appearance of intent to comply with this:

Canon 2A. *Respect for Law.* A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

10. Far from it, the judges below showed disrespect for both the facts and the law by denying *every single document* (US:2453§F) that Dr. Cordero requested to pursue his claim as creditor of the DeLanos and defend against their motion to disallow it (US:2448§D). Although the motion was belated and barred by laches, Judge Ninfo accepted it and even ordered an evidentiary hearing. Dr. Cordero saw through their concerted maneuver: The disallowance motion was an artifice that in tandem with a sham evidentiary hearing (Transcript after D:#; CA:1758§B) would deprive him –as it did- of standing to demand that the DeLanos support their petition with documents.

11. Despite the seriousness of an allegation of bankruptcy fraud through concealment of assets and their duty to ascertain the good faith of all petitions (11 U.S.C. §1325(a)(3)), the judges simply “DENIED” (US:2528 *infra*) Dr. Cordero’s motions for document production with no explanation, without even mentioning the words fraud or concealment (CA:2196§A). They just could not give the appearance of acknowledging the issue participation in bankruptcy fraud by one of their own, thereby attracting attention to what they had engaged in: a cover up in self-interest. Their denial extended to documents that as a matter of course are required from all bankrupts, for they are indispensable to ascertain their claim of lack of money to repay their creditors, not to mention an allegation of bankruptcy fraud, namely, their bank account statements.

12. Contrary to the standard in the Commentary on Canon 2B, the judges provided the DeLanos with “advantage in litigation” by protecting them from an order to produce such incriminating documents. (cf. order here at the back) After all, theirs was a bankruptcy “involving a friend or a member of the judge[s]’ family” of judges and fraud schemers. Thereby the judges violated Canon 3A(1) by allowing themselves to “be swayed by partisan interests, p[eer] clamor, [and] fear of criticism” that they would draw if they failed to close ranks and instead treated all litigants as if they had accessed “a fair forum where all enter as equals” (introductory quote from the Chief Justice).
13. So the judges let the DeLanos do what they would never have been allowed to do had their “disputes [been] resolved impartially under the rule of law” (id.): They let them, the Debtors, retire to a golden pot without having to account for the whereabouts of at least \$673,657 in concealed assets. (SApp:1654 infra) By contrast, they forced the creditors to bear “the effect of the improper activity on others or on the judicial system” (Commentary on Canon 1), which included making them finance the DeLanos’ retirement with the loss of their claims against them. In particular, they have made Dr. Cordero sustain an enormous additional loss of effort, time, and money in litigating a case predetermined for the judges’ own sake that he would lose, thus intentionally inflicting on him tremendous emotional distress. Thereby they “denigrat[ed] public confidence in the judiciary’s integrity and impartiality, which [] violate[d] Canon 2A”. (Commentary on Canon 3A(6)).

B. The Court of Appeals, 2nd Cir., committed “actual improprieties” by dismissing the appeal in a summary order that irresponsibly bore no relation to the applicable law or even the facts of the case and evaded the issue presented for its appellate review: a bankruptcy fraud scheme run by its bankruptcy appointee

14. This pattern of disrespect for the law was extended when CA2 dismissed the appeal by fetching a doctrine and two cases and slapping them without any discussion on a summary order form although they are objectively inapplicable to *DeLano* both on the facts and the law. (US:2456§A)
15. Then CA2 disingenuously pretended that the motion filed by the Trustee, George Reiber, Esq., to

dismiss the appeal had only “minor deficiencies”, never mind the one right in the caption, where he addressed it to ““UNITED STATES DISTRICT COURT OF APPEALS SECOND CIRCUIT” (CA:2102). This set the standard of quality for his motion, where he failed to state the facts indispensable to his pretense that he had served on an unstated date on Dr. Cordero a certain instrument, although it was different from the one on which he based his dismissal motion, to which Dr. Cordero had not objected by an unstated date so as to comply with an obligation under some uncited authority to preserve something and the dismissal consequence followed from no authority other than the Trustee’s wish to get rid of a case incriminating him in the bankruptcy fraud scheme. (US:2459 §B) CA2 paid attention to such a motion so disrespectful of every standard of legal sense instead of sanctioning Trustee Reiber for his arrogance that because he was a bankruptcy system insider and co-schemer with CA2’s appointee, Bankruptcy Judge Ninfo (28 U.S.C. §152(a)(1)), anything he filed with CA2 would be accepted. (CA:1738§2, 2135§1) Thereby CA2 showed gross lack of “respect for the law”. It also violated Canon 2B on Outside Influence because it “should not allow [judicial] family...financial, [and] other relationships to influence [its] conduct or judgment...or convey or permit others to convey the impression that they are in a special position to influence [CA2] judge[s]”.

16. In both instances, CA2’s conduct offended against Canon 3A(1), which requires that “a judge should be faithful to, and maintain professional competence in, the law”. Judges cannot simply claim to be learned in the law; they must also give the appearance of knowing it. When they apply it perfunctorily to eliminate three out of every four appeals through the expedient of a cobbled summary order ([CA2 Handbook](#), p.17, US:2508¶19 supra), they also offend against Canon 2A requiring them to act “**at all times** in a manner that promotes public confidence in the integrity and impartiality of the judiciary”. (emphasis added) They also fail to competently “hear and decide matters assigned”, as they are required under Canon 3A(2) to discharge their “Adjudicative Responsibilities”, when they deny *every single document* requested by one party to a dispute, as they did in the

instant case to Dr. Cordero. By so doing, they not only take away the party's right to obtain evidence to defend his claims in "a fair forum", but also deprive themselves of the source of facts that they need to 'disclose through a reasonable inquiry the relevant circumstances' (Commentary on Canon 2) in order to apply to them "the rule of law" so as to 'impartially resolve the disputes' before them' (opening quote of the Chief Justice). That constitutes "irresponsible [and] improper conduct by judges [that also] erode[s] public confidence in the judiciary". (Commentary on Canon 2)

C. The judges have engaged in a "pattern of...violations of law and court rules" to protect the DeLanos and themselves from incrimination in a bankruptcy fraud scheme and secure their continued benefit from running it, which renders certiorari 'supervision', if not "disciplinary action appropriate" (Commentary on Canon 1)

17. Among the judges' most shocking "actual improprieties" resulting from the judges' failure to "respect and comply with the law", as required under Canon 2A and its Commentary, are these:

- a) the 5th Amendment right to due process of law, violated by **(i)** *every single document* requested by Dr Cordero being denied by Judge Ninfo though needed to defend himself in the sham evidentiary hearing that he conducted on March 1, 2005, to eliminate him from the case so as to protect the DeLanos and their scheme (D:378§D; Add:609§B); **(ii)** the sham being aided by District Judge Larimer (CA:1735§B), and **(iii)** their complicit collegiality being abetted by CA2 (Add:598§C, 613§§C-D; US:2467§A; US:2528 infra);
- b) FRBkrP 7026 and 7034 and FRCP 26 and 34, providing rights to discovery in general and to discovery of documents in particular, respectively (Add:592§A; US:2448§§D-F);
- c) FRBkrP 8002 and 9006 on the time for filing an appeal, which Judge Ninfo disregarded in order to protect Trustee Gordon from Dr. Cordero's claim against him (CA:2027§3);
- d) FRBkrP 8006 and 8007, violated in an effort to deprive Dr. Cordero of the incriminating transcript of that sham evidentiary hearing (Pst:1264¶¶21-26; US:2451:E);
- e) FRBkrP 9003 prohibiting ex parte contacts, as does Canon 3A(4), repeatedly violated by

Judge Ninfo having ex parte contacts with parties opposing Dr. Cordero but who were bankruptcy system insiders (D: 404§2, 433§D, 434¶¶22-24; Add:610¶¶50-52, 902:¶¶47-53; Pst:1273¶40; CA:2034§8, cf. CA:1766¶97);

- f) FRBkrP 1001 and FRCP 1 on applying the Rules “to secure the just, speedy, and inexpensive determination of every action and proceeding”, in consonance with which the Commentary on Canon 3A(5) provides that “a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay”, a standard violated by Judge Ninfo arbitrarily granting Dr. Cordero’s request to appear by phone or forcing him to travel hundreds of miles from New York City to Rochester on a short notice so as to make it too expensive or practically impossible for him to appear and defend his rights (D:415§6; Add:1064-1068, 1070; 1128§§I-II);
- g) FRCP 8(a)(2) on notice pleading and 83(a)(1) on local rule issuing authority, violated by WDNY Local Rule 5.1(h) (Add:633 infra), which requires for filing a RICO claim such detailed facts before discovery has begun as to prevent it from being filed, thus protecting the bankruptcy fraud scheme and other forms of judicial wrongdoing (US:2461§XI);
- h) FRCP 4 and 55, on default judgment, the application for which Judges Ninfo and Larimer denied Dr. Cordero although the party in default had sought protection under the Bankruptcy Code before Judge Ninfo, but failed to appear, whether in writing or in person, to answer Dr. Cordero’s claim against him under that Code (Add:597§B; CA:2064§C);
- i) 11 U.S.C. §341 on the meeting of creditors, which Trustee Reiber was allowed, in violation of C.F.R. §58.6(10), not to conduct personally on March 8, 2004, and which was terminated by his lawyer, James Weidman, Esq., after Dr. Cordero had asked only two questions of the DeLanos so as to protect them from self-incrimination or perjury (US:2444§B);

j) 28 U.S.C. §158 on the power of circuits to establish and operate Bankruptcy Appellate Panels, which the 2nd Circuit has abused so as to run a bankruptcy fraud scheme (US2464§XII);

k) 28 U.S.C. §455(1) requiring disqualification due to:

1) bias and prejudice, as does Canon 3A(1)(a), shown by Judge Ninfo for bankruptcy system insiders, e.g. the DeLanos' attorney, Christopher Werner, Esq., with 525 cases² before him; Trustee Kenneth Gordon with 3,382³; and Trustee Reiber with 3,907 *open* cases⁴, according to PACER (D:356; 387; 425; Pst:1266§1, 1299§j; US:2442§A);

2) the judge "hav[ing] an interest that could be substantially affected by the outcome of the proceeding", as provided under Canon 3C(1)(d)(iii) (Pst:1281§§c-d; CA:1254¶¶15-17; US:2450¶¶27-28);

3) Judge Ninfo relinquishing his position as a neutral arbiter to become Mr. DeLano's Advocate in Chief at the sham evidentiary hearing (US:2448§D; Transcript);

l) Canon 3A(2) requires the judge to "maintain order and decorum in all judicial proceedings", which Judge Ninfo failed to do when he repeatedly allowed his partner in the firm in which he was a partner at the time of taking the bench, Michael J. Beyma, Esq, of Underberg & Kessler, LLP, who represented M&T and his officer, Mr. DeLano, in *Pfuntner*, and Mr. Werner to suborn perjury by signaling answers to Mr. DeLano while he was being examined on the stand by Dr. Cordero at the sham evidentiary hearing (Pst:1289§f);

18. These 'serious actual improprieties' concern established principles of law and standards of conduct contained in the old Code and certainly in the new one. Familiarity with them and their correct application by all federal judges can be presumed. But if it were assumed *arguendo* that those improprieties only betrayed their adjudicative and administrative incompetence, then one would

² [Http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf](http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf)

³ [Http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf](http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf)

⁴ [Http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf](http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf)

reasonably expect half of the improprieties to benefit or harm Dr. Cordero and the other half to inversely affect the opposing parties. The fact that they all consistently benefited only the bankruptcy system insiders and local parties while they harmed Outsider and Out-of-Town Dr. Cordero demonstrates that, far from being random occurrences, they stem from knowing decisions of people with a shared set of motives, means, and opportunity seeking to achieve a specific common result. Expressed in terms of the Commentaries on Canons 2A and 1, “reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude” that they constitute a “pattern of actual improprieties consisting of intentional and serious violations of law [and] court rules” ‘by judges that with disregard for the harmful effect on others and the judicial system’ run and cover up a bankruptcy fraud scheme. (Add:621§1; CA:2025§C)

III. ‘During these times when bankruptcy cases increased’ to 1,043,993 in FY08 but bankruptcy appeals in the court of appeals decreased to only 773, the Court must ‘address the challenge’ of ‘absence of effective oversight’ over bankruptcy courts that has led their judges to take advantage of the inability of millions of debtors and creditors to seek review of their rulings

19. The bankruptcy fraud scheme “disclosed by a reasonable inquiry” (§17 supra) involves much more than just the at least \$673,657 concealed from the creditors by the DeLanos with the abetment of co-schemers. (SApp:1654 infra) After a “reasonable inquiry”, one can conclude that it extends to \$hundreds of millions or billions unlawfully unaccounted for, allowed, or disallowed in any number of Trustee Gordon’s 3,382 cases (ftnt. 3 supra) and Trustee Reiber’s 3,907 *open* cases (ftnt. 4 supra) that Assistant U.S. Trustee Kathleen Dunivin Schmitt allowed these trustees to amass before Judge Ninfo as well as similarly unmanageable numbers of cases that other trustees are allowed to take on. That such numbers of cases are unmanageable can be realized in light of the many duties that a trustee is required to perform personally with respect to each case. (D:139; 11 U.S.C. §§341, 343, 704, 1106, 1202, 1302; 28 U.S.C. §586(a)(7); C.F.R. §58.6)

20. However, the judge can unlawfully allow the trustee to skip those duties. So did Judge Ninfo by **a)** allowing Trustee Reiber not to preside over the DeLanos' meeting of creditors, which is cause for removal as trustee (US:2443¶¶15-20; C.F.R. §58.6(10)), but instead use his courtroom for other business while the Trustee's lawyer was conducting that meeting in a room of Assistant U.S. Trustee Schmitt, which shows that she too approved the Trustee's disregard of that duty; **b)** accepting Trustee Reiber's shockingly unprofessional and perfunctory 'report' (Add:937 infra, cf. 953§I); **c)** discharging him without requiring that he introduce a single document attesting to any investigation by him of the allegation of concealment of assets by the DeLanos (CA:1933); and **d)** letting him disregard his duty to investigate the DeLanos' financial affairs (11 U.S.C. §704(a)(4, 7)). Indeed, a co-scheming judge can allow a trustee to systematically rubberstamp petitions so as to collect effortlessly his 10% fee under a Chapter 12 or 13 debt repayment plan (11 U.S.C. §586(e)(1)(B)(ii)(I)) or bracketed percentage fees under Chapter 7 and/or 11 (11 U.S.C. §§326(a) and 330(b)). The creditors, who are deprived of their rights and the assets due them, become the victims of both the judge and his co-schemers; the debtors too can be victimized by the schemers imposing upon them unlawful conditions in exchange for rubberstamping their petitions.
21. Neither the creditors nor the debtors have the resources to seek appellate review. Hence, although just in FY08 1,043,993 new bankruptcy cases were filed, only 2,383 were appealed to the district courts (US:2508¶22), and only 773 were filed in the courts of appeals (US:2508¶22). It follows that whatever a bankruptcy judge decided, it was all but certain to stand given that the chances of even being appealed, let alone overturned, were infinitesimal: only 0.07% of all bankruptcy cases went to the appeals courts or only 1 in every 1,351 cases. Judges that wield what in practice is unreviewable power over so much money are bound to abuse it, for they are assured in practice that their "violations of law [and] court rules" will be riskless and profitable. This conclusion is supported by the findings that led Congress to adopt the Bankruptcy Abuse Prevention

and Consumer Protection Act, “Representing the most comprehensive set of reforms in more than 25 years”. (HR Report 109-31, p.3, US:2509¶30 supra) Congress stated that, as a factor for reform,

The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system...[to] respond to...the **absence of effective oversight to eliminate abuse in the system** [and] deter serial and abusive bankruptcy filings. (emphasis added) (id., p.2)

22. There has been no improvement in bankruptcy abuse prevention because the cause of the abuse is as insidious as it was before: “absence of effective oversight”. The instant case is evidence that such abuse not only projects “the appearance of impropriety”, but has also developed into the way of the judiciary doing business: It has become institutionalized impropriety.
23. The “appearance of impropriety” is destined to become ever more glaring because “these times [of] pressing economic problems” has led to a steady increase in bankruptcies. So the 1,043,993 new bankruptcy cases in FY08 represented a 30% increase over the 801,269 cases filed in FY07. By year end, CY08 had registered 1,117,771 new cases, up 31% from the 850,912 bankruptcies in CY07. (US: 2509¶25 supra) By contrast, only 267,257 civil cases were filed in the district courts in FY08. (US:2509¶24 supra) The fact that the overwhelming majority of civil cases filed in the federal courts are bankruptcy cases, whose numbers keep rising substantially, strengthens the justification for the Court to take up this case because bankruptcy cases are in dire need of oversight and the oversight provided would impact the largest number of cases.
24. Moreover, the nature of this case offers the Court the opportunity to have the farthest reaching impact because what is at stake is not an esoteric provision of the Bankruptcy Code, but rather fundamental principles affecting the exercise of judicial power, to wit, “the judge’s honesty, integrity, [and] impartiality” and thereby “public confidence in the judiciary”. (Commentary on Canon 2A).
25. In addition, the Justices, as circuit “ju[stic]es with supervisory authority over other judges [from the circuits represented in the Conference] should take reasonable measures to ensure that they perform their

duties timely and effectively” (Canon 3B(4)), such as reviewing this case to ensure that “violations of law, court rules, or other specific provisions of this Code” are not allowed to ‘erode public confidence in the judiciary’ (Commentary on Canon 2A). By applying to this case the Code’s standards of conduct the Court can send a powerful message, not just to the public, but in the first place to the “other judges” themselves that those standards must be ‘observed and enforced’. (Canon 1)

A. The Court should “maintain and enforce [the] high standards of conduct” of the Code by setting a clear example through their application to this case; otherwise, the Code is destined to be treated with the same contemptuous disregard as the Rules for Judicial Conduct and Disability Proceedings

26. The Code “may provide standards of conduct for application in proceedings under the...Judicial Conduct and Disability Act” (Commentary on Canon 1) To deal with problems in its application, the Conference adopted the new Rules for Judicial Conduct and Disability Proceedings on March 11, 2008. (US:2508¶17 supra) The official 07-08 statistics have been published by the Administrative Office of the U.S. Courts (AO). They show that of the 1,163 complaints filed only 2 were on order of a chief judge (US:2509¶27 supra), thus following the same pattern as that revealed by the AO statistics reported for the previous 11 years from 1oct96-30sep07 (US:2529 infra). Likewise, chief judges and judicial councils systematically dismissed complaints as they had done in the past. So only two special investigating committees were appointed and only two complaints were referred to such a committee, only for no committee report to be received by any judicial council so that no action was taken on any such report. Moreover, only one single judge was disciplined at all, despite the fact that there were 2,153 judges in FY08. (US:2509¶26 supra)
27. Hence, “reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, [and] impartiality” in their handling of complaints filed against them are not just “impaired”. (Commentary on Canon 2A) The inquiry reveals the concerted unlawful practice among the judges to systematically exempt themselves from dis-

cipline. They have thus abused for their own benefit their judicial power and abrogated in practice an Act of Congress, which mistakenly trusted them with a system of judicial self-discipline.

28. Concerted abuse is illustrated by the successive 2nd Circuit chief judges and judicial council members. During the 96-08 12-year reported period, they adopted and applied the policy of denying 100% of all petitions for review of complaint dismissals⁵. (cf. US:2530 infra) Such abusive practice of theirs and their peers in the other circuits shows that in their “minds” judges can do no wrong. They have set themselves up as ‘Judges Above the Law’. In the process, they have injured litigants and everybody else by leaving them unprotected in the hands of their protégés: their disciplined-exempted misconducting and disable judges complained against. Can it be reasonably or honestly disputed that such “irresponsible and improper conduct by judges has eroded public confidence in the judiciary”? (Commentary on Canon 2A)

29. If the Code is not to become, as the complaint Rules have, a showy public pretense at self-discipline that was never meant to be applied, the Court should apply it to this case. It can take up the challenge of exercising its “supervisory authority” over what a “reasonable inquiry” into the long procedural history of *DeLano* and *Pfuntner* has disclosed: a “pattern of actual improprieties consisting of serious and intentional violations of law, court rules and other specific provisions of this Code” by judges running and covering up a bankruptcy fraud scheme. (Commentary on Canons 1 and 2A)

IV. Relief requested

30. Therefore, Dr. Cordero respectfully requests that the Court quash the order denying the petition for certiorari and grant the petition and the relief requested therein (US:2478-2480 infra) and to that end, issue the proposed document production order (here at the back).

Dated: April 23, 2009
59 Crescent St., Brooklyn, NY 11208

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

⁵ http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf, ¶¶1-4.

CERTIFICATE

I, Dr. Richard Cordero, Esq., Petitioner, certify that I am submitting this petition for rehearing of the order denying the petition for a writ of certiorari in good faith and not for delay, but rather for the purpose of seeking the application to this case, namely, *Dr. Cordero v. DeLano*, 08-8382, of the standards of conduct and legal principles established in the Code of Conduct for United States Judges adopted on March 17, 2009, by the Chief Justice and the other judges in the Judicial Conference under the Associate Judges' supervisory authority so that I may be granted my right so far denied to have due process of law and an effective opportunity at "Equal Justice Under Law".

Dated: April 23, 2009
59 Crescent Street
Brooklyn, NY 11208

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

Certificate of Service

Dr. Richard Cordero v. David DeLano et ux., 08-8382

I, Dr. Richard Cordero, Esq., certify that I mailed or e-mailed to the parties listed below a copy of my petition to U.S. Supreme Court for a rehearing of the order denying my petition for a writ of certiorari to the Court of Appeals for the Second Circuit concerning *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, and *Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY.

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**Coordinated Denial by Bankruptcy System Insiders and Courts
Running a Bankruptcy Fraud Scheme**

**of discovery rights under FRBkrP 7026 and 7034 & FRCP 26 and 34 and
the consequent intentional denial of due process of law**

How many people benefit from keeping the whereabouts of <\$673,657 unknown?

	Officers and Courts that disregarded or denied Creditor's right to have the DeLano Debtors produce financial documents or testimony to account for their income and mortgage proceeds of at least \$673,657	DeLano, 04-20280, WBNY, & 05-6190, WDNY Requests for, and denials of, production of document to verify the Debtors inherently incongruous, implausible, and suspicious bankruptcy petition (US:2442§A)
1.	Chapter 13 Trustee George Reiber	D:63, 94¶80a, d; 112, 124, 147, 161, 283, 298, 302, 311, 461, 492; Add:683
2.	Assistant U.S. Trustee Kathleen Dunivin Smith	D:94¶80a, f; 307, 470, 471, 474, 492; Add:685
3.	U.S. Trustee for Region 2 Deirdre A. Martini	D:94¶80g; 104, 137, 141, 158, 307, 330, 492, Add:682
4.	Christopher K. Werner, Esq., Debtors' attorney	D:94¶80b, 159, 287, 310, 473
5.	Bankruptcy Judge John C. Ninfo, II, WBNY	D:75, 136¶d, 199¶31 207, 208, 217, 243¶34a, 246, 278¶1, 323¶30a 327; Tr:188/2-189/22
6.	District Judge David G. Larimer, WDNY	Add:845, 885¶15d, 907, 951, 977, 1031; Pst:1307, 1418; Add:1022; SApp:1504

Document requests by Creditor Dr. Richard Cordero and denials by CA2				
	Requests in <i>DeLano</i> , 06-4780, CA2		Denials	
	page #	date	page #	date
7.	CA:1606	December 19, 06	SApp:1623	January 24, 07
8.	CA:1618	January 18, 07	SApp:1634	February 1, 07
9.	CA:1637	February 15, 07	SApp:1678	March 5, 07
10.	CA:1777	March 17, 07	CA:2180	February 7, 08
11.	CA:1932	June 14, 07	CA:2180	February 7, 08
12.	CA:1975¶59a	July 18, 07	CA:2182	February 7, 08
13.	CA:2081¶c.1	August 29, 07	CA:2181	February 7, 08
14.	CA:2126¶e	November 8, 07	CA:2180	February 7, 08
15.	CA:2140¶e	November 27, 07	CA:2180	February 7, 08
16.	CA:2165¶33e	December 26, 07	CA:2180	February 7, 08
17.	CA:2179	January 3, 08	CA:2180	February 7, 08
18.	CA:2205¶25c	March 14, 08	CA:2209	May 9, 08

Systematic Dismissal by Judges of 99.86% of Complaints Against Them¹

Table S-22 [previously S-23 & S-24]. Report of Complaints Filed and Action Taken Under 28 U.S.C. §351 for the 12-Month Period Ended Sep. 30 1997-2007. <http://www.uscourts.gov/judbususc/judbus.html>; collected at http://Judicial-Discipline-Reform.org/judicial_complaints/complaint_tables.pdf

Complaints filed in the 13 Circuits and 2 National Courts	'96-97	'97-98	'98-99	'99-00	'00-01	'01-02	'02-03	'03-04	'04-05	'05-06	'06-07	'96-07	Avr.
Complaints Pending on each September 30 of 1996-2007*	109	214	228	181	150	262	141	249	212	210	241	2197	199.7
Complaints Filed	679	1,051	781	696	766	657	835	712	642	643	841	8303	754.8
Complaint Type												0	0.0
Written by Complainant	678	1,049	781	695	766	656	835	712	642	555	841	8210	746.4
On Order of Chief Judges	1	2	0	1	0	1	0	0	0	88	0	93	8.5
Officials Complained About**													
Judges													
Circuit	461	443	174	191	273	353	204	240	177	141	226	2883	262.1
District	497	758	598	522	563	548	719	539	456	505	792	6497	590.6
National Courts	0	1	1	1	3	5	1	0	0	3	4	19	1.7
Bankruptcy Judges	31	28	30	26	34	57	38	28	31	33	46	382	34.7
Magistrate Judges	138	215	229	135	143	152	257	149	135	159	197	1909	173.5
Nature of Allegations**													
Mental Disability	11	92	69	26	29	33	26	34	22	30	20	392	35.6
Physical Disability	4	7	6	12	1	6	7	6	9	3	1	62	5.6
Demeanor	11	19	34	13	31	17	21	34	20	35	22	257	23.4
Abuse of Judicial Power	179	511	254	272	200	327	239	251	206	234	261	2934	266.7
Prejudice/Bias	193	647	360	257	266	314	263	334	275	295	298	3502	318.4
Conflict of Interest	12	141	29	48	38	46	33	67	49	43	46	552	50.2
Bribery/Corruption	28	166	104	83	61	63	87	93	51	40	67	843	76.6
Undue Decisional Delay	44	50	80	75	60	75	81	70	65	53	81	734	66.7
Incompetence/Neglect	30	99	108	61	50	45	47	106	52	37	59	694	63.1
Other	161	193	288	188	186	129	131	224	260	200	301	2261	205.5
Complaints Concluded	482	1,002	826	715	668	780	682	784	667	619	752	7977	725.2
Action By Chief Judges													
Complaint Dismissed													
Not in Conformity With Statute	29	43	27	29	13	27	39	27	21	25	18	298	27.1
Directly Related to Decision or Procedural Ruling	215	532	300	264	235	249	230	295	319	283	318	3240	294.5
Frivolous	19	159	66	50	103	110	77	112	41	63	56	856	77.8
Appropriate Action Already Taken	2	2	1	6	4	3	3	3	5	5	3	37	3.4
Action No Longer Necessary Because of Intervening Events	0	1	10	7	5	6	8	9	8	6	6	66	6.0
Complaint Withdrawn	5	5	2	3	3	8	8	3	6	9	3	55	5.0
Subtotal	270	742	406	359	363	403	365	449	400	391	404	4552	413.8
Action by Judicial Councils													
Directed Chief Dis. Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	1	0	1	0.1
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Ordered Temporary Suspension of Case Assignments	0	1	0	0	0	0	0	0	0	0	0	1	0.1
Privately Censured	0	0	0	0	1	0	0	0	0	0	0	1	0.1
Publicly Censured	0	1	0	2	0	2	0	0	0	0	0	5	0.5
Ordered Other Appropriate Action	0	0	0	0	0	0	1	0	0	0	2	3	0.3
Dismissed the Complaint	212	258	416	354	303	375	316	335	267	227	344	3407	309.7
Withdrawn	n/a	n/a	4	0	1	0	0	0	0	0	2	7	0.6
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Subtotal	212	260	420	356	305	377	317	335	267	228	348	3425	311.4
Special Investigating Committees Appointed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	7	5	12	1.1
Complaints Pending on each September 30 of 1997-07	306	263	183	162	248	139	294	177	187	234	330	2523	229.4

*Revised. **Each complaint may involve multiple allegations against numerous judicial officers. Nature of allegations is counted when a complaint is concluded.

Statistics Revealing 2nd Cir. Judges' Systematic Dismissal of Complaints Against Them & 0 Judge Disciplined¹

Table S-22 [previously S-23 & S-24]. Report of Complaints Filed and Action Taken Under 28 U.S.C. §351 for the 12-Month Period Ended Sep. 30, 1997-07. <http://www.uscourts.gov/judbususc/judbus.html>; collected at http://Judicial-Discipline-Reform.org/judicial_complaints/complaint_tables.pdf

Data collected by Jud. Council 2 nd Cir. for AO; 28 U.S.C. §332(g)	'96-97	'97-98	'98-99	'99-00	'00-01	'01-02	'02-03	'03-04	'04-05	'05-06	'06-07	'96-07	Avg.
Complaints Pending on each September 30 of 1996-2006*	5	10	23	65	33	60	29	34	57	31	28	375	34.1
Complaints Filed	40	73	99	59	102	62	69	23	36	14	22	599	54.5
Complaint Type													
Written by Complainant	40	73	99	59	102	62	69	23	36	0	22	585	53.2
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	14	0	14	1.3
Officials Complained About**													
Judges													
Circuit	3	14	23	9	31	10	8	4	7	0	6	115	10.5
District	27	56	63	41	52	41	49	15	23	10	12	389	35.4
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Bankruptcy Judges	2	1	2	2	2	1	1	1	0	0	0	12	1.1
Magistrate Judges	8	8	11	7	17	10	11	3	6	4	4	89	8.1
Nature of Allegations**													
Mental Disability	1	9	26	2	5	4	6	3	3	1	1	61	5.5
Physical Disability	0	1	2	1	0	0	1	2	0	0	0	7	0.6
Demeanor	2	2	2	3	14	3	4	6	0	0	0	36	3.3
Abuse of Judicial Power	25	30	7	29	28	57	20	6	3	0	1	206	18.7
Prejudice/Bias	32	36	34	28	24	40	20	35	43	28	30	350	31.8
Conflict of Interest	0	0	5	11	10	18	3	4	5	1	1	58	5.3
Bribery/Corruption	0	0	10	21	2	15	4	5	2	2	1	62	5.6
Undue Decisional Delay	0	4	0	11	6	15	9	5	8	2	3	63	5.7
Incompetence/Neglect	4	1	3	1	5	2	3	3	4	0	3	29	2.6
Other	0	11	3	5	0	0	4	33	80	38	47	221	20.1
Complaints Concluded	33	56	57	80	75	93	42	51	91	45	50	673	61.2
Action By Chief Judges													
Complaint Dismissed													
Not in Conformity With Statute	3	4	0	0	4	1	1	6	5	8	1	33	3.0
Directly Related to Decision or Procedural Ruling	12	19	19	29	17	23	14	18	46	15	10	222	20.2
Frivolous	0	1	19	0	13	9	7	3	1	3	2	58	5.3
Appropriate Action Already Taken	0	0	0	0	0	0	0	1	0	1	0	2	0.2
Action No Longer Necessary Because of Intervening Events	0	0	3	1	0	2	0	0	0	1	0	7	0.6
Complaint Withdrawn	0	0	0	0	0	2	0	1	2	0	0	5	0.5
Subtotal	15	24	41	30	34	37	22	29	54	28	13	327	29.7
Action by Judicial Councils													
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0.0
Dismissed the Complaint	18	32	16	50	40	56	20	22	37	17	37	345	31.4
Withdrawn	n/a	n/a	0	0	1	0	0	0	0	0	0	1	0.1
Referred Complaint to Judicial Conference	0	0	0	0	0	0	n/a	0	0	n/a	0	0	0.0
Subtotal	18	32	16	50	41	56	20	22	37	17	37	346	31.5
Special Investigating Committees Appointed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	1	2	0.2
Complaints Pending on each September 30 of 1997-2007	12	27	65	44	60	29	56	6	2	0	0	301	27.4

*Revised. **Each complaint may involve multiple allegations against numerous judicial officers. Nature of allegations is counted when a complaint is concluded.

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

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

...
(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., shall file and serve a "RICO Case Statement" under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party's RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party's failure to file a statement may result in dismissal of the party's RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).

(2) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a “pattern of racketeering activity”; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable “person” and the “enterprise” under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

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

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

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

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

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

Rejection of executory contracts None

92,920 TOTAL

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

B. Feasibility: **Why then returned loan paid**

Total Indebtedness	\$ <u>185462</u>	including mortgages
Monthly Income (net)	\$ <u>4886.50</u> 2946.50	(gross) \$ <u>7501.</u>
Less Estimated Expenses	\$ <u>2946.50</u>	
Excess for Wage Plan	\$ <u>1940.</u>	
Duration of Plan	<u>3</u>	years

Why End of Sec a Unemployment

Payments are not adequate to execute plan.

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

Name of Creditor	Amount of Security	Security Claimed	Perfectured	341 Valuation	Disputed
Capital One Autos	\$ <u>10,285</u>	<u>198 Chevy Blazer</u>	<u>Yes</u>	<u>\$6900</u>	<u>STIP</u>

3. Best interest of creditors test:

A. All assets were listed.

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

Less valid liens \$ 83,734

Less exempt property \$ 17,732

Available for judgment liens \$ 2,666

Less priority claims \$ 16,655

(Support \$)

C. Total available for unsecured creditors in liquidation \$ 1,976 0

D. Amount to be distributed to unsecured creditors \$ 4,646

E. Nature of major non-exempt assets:

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

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

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

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

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

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

10. Converted from Chapter 7 because (2)

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

ATTORNEY'S FEES: \$ 1350

Additional fees Anticipated? Yes \$ 16,655

GEORGE M. REIBER TRUSTEE

IN RE:

DeLana David - MaryAnn

BK. #

04-20280

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

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

**The DeLanos' income of \$291,470,
+ mortgage receipts of \$382,187 = \$673,657
and credit card borrowing of \$98,092**

unaccounted for due to the judges' and the trustees' refusal to require the DeLanos to produce documents supporting their declaration in Schedule B (D:31) of their bankruptcy petition that at the time of its filing on January 27, 2004, they had in hand and on account only \$535!¹

Exhibit page #	Mortgages referred to in the incomplete documents produced by the DeLanos to Chapter 13 Trustee George Reiber ^a (cf.Add:966§B)	Mortgages or loans	
		year	amount
D ^b :342	1) from Columbia Banking, S&L Association	16jul75	\$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers & Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-54	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed?	Subtotal	\$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition of January 27, 2004 (D:23)			
2001	1040 IRS form (D:186)	\$91,229	\$91,229
2002	1040 IRS form (D:187) Statement of Financial Affairs (D:47)	\$91,859	91,655
2003	1040 IRS form (D:188) Statement of Financial Affairs (D:47)	+97,648	+108,586
to this must be added the receipts contained in the \$98,092 owed on 18 credit cards, as declared in Schedule F (D:38) ^c		\$280,736 ^d	\$291,470 ^d
		TOTAL	\$673,657

^a The DeLanos claimed in their bankruptcy petition that their only real property is their home, valued on November 23, 2003, at \$98,500, as to which their mortgage is still \$77,084 and their equity is only \$21,416 (D:30/Sch.A)...after making mortgage payments for 30 years! and having received during that same period at least \$382,187 through the known elements of a string of mortgages! *Mind-boggling!*

^b D=Designated items in the record of *Cordero v. DeLano*, 05-6190L, WDNY, of April 18, 2005.

^c The DeLanos declared that their credit card debt on 18 cards totals \$98,092 (D:38/Sch.F), while they set the value of their household goods at only \$2,810! (D:31/Sch.B) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years.

^d Why do these numbers not match?

XIV. RELIEF REQUESTED

98. Therefore, Dr. Cordero respectfully requests that the Court:

a. 1) grant this petition for a writ of certiorari or,

2) in the alternative,

(a) hold null and void all decisions and orders in *DeLano* and *Pfuntner* and remand those cases to the U.S. District Court, NDNY, in Albany, NY, for trials by jury, and

(b) proceed under the All Writs provision of 28 U.S.C. §1651(a) or cause the issue of

a certificate of necessity under 28 U.S.C. §294(d),¹ and designate and assign a judge, who may be on the roster of senior judges, but who in any event is retired, was from a circuit other than the Second Circuit, and is unrelated to the judges and parties in these cases and capable of exercising his or her judicial duties in these cases fairly, independently, and impartially, to preside over such trials;

- b. issue the document production order proposed below;
- c. allow the filing of supplemental briefs 60 days after completion of such production;
- d. stay CA2's order dismissing *DeLano* (CA:2180);
- e. stay all proceedings in *Pfuntner* in Bankruptcy and District Courts revived by the dismissal of *DeLano*;
- f. cause CA2 to refund Dr. Cordero the \$455 filing fee for the reasons above stated;
- g. in consideration of the enormous cost for litigating *DeLano* and *Pfuntner* that Dr. Cordero had already incurred:
 - 1) waive the \$300 filing fee in this Court, which Dr. Cordero has already paid, and refund it;
 - 2) grant leave for this petition and, if certiorari is granted, for the merits brief, to be printed on 8½ x 11" paper and CDs in 10 copies in light of:
 - i) the acceptance of 8½ x 11" paper for printing other papers, such as briefs, applications, and motions under SCtR 19.1, 21.2.c, 26.4(b), 37.5, 39.3 & 5, 40.1 & 2;
 - ii) the goal expressed in FRBkrP 1001 and FRCivP 1 that procedural rules "should be construed and administered to secure the...inexpensive determination of every action and

¹ The All Writs provision does not exclude from its scope the appointment of such a judge by the chief justice. For its part, §294 does not exclude his or her appointment except under it, but merely creates the duty for the chief justice to appoint such judge if a chief judge or the respective circuit justice presents a certificate of necessity.

proceeding” having been heralded by this Court as one of “the touchstones of federal procedure”, *Brown Show Co. v. U.S.*, 370 U.S. 294, 306, 82 S.Ct. 1502, 1513, 8 L.Ed. 2d 510 (1962);

- iii) those “simple” Rules serving as reminders that form should not be exalted over substance, *Hall v. Sullivan*, 229 F.R.D. 501, 504 (D.Md. 2005);
 - iv) the privacy concerns protecting the information required for filing a motion to file in forma pauperis;
 - v) the record in DeLano running to more than 2,400 pages;
- h. given the facts surrounding, and the arguments supporting, this petition, grant Dr. Cordero any other relief that is proper and just.

Dated: October 3, 2008
59 Crescent Street
Brooklyn, NY 11208

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

IN THE
SUPREME COURT OF THE UNITED STATES

Having considered the petition for a writ of certiorari to the Court of Appeals for the Second Circuit in *Dr. Richard Cordero v. David DeLano et ux.*, 08-8382, SCt, made by Petitioner Dr. Richard Cordero, Esq., and 28 U.S.C. §§1651 and 2101 and Rule 23 of the Rules of the Supreme Court of the United States, the Court orders as follows:

A. Persons concerned by this order and its execution

1. Any person or entity, whether a corporation, company, firm, association, unincorporated group, branch of government or subdivision thereof, is concerned by this order (hereinafter concerned person) who:
 - a. has actual knowledge of it;
 - b. would have knowledge of it by proceeding as a reasonable person would acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity.
2. Among the concerned persons are those identified in ¶¶3-18 below:
3. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), formerly resident at 1262 Shoecraft Road, Webster, NY 14580, and debtors in *In re David and Mary Ann DeLano*, 04-20280, WBNY; *Cordero v. DeLano*, 05-cv-6190L, WDNY; *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, and *Dr. Richard Cordero v. David and Mary Ann DeLano*, 08-8382, SCt (hereinafter *DeLano*);
Combined docket: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf
4. Devin L. Palmer, Esq., dpalmer@BoylanBrown.com, and Christopher K. Werner, Esq.,

cwerner@BoylanBrown.com, attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585)232-5300, fax (585)232-3528; and any and all members of their law firm; <http://www.boylanbrown.com/index.php>

Docket: http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf

5. Michael J. Beyma, Esq., attorney for Mr. DeLano and M&T Bank, 300 Bausch & Lomb Place, Rochester, NY 14604, tel (585)258-2800, fax (585)258-2821; and any and all members of their law firm, including, but not limited to, Paralegal Brenda G. Reed, breed@underbergkessler.com; Paralegal Sandy Mattle, and Administrative Assistance Rene Reale, tel. (585)258-2843, RReale@underbergkessler.com; <http://www.underberg-kessler.com>;
6. James Pfunter, at the address of his attorney, David MacKnight, Esq., dmacknight@lacykatzen.com, or successor, at Lacy, Katzen, Ryen & Mittlemann, LLP, 130 East Main St., Rochester, NY 14604; tel. (585)454-5650, fax (585)269-3077, plaintiff in *Pfunter v. Trustee Gordon et al.*, 02-2230, WBNY (hereinafter *Pfunter*); <http://www.lacykatzen.com/>;
Combined docket: http://Judicial-Discipline-Reform.org/dockets/6Pfunter_Bkr-SCt_28mar5.pdf
7. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585)263-5812, fax (585) 263-5862, and any and all members of her staff, including, but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker; <http://www.usdoj.gov/ust/r02/rochester.htm>;
8. Ms. Diana G. Adams, U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, tel. (212)510-0500, fax (212) 668-2255; and any and all members of their staff; <http://www.usdoj.gov/ust/r02/>;
9. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585)427-7225, fax (585)427-7804, and any and all members of his staff, including, but

not limited to, James Weidman, Esq., attorney for Trustee Reiber; trustee13@roch13.com;

10. Trustee Kenneth W. Gordon, Gordon & Schall, LLP, 1099 Monroe Ave., Ste. 2, Rochester, NY 14620-1730; tel. (585)244-1070, and any and all members of his staff;
11. M&T Bank, 255 East Avenue, Rochester, NY, tel. (800)724-8472, 585-546-0501, fax: 585-546-0550, (585)546-7584; <http://www.mandtbank.com/>;
12. David Palmer, 1829 Middle Road, Rush, NY 14543, and his company, Premier Van Lines, debtor in *In re Premier Van Lines*, 01-20692, WBNY (hereinafter Mr. Palmer/Premier and *Premier*);
13. David M. Dworkin & Jefferson Henrietta Associates, at the address of their attorney, Karl S. Essler, Esq., Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450, tel. (585) 641-8000; fax (585)641-8080; kessler@fixspin.com;
14. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392;
15. Ms. Melissa L. Frieday, Contracting Officer for court reporters, US. Bankruptcy Court, WDNY, Olympic Towers, 300 Pearl Street, Suite 250, Buffalo, NY 14242, tel. (716) 362-3200, fax (716)551-5103;
16. Bankruptcy Judge John C. Ninfo, II, WBNY, and Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585)613-4200, and any and all members of their staff, including, but not limited to, Andrea Siderakis, Assistant to Judge Ninfo, courtroom tel. (585)613-4281, fax (585)613-4299; Deputy Clerk in Charge Todd M. Stickle, tel. (585)613-4223, fax (585)613-4242; Case Administrators Karen S. Tacy and Paula Finucane; <http://www.nywb.uscourts.gov/>;
17. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, U.S. District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585) 613-4035, and any and all members of their staff; <http://www.nywd.uscourts.gov/mambo/>; and

18. Former Chief Judge John M. Walker, Jr., of the Court of Appeals for the Second Circuit and former Clerk of Court Roseann B. MacKechnie, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, NY, 1007, tel. (212)857-8500, and any all members of their staff; <http://www.ca2.uscourts.gov/>.
19. The officer with authority to execute this order is hereinafter referred to as executor.
20. Without prejudice to the duty to comply with this order and lend all assistance to its complete, efficient, and timely execution, as such assistance is requested by any executor, no person shall be an executor who is an investigation-related person, that is, a person who is or was:
 - a. an agent or employee in the offices of the U.S. Department of Justice or the Federal Bureau of Investigation in Rochester or Buffalo, NY; or
 - b. familiar or acquainted with any person of interest.
21. A person of interest is one who is or was:
 - a. a party to either *DeLano* or *Pfuntner* and their progeny;
 - b. a court officer, whether judicial or administrative, a lawyer, a private or U.S. trustee, a bankruptcy professional, or a member of their respective staff, directly or indirectly involved in, concerned with, or affected by either of those cases or the investigation concerning this order; or
 - c. employed by, or otherwise a worker in, any of the U.S. courts in Rochester or Buffalo or anywhere else where their judges hold or held court; or
 - d. investigated or is likely to be investigated in connection with those cases or with this order.

B. Duties of a concerned person

22. A concerned person shall:
 - a. understand a reference to a named concerned person to include any and all members of such person's staff or membership;

- b. comply with the instructions stated herein and complete such compliance within seven days of the issue of this order unless a different deadline for compliance is stated in ¶24 below;
- c. be held responsible for any non-compliance and subject to the continuing duty to comply with this order within the day each day after the applicable deadline is missed, under pain of being named the subject of a contempt proceeding.

23. A concerned person shall provide upon request of, and volunteer to, an executor information:

- a. that such person has concerning a document herein identified, including, but not limited to, its author, existence, nature, condition, use, actual or likely whereabouts, person in possession of or who controls it;
- b. without passing judgment on the degree of relevance or lack thereof for the order in recognition of the fact that the relevance of a piece of information may only become apparent in the broader context of information already gathered or to be gathered by an executor; and
- c. in application of the principle “If in doubt, communicate the information to an executor”.

24. A concerned person shall with respect to a document herein identified provide information about it, produce it, and issue a certificate, as defined in ¶28 below,

- a. whenever a reasonable person would who is:
 - 1) acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity, and
 - 2) applying the principle “If in doubt, produce the document to an executor”, and
- b. believes that at least one part of such document is a document herein identified;
- c. has doubts as to whether any or no part of the document is herein identified; or
- d. believes that another person with an adversarial interest would want such information,

production, or certificate or find it of interest to the end of ascertaining whether an individual or entity:

- 1) is a holder or an identifier, as defined in ¶25; or
- 2) has committed, covered up, or tolerated an offense, including, but not limited to, bankruptcy fraud, concealment of assets, destruction of documents, money laundering, perjury, and bribery.

25. A concerned person who with respect to any document herein identified:

- a. has possession or custody of it (hereinafter holder) shall produce a true and correct copy thereof and a certificate, as defined in ¶28 below;
- b. controls or knows the actual or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the actual or likely whereabouts of, and state such whereabouts and the name and address of the known or likely holder of, such document.

26. A holder or identifier shall certify that he or she holds such original and acknowledges the duty under this order to hold it in a secure place, ensure its chain of custody, and produce it upon order of an executor.

27. A concerned person shall produce those parts of each document herein identified that state as to each transaction covered by such document:

- a. The time and amount of each such transaction;
- b. the rates, including but not limited to normal and delinquent rates, applied to the transaction;
- c. the opening and closing dates of the transactions reported in the document, such as a statement of account;
- d. the description of the goods or service concerned by the transaction;

- e. the source or recipient of funds or who made any charge or claim for funds;
 - f. the opening date of, the payment due date of the amount owing on, and the good or delinquent standing of, the account, agreement, or contract dealt with in the document;
 - g. the beneficiary of any payment;
 - h. the surety, codebtor, or collateral; and
 - i. any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the document;
28. A concerned person shall certify individually as a person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that:
- a. it has not been the subject of any addition, deletion, correction, or modification of any type whatsoever; and
 - b. it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or
 - c. such certification cannot be made with respect to any part or the whole of such document and the reason therefor and attach the whole document to the certificate;
29. A concerned person shall produce documents pursuant to the following timeframes measured from the time the order is served on such person or the latter has actual knowledge or would have knowledge of it, as provided for in ¶1 above, whichever is earlier:
- a. within seven days with respect to documents that a concerned person has possession of at home or other permanent or temporary dwelling, in the office or vehicle, or equivalent place;
 - b. with respect to documents that are kept, stored or archived elsewhere than in a. above;
 - 1) within two weeks with respect to documents dated January 1, 2000, or since, to date;
- and

- 2) within 30 days with respect documents dated since January 1, 1975, to December 31, 1999, including the first and last dates of such period.

C. Documents in general, production, and certification

30. A document identified with particularity or in general in this order (hereinafter document(s)) is to be understood broadly to mean ‘an object that holds information or data in any form’, whether the form be handwritten, print, digital, electronic, or otherwise; and the object be any of the following or similar objects:
 - a. paper, including any type of graphic or photographic paper, film, and equivalent;
 - b. a removable storage device, such as a floppy, CD, DVD, Blue Ray disk, external hard disk; memory flash, stick, or card; electronic memory strip, such as found on plastic cards; and audio or video tape;
 - c. fixed storage device, such as an internal hard disk of a computer, server, mainframe, or recorder box;
 - d. an audio or video cassette, such as used in a tape recorder or camcorder;
 - e. a wireless handheld digital device, such as an iPod, Blackberry, or smartphone.
31. A reference herein to a specific type of document includes any other type of document in which the information referred to or derived therefrom, such as through addition, deletion, modification, correction, transformation from one form to another, or rearrangement for inclusion in a database, is available.

D. Particular documents to be produced

32. A concerned person that has any of the following documents shall produce them to an executor:
33. The financial documents in either or both of the names of:
 - a. the DeLanos,

- b. Mr. Palmer and/or Premier; and
- c. third parties but concerning a financial matter under the total or partial control of either or both of them, respectively, whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's;

34. The dates of the documents referred to in ¶33 above are:

- a. in the case of the DeLanos, since January 1, 1975, to date; and
- b. in the case of Mr. Palmer, since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier to date.

35. The financial documents referred to in ¶33 above include the following:

- a. the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at, or issued by, M&T Bank and any other entity, whether banking, financial, investment, commercial, or otherwise, in the world;
- b. the unbroken series of documents relating to the purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, by either or both of the DeLanos and Mr. Palmer/Premier, respectively, including, but not limited to:
 - 1) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY 14580;
 - 2) Premier, any similar moving or storage company, or other business, whether incorporated or not incorporated;
 - 3) Premier's warehousing space at the warehouse at 2130 Sackett Road, Avon, NY,

14414, owned by Mr. James Pfunter;

4) moving and storage equipment, including, but not limited to, vehicles, forklifts, crates, padding and packaging material; and

5) personal property, including any vehicle, mobile home, or water vessel;

c. mortgage documents;

d. loan documents;

e. title documents and other documents reviewing title, such as abstracts of title;

f. prize documents, such as lottery and gambling documents;

g. service documents, wherever in the world such service was, is being, or may be received or given; and

h. documents concerning the college expenses of each of the DeLanos' children, Jennifer and Michael, including, but not limited to, tuition, books, transportation, room and board, and any loan extended or grant made by a government or a private entity or a parent or relative for the purpose of such education, regardless of whose name appears on the documents as the loan borrower or grant recipient;

36. The minutes, transcript, stenographic packs and folds, audio tape, and any other recording of the status conference and pretrial hearing in *Pfunter* requested by Trustee Schmitt on December 10, 2002, and held before Judge Ninfo on January 10, 2003.

37. The transcript and stenographic packs and folds of the hearings held before Judge Ninfo:

a. in *Pfunter* on: http://Judicial-Discipline-Reform.org/dockets/6Pfunter_Bkr-SCt_28mar5.pdf

a. December 18, 2002

d. April 23, 2003

g. July 2, 2003

b. February 12, 2003

e. May 21, 2003

h. October 16, 2003

c. March 26, 2003

f. June 25, 2003

b. in *DeLano* on: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf

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

38. Trustee Schmitt and Trustee Reiber or their respective successors shall within 10 days of this order arrange for, and produce:

- a. The audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman;
- b. its transcription on paper and as a PDF file on a floppy disc or CD; and
- c. the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it.

39. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office and made by Court Reporter Ms. Bonsignor at Alliance Shorthand 183 East Main Street, Suite 1500 Rochester, NY 14604 (585) 546-4920, and is in possession of Trustee Reiber, who shall produce it on paper and as a PDF file on a floppy disc or CD;

40. The original stenographic packs and folds on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim, held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available upon request to an executor;

41. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Pfuntner*, regardless of the source, up to the date of compliance with this order, whether such documents relate generally to the DeLanos' or Mr. Palmer/Premier's bankruptcy petition or particularly to the investigation of whether either or both of them have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;

42. The statement reported in entry 134 of the docket of *DeLano* to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read and the stenographic packs and folds used by the reporter to record it;
43. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including the following:
- a. in *DeLano*: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf
 - 1) July 26, 2004, for production of some documents by the DeLanos;
 - 2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;
 - 3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;
 - 4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;
 - 5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;
 - 6) August 8, 2005, ordering M&T Bank to pay part of Mr. DeLano's salary to Trustee Reiber;
 - 7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet

titled “I/We filed Chapter 13 for one or more of the following reasons”;

- 8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos’ debt repayment plan;
 - 9) November 22, 2005, denying Dr. Cordero’s motion to revoke the confirmation of the DeLanos’ debt repayment plan;
 - 10) Notice of January 24, 2007, releasing Mr. DeLano’s employer, M&T Bank, from making further payments to Trustee Reiber.
 - 11) February 7, 2007, discharging the DeLanos after completion of their plan;
 - 12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinder of creditors, the closing of the DeLanos’ estate, and the release of their employer from the order to pay the Trustee;
- b. in *Pfuntner*: http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCt_28mar5.pdf
- 1) December 30, 2002, dismissing Dr. Cordero’s cross-claims for defamation as well as negligent and reckless performance as trustee against Trustee Gordon;
 - 2) February 4, 2003, transmitting to District Judge David Larimer, WDNY, the record in a non-core proceeding and findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero’s request for entry of default judgment;
 - 3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court that the default judgment not be entered by the District Court;
 - 4) February 18, 2003, denying Dr. Cordero’s motion to extend time to file notice of appeal;
 - 5) July 15, 2003, ordering that a “discrete hearing” be held in Rochester on October 23, 2003, followed by further monthly hearings;

- 6) October 16, 2003, Disposing of Causes of Action;
- 7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
- 8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
- 9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfunter, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
- 10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

44. The Bankruptcy Clerk shall produce certified copies of the following documents referred to in the docket of *Premier*, 01-20692, WBNY, or connected to that case:

Docket: http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf

a. Documents entered in the docket:

- 1) the monthly reports of operation for March through June 2001, entered as entries no. 34, 35, 36, and 47;
- 2) the reports for the following months until the completion of the liquidation of Premier;
- 3) the court order closing that case, which is the last but one docket entry, but bears no number;
- 4) the court order authorizing the payment of a fee to Trustee Gordon and indicating the amount thereof, which is the last docket entry, but bears no number.

b. Documents that are only mentioned in other documents in *Premier*, 01-20692, WBNY, but not entered themselves anywhere:

- 1) the court order authorizing payment of fees to Trustee Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;

- 2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
- 3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
- 4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
- 5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
- 6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.

45. Judge Ninfo's annual financial disclosure reports since 1992, required to be filed under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (identified in West publications as App. 4) shall be produced by Judge Ninfo and by the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600.

for the Supreme Court of the United States:

Date

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