

28 U.S.C. 158(b) on Bankruptcy Appellate Panels (BAP)
provides for bankruptcy appellate review by judges of unequal
degree of impartiality in violation of the equal protection
requirements of the Due Process Clause of the Fifth Amendment of
the Constitution and is unconstitutional

excerpt from Appellant's brief

Dr. Richard Cordero v. David and Mary Ann DeLano, dkt. 06-4780-bk, CA2

1. Section 158(b) of 28 U.S.C. [1] provides for a three-judge bankruptcy appellate panel from a district different from that of the bankruptcy judge appealed from. Such appellate process offers a higher degree of impartiality, objectivity, and integrity than a single district judge to whom a decision must be appealed from his colleague bankruptcy judge in the same district. In the latter instance, the bankruptcy and the district judge may even have their chambers in the same small federal building, so propitious for them to meet daily, become buddies, and develop more deference for their friendship and its terms of coordination than for any abstract rights of unknown, one-time, far away appellants. Such in-house review engenders the same danger of bias and collusion that warranted diversity of citizenship jurisdiction. Unlike in the latter matter, in that of bankruptcy appellate process Congress provided for the home team advantage at the expense of equal protection.
2. Indeed, section 158(b) allows different majorities of judges in individual districts or circuits to decide whether they want to set up or keep a bankruptcy appellate panel (BAP). Likewise, it allows individual litigants to choose whether to let an appeal go to the BAP, if available, or to "elect to have such appeal heard by the district court" rather than the BAP initially chosen by appellant. It also allows judges and some parties to keep the appeal in district court for the time being by refusing to agree to a direct appeal to the court of appeals.
3. Section 158 prohibits any BAP judge to hear any appeal originating in his own district. The degree of independence that this provision is intended to ensure is nevertheless defeated by allowing a majority of bankruptcy judges in a district to vote against the creation or retention of a BAP. Thereby they can keep appeals from their decisions in their own district and choose as their reviewer their friendly in-house, in-the-family district judge.
4. There is the reasonable presumption that bankruptcy judges will prefer to have one friend decide those appeals rather than three judges from other districts whom they may not even know. Hence, allowing judges to decide whether to set up a BAP goes against the protection from prejudgment and self-interest that 28 U.S.C. §47. "Disqualification of trial judge to hear appeal" intends to afford by providing that "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." The presumption of favoritism by district judges toward the judges in the "adjunct" bankruptcy court to which they refer cases under 28 U.S.C. §157(a) [2] and with whom they may be "so connected" finds support, *mutatis mutandis*, as follows:

Advisory Committee Notes to FRBkrP 5002. Restrictions on Appointments

...The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district....

FRBkrP 5004(b) Disqualification of judge from allowing compensation. A bankruptcy judge shall be disqualified from allowing compensation to **a person** who is a relative of the bankruptcy judge or **with whom the judge is so connected** as to render it improper for the judge to authorize such compensation. (emphasis added) (cf. 5004(a) requiring disqualification as provided under 28 U.S.C. §455 of a bankruptcy judge where a relative is involved)

8. This presumption of favoritism also supports a challenge to the appointment of bankruptcy judges by the court of appeals rather than Congress. Indeed, after the appeals court for the circuit appoints a bankruptcy judge under 28 U.S.C. §152(a)(1), [3] that judge becomes their appointee. When a decision by that judge comes on appeal to that court of appeals, one, two, or three circuit judges who may have been among the appointing judges must then decide, not only whether the bankruptcy judge's decision was legally correct, but also whether they were right in voting for that judge's appointment. The circuit judges are not so much reviewing a case on appeal as they are examining the work of their appointee under attack. Voting to reverse his decision amounts to voting against the wisdom of their own vote to appoint him. How many circuit judges would willingly admit that they made a mistake in one of their appointments to office...or for that matter, any mistake?
9. Likewise, §158 allows local litigants, who may have developed a very friendly relation with the bankruptcy judge, to elect the district judge to hear an appeal as oppose to three judges in the available BAP, on the spurious consideration that "the friend of my friend is my friend". The cases at hand [4, 5] illustrate how likely it is for local litigants to develop a close relationship, even friendship, with the local judges to the detriment of non-local ones: According to PACER, Christopher Werner, Esq., attorney for the DeLanos, has appeared before WDNY Bankruptcy Judge John C. Ninfo, II, in [over 525 cases](#); and Chapter 13 [Trustee George Reiber](#) in [more than 3,900 cases!](#) Would local attorneys similarly situated ever think of allowing an appeal from their judicial friends to go to an available BAP where their friendship would not play a role and they would have to engage in legal research and writing and present legal arguments to defend their clients? Hardly.
10. The importance of providing a level field where locals and non-locals argue and decide appeals on legal considerations rather than personal relationships ([D:431§C](#)) grows ever more as does "an increasingly national bar". If in recognition of the latter the Judicial Conference of the United States provides for uniformity among judicial districts in connection with setting up standards governing the technological aspects of electronic filing, then providing for equal protection under the law when local and non-local counsel clash on appeal should assume even more importance (cf. Advisory Committee Notes on the 1996 Amendments to FRBkrP 5005, Filing and Transmittal of Papers).
11. Hence, §158(b), provides for an appellate system with two-stages of inequality: First judges choose to handle among insiders the review of their own judicial process dealing with one of the most insidious corruptors, money!, that to be made by not having to pay it to creditors; and then the parties with the stronger connection with them choose for each appeal how to deal ad

hoc with the weaker, ‘out-of-the-loop citizen’ involved. (Add:603¶¶32-33) That is the antithesis of a uniform nationwide system that provides independent appellate review of bankruptcy decisions on terms settled in advance and apt to ensure equal protection under law.

12. The Court of Appeals, 2nd Cir., has through the elimination of BAPs in the Circuit facilitated the operation of a [bankruptcy fraud scheme](#). It even reappointed Judge Ninfo to a second term as bankruptcy judge despite the evidence of his bias [6] and involvement in the scheme [C:980-1080]. It denied (SApp:1623, 1678) Dr. Cordero’s motions (SApp:1606, 1637) for it to order the DeLano Debtors to produce financial documents required in every bankruptcy case, and evidently so, for they include even bank account statements. Such statements were also denied by all the members of the bankruptcy fraud scheme [4]...for understandable reasons, for those financial records will lead first to the Debtors’ known concealed assets worth at least \$673,657 and then to the incrimination of Appointee Ninfo and Peer Judge Larimer for covering up the Debtors’ fraud.
13. Therefore, due to the inequality of judicial process that it provides for as well as the way it can be applied by judges and has in fact been applied in the Second Circuit, §158(b) denies both equal protection under the law and due process of law, leading to the abuse of weaker, less well connected and non-local parties and to coordinated judicial wrongdoing. Consequently, 28 U.S.C. §158(b) must be held to be unconstitutional.

EXHIBITS

[1] 28 U.S.C. §158 Bankruptcy procedure..... [bap:4](#)

[2] 28 U.S.C. §157 Appeals from bankruptcy courts..... [bap:6](#)

[3] 28 U.S.C. §152 Appointment of bankruptcy judges [bap:10](#)

[4] Statement of Facts in Appellant’s brief in *Dr. Richard Cordero v. David and Mary Ann DeLano*, dkt. [06-4780-bk](#), CA2..... [bap:20](#)
http://Judicial-Discipline-Reform.org/DeLano_record/brief_DeLano_CA2.pdf

[5] Statement of the Case and of Facts in Appellant Dr. Cordero’s brief in *In re Premier Van et al.*, 03-5023, CA2..... [bap:31](#)
http://Judicial-Discipline-Reform.org/docs/DrCordero_v_Trustee_Gordon_CA2_9jul3.pdf

[6] Table of Notices to the 2nd Circuit Court of Appeals and Judicial Council the Circuit Judges, and other officers of Evidence of a Bankruptcy Fraud Scheme in the Bankruptcy and District Courts, WDNY since May 2, 2003 [bap:41](#)

[7] Cf. Statement of Facts providing evidence showing that a federal judgeship has become a safe haven for wrongdoing due to lack of an effective mechanism of judicial conduct control and that Chief Judge John M. Walker, Jr., and Circuit Judge Dennis Jacobs of the U.S. Court of Appeals for the Second Circuit have engaged in a series of acts of disregard for the law, the rules, and the facts, and of systematic dismissal of judicial misconduct complaints forming a pattern of non-coincidental, intentional, and coordinated wrongdoing that protects peers and other schemers involved in a bankruptcy fraud scheme [bap:43](#)
http://Judicial-Discipline-Reform.org/docs/Statement_of_Facts_Table_of_Cases.pdf

-CITE-

28 USC Sec. 157

01/03/05

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 157. Procedures

-STATUTE-

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to -

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98

Stat. 340; amended Pub. L. 99-554, title I, Secs. 143, 144(b), Oct. 27, 1986, 100 Stat. 3096; Pub. L. 103-394, title I, Sec. 112, Oct. 22, 1994, 108 Stat. 4117.)

-MISC1-

AMENDMENTS

1994 - Subsec. (e). Pub. L. 103-394 added subsec. (e).

1986 - Subsec. (b)(2). Pub. L. 99-554, in subpar. (B) substituted "interests" for "interest" and inserted reference to chapter 12, and in subpar. (G) inserted a comma after "annul".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of this title.

-End-

-CITE-

28 USC Sec. 158

01/03/05

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 158. Appeals

-STATUTE-

(a) The district courts of the United States shall have jurisdiction to hear appeals (!1)

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that -

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal

originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless -

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 341; amended Pub. L. 101-650, title III, Sec. 305, Dec. 1, 1990, 104 Stat. 5105; Pub. L. 103-394, title I, Secs. 102, 104(c), (d), Oct. 22, 1994, 108 Stat. 4108-4110.)

-REFTEXT-

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subsec. (c)(2), are set out in the Appendix to Title 11, Bankruptcy.

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-394, Sec. 102, which directed the amendment of subsec. (a) by striking "from" the first place it appears and all that follows through "decrees," and inserting pars. (1) to (3), was executed by making the insertion and striking after "appeals" "from final judgments, orders, and decrees," which is through "decrees," the first place appearing, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103-394, Sec. 104(c)(3), added par. (1) and struck out former par. (1) which read as follows: "The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit,

to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section."

Subsec. (b)(2). Pub. L. 103-394, Sec. 104(c)(3), added par. (2). Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 103-394, Sec. 104(c)(1), (3), added par. (3) and struck out former par. (3) which read as follows: "No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district."

Subsec. (b)(4). Pub. L. 103-394, Sec. 104(c)(1), (2), redesignated par. (2) as (4) and struck out former par. (4) which read as follows: "A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title."

Subsec. (b)(5), (6). Pub. L. 103-394, Sec. 104(c)(4), added pars. (5) and (6).

Subsec. (c). Pub. L. 103-394, Sec. 104(d), designated existing provisions as par. (2) and added par. (1).

1990 - Subsec. (b)(2) to (4). Pub. L. 101-650 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

-FOOTNOTE-

(11) So in original. Probably should be followed by a dash.

-End-

-CITE-

28 USC Sec. 152

01/03/05

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 6 - BANKRUPTCY JUDGES

-HEAD-

Sec. 152. Appointment of bankruptcy judges

-STATUTE-

(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges

Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3
California:	
Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5

Connecticut	3	
Delaware	1	
District of Columbia		1
Florida:		
Northern	1	
Middle	8	
Southern	5	
Georgia:		
Northern	8	
Middle	2	
Southern	2	
Middle and Southern		1
Hawaii	1	
Idaho	2	
Illinois:		
Northern	10	
Central	3	
Southern	1	
Indiana:		
Northern	3	
Southern	4	
Iowa:		
Northern	2	
Southern	2	
Kansas	4	
Kentucky:		
Eastern	2	
Western	3	
Louisiana:		
Eastern	2	
Middle	1	
Western	3	
Maine	2	
Maryland	4	
Massachusetts		5
Michigan:		
Eastern	4	
Western	3	
Minnesota	4	
Mississippi:		
Northern	1	
Southern	2	
Missouri:		
Eastern	3	
Western	3	
Montana	1	

Nebraska	2	
Nevada	3	
New Hampshire		1
New Jersey	8	
New Mexico	2	
New York:		
Northern	2	
Southern	9	
Eastern	6	
Western	3	
North Carolina:		
Eastern	2	
Middle	2	
Western	2	
North Dakota		1
Ohio:		
Northern	8	
Southern	7	
Oklahoma:		
Northern	2	
Eastern	1	
Western	3	
Oregon	5	
Pennsylvania:		
Eastern	5	
Middle	2	
Western	4	
Puerto Rico	2	
Rhode Island		1
South Carolina		2
South Dakota		2
Tennessee:		
Eastern	3	
Middle	3	
Western	4	
Texas:		
Northern	6	
Eastern	2	
Southern	6	
Western	4	
Utah	3	
Vermont		1
Virginia:		
Eastern	5	
Western	3	
Washington:		

Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1.

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence,

misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

-SOURCE-

(Added Pub. L. 98-353, title I, Sec. 104(a), July 10, 1984, 98 Stat. 336; amended Pub. L. 99-554, title I, Sec. 101, Oct. 27, 1986, 100 Stat. 3088; Pub. L. 100-587, Nov. 3, 1988, 102 Stat. 2982; Pub. L. 101-650, title III, Sec. 304, Dec. 1, 1990, 104 Stat. 5105; Pub. L. 102-361, Secs. 2, 4, Aug. 26, 1992, 106 Stat. 965, 966.)

-MISC1-

AMENDMENTS

1992 - Subsec. (a)(2). Pub. L. 102-361, Sec. 2, in item relating to district of Arizona substituted "7" for "5", in item relating to central district of California substituted "21" for "19", in item relating to district of Connecticut substituted "3" for "2", in item relating to middle district of Florida substituted "8" for "4", in item relating to southern district of Florida substituted "5" for "3", in item relating to northern district of Georgia substituted "8" for "6", inserted item relating to middle and southern districts of Georgia, in item relating to district of Maryland substituted "4" for "3", in item relating to district of Massachusetts substituted "5" for "4", in item relating to district of New Jersey substituted "8" for "7", in item relating to southern district of New York substituted "9" for "7", in item relating to eastern district of Pennsylvania substituted "5" for "3", in item relating to middle district of Tennessee substituted "3" for "2", in item relating to western district of Tennessee substituted "4" for "3", in item relating to northern district of Texas substituted "6" for "5", and in item relating to eastern district of Virginia substituted "5" for "4".

Subsec. (b)(3). Pub. L. 102-361, Sec. 4, added par. (3).

1990 - Subsec. (a)(1). Pub. L. 101-650 inserted after third sentence "However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor."

1988 - Subsec. (a)(2). Pub. L. 100-587 in item relating to district of Alaska substituted "2" for "1", in item relating to district of Colorado substituted "5" for "4", in item relating to district of Kansas substituted "4" for "3", in item relating to eastern district of Kentucky substituted "2" for "1", in item relating to eastern district of Texas substituted "2" for "1", in item relating to western district of Texas substituted "4" for "3", and in item relating to district of Arizona substituted "5" for "4".

1986 - Subsec. (a)(2). Pub. L. 99-554 in item relating to eastern district and western district of Arkansas substituted "3" for "2", in item relating to northern district of California substituted "9" for "7", in item relating to eastern district of California substituted "6" for "4", in item relating to central district of California substituted "19" for "12", in item relating to southern district of California substituted "4" for "3", in item relating to middle district of Florida substituted "4" for "2", in item relating to northern district of Georgia substituted "6" for "4", in item relating to southern district of Georgia substituted "2" for "1", in item relating to district of Idaho substituted "2" for "1", in item relating to northern district of Illinois substituted "10" for "8", in item relating to central district of Illinois substituted "3" for "2", in item relating to northern district of Indiana substituted "3" for "2", in item relating to northern district of Iowa substituted "2" for "1", in item relating to southern district of Iowa substituted "2" for "1", in item relating to western district of Kentucky substituted "3" for "2", in item relating to western district of Louisiana substituted "3" for "2", in item relating to district of Maryland substituted "3" for "2", in item relating to western district of Michigan substituted "3" for "2", in item relating to district of Nebraska substituted "2" for "1", in item relating to district of Nevada substituted "3" for "2", in item relating to district of New Jersey substituted "7" for "5", in item relating to western district of North Carolina substituted "2" for "1", in item relating to northern district of Oklahoma substituted "2" for "1", in item relating to western district of Oklahoma substituted "3" for "2", in item relating to district of Oregon substituted "5" for "4", in item relating to western district of Pennsylvania substituted "4" for "3", in item relating to district of South Carolina substituted "2" for "1", in item relating to district of South Dakota substituted "2" for "1", in item relating to eastern district of Tennessee substituted "3" for "2", in item relating to western district of Tennessee substituted "3" for "2", in item relating to northern district of Texas substituted "5" for "4", in item relating to southern district of Texas substituted "6" for "3", in item relating to

western district of Texas substituted "3" for "2", in item relating to district of Utah substituted "3" for "2", in item relating to eastern district of Virginia substituted "4" for "3", in item relating to eastern district of Washington substituted "2" for "1", in item relating to western district of Washington substituted "5" for "4", and in item relating to eastern district of Wisconsin substituted "4" for "3".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective Oct. 27, 1986, see section 302(b) of Pub. L. 99-554, set out as a note under section 581 of this title.

TEMPORARY APPOINTMENT OF ADDITIONAL JUDGES

Section 3 of Pub. L. 102-361, as amended by Pub. L. 104-317, title III, Sec. 307, Oct. 19, 1996, 110 Stat. 3852, provided that:

"(a) Appointments. - The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code:

"(1) 1 additional bankruptcy judge for the northern district of Alabama.

"(2) 1 additional bankruptcy judge for the district of Colorado.

"(3) 1 additional bankruptcy judge for the district of Delaware.

"(4) 1 additional bankruptcy judge for the southern district of Illinois.

"(5) 1 additional bankruptcy judge for the district of New Hampshire.

"(6) 1 additional bankruptcy judge for the middle district of North Carolina.

"(7) 1 additional bankruptcy judge for the district of Puerto Rico.

"(8) 1 additional bankruptcy judge for the district of South Carolina.

"(9) 1 additional bankruptcy judge for the eastern district of Tennessee.

"(10) 1 additional bankruptcy judge for the western district of Texas.

"(b) Vacancies. - The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the appointment date of the judge named to fill the temporary judgeship position, shall not be filled. In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described

in the preceding sentence, that judge shall be eligible for reappointment as a bankruptcy judge in that district."

EXTENSION AND TERMINATION OF TERM OF OFFICE OF PART-TIME BANKRUPTCY

JUDGE SERVING ON JULY 2, 1986, IN DISTRICT OF OREGON, WESTERN DISTRICT OF MICHIGAN, AND EASTERN DISTRICT OF OKLAHOMA
Pub. L. 99-349, title I, July 2, 1986, 100 Stat. 718, provided that: "Notwithstanding the provisions of section 106(b)(1) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [section 106(b)(1) of Pub. L. 98-353, set out below], a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 2, 1986] may continue to serve as a part-time judge for such district until December 31, 1986, or until such time as a full-time bankruptcy judge for such district is appointed, whichever is earlier: Provided, That these provisions shall apply only to part-time bankruptcy judges serving in the district of Oregon, the western district of Michigan, and the eastern district of Oklahoma."

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE AND

PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 10, 1984; PRACTICE OF LAW BY PART-TIME BANKRUPTCY JUDGE

Section 106 of Pub. L. 98-353 provided that:

"(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

"(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 10, 1984] may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act [July 10, 1984].

"(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph."

APPOINTMENT TO FILL VACANCIES; NOMINATIONS; QUALIFICATIONS

Section 120 of Pub. L. 98-353, as amended by Pub. L. 99-554, title I, Sec. 102, Oct. 27, 1986, 100 Stat. 3089; Pub. L. 104-317, title III, Sec. 303, Oct. 19, 1996, 110 Stat. 3852, provided that:

"(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

"(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

"(3) When filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States.

"(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position. All incumbent nominees seeking reappointment thereafter may be considered for such a reappointment, pursuant to a majority vote of the judges of the appointing court of appeals, under procedures authorized under subsection (a)(3).

"(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that -

"(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex,

religion, or national origin,

"(2) such persons are members in good standing of at least one State bar, the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members,

"(3) such persons possess, and have a reputation for, integrity and good character,

"(4) such persons are of sound physical and mental health,

"(5) such persons possess and have demonstrated commitment to equal justice under law,

"(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

"(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge."

-End-

United States Court of Appeals for the Second Circuit

06-4780-bk

on appeal from *Cordero v. DeLano*, 05-6190, WDNY

Dr. Richard Cordero,
Appellant and creditor

v.

APPELLANT's PRINCIPAL BRIEF

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

(Excerpt; full brief at

http://Judicial-Discipline-Reform.org/Follow_money/DrCordero_v_DeLano_06_4780_CA2.pdf)

VII. Statement of Facts

A. In Bankruptcy Court, the Debtors filed a bankruptcy petition with schedules where they made incongruous, implausible, and outright suspicious declarations about their financial affairs and since then have refused to account for the whereabouts of known concealed assets worth at least \$673,657

15. Mr. David DeLano, a 39-year veteran of the financing and banking industries still employed in the bankruptcy department of M&T Bank, and Mrs. Mary DeLano, a Xerox technician, filed a voluntary bankruptcy petition on January 27, 2004, in Bankruptcy Court, WBNY. It included their debt repayment plan to have 78% of their debt discharged in three years (D:59), just in time to travel light into their retirement. They invoked 11 U.S.C. Chapter 13, thereby avoiding the liquidation of any of their assets that would have resulted from filing under Chapter 7. Their petition was accompanied by Schedules A-J (D:29-45), signed by them under penalty of perjury (D:46) and verified by Christopher K. Werner, Esq., their bankruptcy attorney with 28 years' experience (D:28). Therein they listed 21 creditors, 19 as unsecured (D:38), including 18 credit cards and Dr. Cordero (D:40). The latter's claim against Mr. DeLano had arisen in the

still pending adversary proceeding under FRBkrP 7001 et seq. *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY (Add:712).

16. The DeLanos' sworn declarations in their Schedules are most suspicious even for a lay person. Indeed, they declared that:
17. a) They only had \$535 in cash and bank accounts. (D:31) Yet their 1040 IRS forms for 2001-03 show that they earned \$291,470 in just the three years preceding their filing. (D:47; 186-188; SApp:1608) Since they petitioned for debt discharge due to inability to pay, it would appear reasonable to ask that they account for the whereabouts of their earnings by producing supporting documents, such as bank account statements, so obviously apt to establish the good faith of any petition. This is precisely what Dr. Cordero wanted to have them do when he made repeated requests of the Debtors (D:288¶3), the trustees, and the courts (Pst:1261)
17. b) Nevertheless, to date Trustee Reiber (D:193§I), Judge Ninfo (D:278¶1, 327; Tr:189/11-22), Judge Larimer (Add:1022; SApp:1504), and this Court (SApp:1623, 1678) have refused to require the Debtors to provide their bank account statements to ascertain the whereabouts of \$291,470 in earnings unaccounted for. As to the Debtors, to avoid producing such statements, they have incurred attorneys' fees, and their attorneys have been willing to provide them with legal services, worth at last count \$27,953 (Add:938, Pst:1174), and Judge Ninfo has approved their payment (Add:942). What is more, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's motions and appeals.
17. c) Given that under their plan the DeLanos had to commit all their disposable earnings to debt repayment and that they have not needed to request a modification of that plan, where did they come up and "continue" to come up with that kind of money and how did Att. Werner and Palmer, members of the same firm, know that the Delano Debtors could pay them despite their declaration that they only had \$535 in cash and *on account*?
18. Even more suspiciously incongruous, the DeLanos declared only one piece of real property (D:30), to wit, the home that is presently their address at 1262 Shoecraft Road, Webster (Town of Penfield), NY 14580. They bought it in 1975, when they took out on it a \$26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it is only \$21,416 and the mortgage that they carry on it is \$77,084...after making mortgage payments for 30 years!

Mind-boggling! (Add:1058¶54) Worse still, during that same period the DeLanos received a total of \$382,187 through a string of mortgages! (SApp:1608; D:341-354) Where did that money go, for whose benefit, and where is it now?

19. Moreover, the Debtors declared credit card borrowings totaling \$98,092 (D:41), while they set the value of their household goods at only \$2,810! (D:5/4-8; Add:888§§c-e) *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. This is particularly so if they are two professionals and have not experienced a home disaster or long-term catastrophic illness. Such are the DeLanos, who did not incur either or similar loss or expense, as shown in Trustee Reiber's shockingly unprofessional Findings Report (Add:937-939), which was approved by Judge Ninfo (Add:941) and Judge Larimer (Add:1022) despite Dr. Cordero's analytical objections (Add:951, 1038).

1. **The efforts of the trustees and Judge Ninfo to protect the Debtors from being examined at the meeting of creditors and having to produce incriminating documents reveal coordination pointing to a bankruptcy fraud scheme**

20. From the very beginning, it became evident that nobody was going to question whatever declarations the DeLanos had made in their January 2004 petition and schedules...or allow anybody else to do so. Thus, the meeting of the DeLanos' creditors was held on March 8, 2004, pursuant to 11 U.S.C. §341. (D:23) Mr. DeLano and Trustee Reiber could have expected that no creditor would attend, for creditors hardly ever show up at these meetings unless the amount of their claims is high enough to make travel and representation expenses cost-effective in light of what they can expect to receive on the dollar of debt owed them. Nor could they have expected that the only individual, as oppose to institutional, creditor that they had named in their schedules, namely, Dr. Cordero (D:40), would travel hundreds of miles from New York City to Rochester to attend.
21. Consequently, they were expecting a pro forma §341 meeting that would merely rubberstamp the DeLanos' debt repayment plan and get it ready for confirmation later that afternoon by Bankruptcy Judge Ninfo. So much so that in violation of his duty under C.F.R. §58.6(a)(10) to conduct the meeting personally, Trustee Reiber had his attorney, James W. Weidman, Esq.,

conduct it right there in a room of the office of his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt. She knew and tolerated that violation...and how many others?

22. But the unexpected did happen: Creditor Dr. Cordero showed up and was the only one in attendance. (D:68) Hardly had he finished identifying himself and handing out a copy to Attorneys Werner and Weidman of his written objections to the confirmation of the DeLanos' plan (D:63), when Att. Weidman unjustifiably asked him whether and, if so, how much he knew about the DeLanos' having committed fraud. Dr. Cordero would not reveal what he knew. Rather than risk allowing the DeLanos to incriminate themselves or commit perjury while being examined under oath, as §343 requires, and having their answers officially tape recorded, Mr. Weidman protected them by putting an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II) At the confirmation hearing before Judge Ninfo, Dr. Cordero objected to the conduct of both Att. Weidman and Trustee Reiber, who ratified his attorney's conduct, but the Judge excused them as merely engaging in "local practice", thus disregarding what the law of the land of Congress provided. (D:98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)
23. This blatant conduct revealed confidence born of coordination. Its objective was twofold: To protect the DeLanos from being exposed as bankruptcy fraudsters, and thereby protect themselves from being incriminated as their supporters (D:379§3) in its enabling mechanism: a bankruptcy fraud scheme. (D:458§V; Add:621§1).
24. Dr. Cordero requested and kept requesting the trustees that the DeLanos be required to produce documents supporting their petition's incongruous, implausible, and suspicious declarations. For six months they had treated and went on treating him as a creditor while stonewalling on his request for those incriminating documents. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
25. What is more, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:74), although 11 U.S.C. §341(c) contemplates an indefinite series of meetings and FRBkrP 2004(b) provides for a very broad scope of examination (D:283; Pst:1262¶13 et seq.).
26. Meantime, they produced a few documents (D165-188) and Dr. Cordero analyzed them in light of their petition and its schedules. This resulted in his Statement of July 9, 2004 (D:193), which he sent to Judge Ninfo. It charged the Debtors with bankruptcy fraud, specifically concealment

of assets, and requested that the Judge order them to produce all the other documents that Dr. Cordero had requested but that they had failed to produce with the connivance of Trustee Reiber, whose removal he requested. (D:196§§IV-V; 207, 208) Everything changed after that, as the schemers coordinated how to eliminate Dr. Cordero.

2. The timing and handling of the motion to disallow the claim of Dr. Cordero reveal it as an artifice resulting from coordination among the schemers intended to force him into a sham evidentiary hearing where he would be deprived of standing in *DeLano* and thereby of the right to request documents proving the Debtors' bankruptcy fraud and the involvement of all of them in its enabling mechanism: a bankruptcy fraud scheme

27. Filed on July 22, 2004 (D:218), the motion to disallow was heard on August 25 by Judge Ninfo. He manipulated Dr. Cordero's request for documents (D:234§§II & IV) and disregarded his arguments showing the motion's defects of untimeliness, laches, and bad faith (¶79 below; D:253§§V & VI) as well as the presumption of validity in favor of the claim (D:256§VII). Then the Judge ordered that Dr. Cordero take discovery of Mr. DeLano until December 15, 2004, in *Pfuntner*, that is, the case that gave rise to his claim against Mr. DeLano (Add:534/after entry 13) and that the parties introduce their evidence at an evidentiary hearing (D:278¶¶3 & 4).
28. However, when Dr. Cordero requested evidentiary documents (D:287, 310, 317), the DeLanos (D:313, 325) and Judge Ninfo (D:327) denied him *every single document* that he requested. Dr Cordero was being set up to walk empty-handed into the evidentiary hearing! where he would fall victim of their divide and conquer stratagem that would force him to prove his claim against Mr. DeLano out of context due to the absence of all the other parties and issues. (D:444§§I-II) On December 15, 2004, Judge Ninfo set its date. (D:332)
29. The evidentiary hearing was held on March 1, 2005. On that occasion, Judge Ninfo abandoned his duty impartially to take in evidence and instead behaved as Chief Advocate for Mr. DeLano, who is represented in *Pfuntner* by Michael Beyma, Esq., a partner at Underberg & Kessler (Add:532), the law firm of which Judge Ninfo was a partner at the time of taking the bench (Add:636).
30. Att. Beyma was present at the hearing together with Att. Werner, who at the time had appeared before Judge Ninfo in over 525 cases, according to PACER. (Add:891¶12; Pst:1281§c) Actually, that number pales by comparison to the 3,909 *open* cases that Trustee Reiber had on

April 2, 2004 (D:92§C, 302), of which 3,907 were before Judge Ninfo! (Add:1107§24) Such abnormally high frequency of appearances engenders close personal relationships, the blurring of inhibitions, and the sense of friendship betrayed unless everybody tells the others what he or she is doing, i.e., unless they coordinate their acts. (D:361¶¶13-16, 431§C)

31. It follows that the evidentiary hearing in *DeLano* was for the schemers an organizational affair where they had to protect one of their own from an ‘out-of-town citizen’ whose inquiries in defense of his claim threatened to expose their participation in the scheme. (Add:603¶¶32-33) Defensively, they predetermined that the hearing would end with the disallowance of his claim. This explains why they did not bring either a copy of the motion to disallow that Att. Werner himself had raised or of Dr. Cordero’s claim that they were challenging. (Pst:1288§e) They only needed to rely on their coordination, which included Attorneys Beyma and Werner signaling answers on three occasions to Mr. DeLano as he was on the stand under examination by Dr. Cordero, and Judge Ninfo preposterously pretending that he had not seen them do so in front of his eyes in the courtroom. (Pst:1289§f) Would those attorneys have ever dare so to attempt to suborn perjury had they been before a judge they knew not to be a participant of the scheme after the case had been transferred to a U.S. court in Albany, NY? Of course not!
32. At the evidentiary hearing, Mr. DeLano was the only witness examined and Dr. Cordero the only one to introduce evidence. Mr. DeLano made consistent admissions against self-interest to the effect that as the M&T Bank bankruptcy officer in charge of liquidating the assets of a bankrupt client in the business of storing third parties’ property, including Dr. Cordero’s, he had injured Dr. Cordero. (Pst:1281§d) Thereby Mr. DeLano established Dr. Cordero’s claim against him. So clear and understandable was his testimony that Att. Werner, with 28 years’ experience, felt no need to rehabilitate him or correct it, but on the contrary, validated his testimony at the end of the hearing thus:

I believe Mr. DeLano has given a fair statement of his position and facts, your Honor. I have no questions. (Tr:187/23-25)

33. Nevertheless, Judge Ninfo arbitrarily disregarded Mr. DeLano’s testimony as “confused” in order to reach at the evidentiary hearing the predetermined decision of disallowance. (Tr:182/14-183/18; Pst:1281§§c-d) He confirmed it in his written decision, where he repeated that Dr. Cordero had not proved his claim in *Pfuntner* against Mr. DeLano and had no standing to further participate in *DeLano*; and restated his denial to stay his decision (D:20). Dr. Cordero

challenged that decision, dated April 4, 2005, on appeal to the District Court, WDNY, on April 11, 2005 (D:1).

B. In District Court, Judge Larimer made repeated attempts to deprive Dr. Cordero of the incriminating transcript of the evidentiary hearing before Judge Ninfo, denied him *every single document* that he requested, and avoided even mentioning the evidence of the Debtors' concealment of at least \$673,657 and its enabling bankruptcy fraud scheme

1. To prevent the incriminating transcript of the evidentiary hearing from becoming part of the record, Judge Larimer repeatedly scheduled the brief of Dr. Cordero before he and the Reporter had even made arrangements for its preparation

34. The Bankruptcy Court filed Appellant Dr. Cordero's Designation of Items in the Record and Statement of Issues on Appeal (Add:690) on April 22, 2005, and on that very same day the Court sent it upstairs to District Judge David G. Larimer, who on that very same day dropped everything else he was doing and rushed to schedule Dr. Cordero's appellate brief for filing within 20 days (Add:692). The Judge knew that the record should not have been transmitted to him because it was incomplete and, thus, not in compliance with FRBkrP 8007: There had not been time under FRBkrP 8006 for the Appellees to have their 10 days to file their additional issues and items, which they filed only on May 2, 2005. (Add:711)
35. Nor had there been time for Court Reporter Mary Dianetti even to respond to Dr. Cordero's transcript request made in his letter to her of April 18 (Add:681), as provided for under FRBkrP 8006. Also pursuant to it, he sent a copy of that letter to the Bankruptcy Court together with his Designation and Statement, which bore the same date of April 18, 2005. The Bankruptcy Court selectively docketed the latter, but failed to docket the transcript-requesting letter to Reporter Dianetti...just as Judge Larimer failed to wait until the transcript had been filed, thus making the record complete, before scheduling Dr. Cordero's brief. It was pitcher-catcher coordination to deprive an appellant of an incriminating transcript!, which showed his Downstairs Peer, Bankruptcy Judge Ninfo, engaging in bias, arbitrariness, and denial of due process, and Mr. DeLano establishing the claim by admitting that his handling of Dr. Cordero's property could

have injured Dr. Cordero. (Pst:1281§d)

36. Such non-docketing once more of incriminating documents (D:231, 234¶¶14-17; 106, 108, 217; Add:1081) is evidence itself of an unlawful practice by courts that have no respect for the rules, such as FRBkrP 5003, 5005(a)(1), and FRCivP 79, or for the purpose of the docket, that is, to give public notice of every event in a case and thereby contribute to the administration of justice in public. (cf. FRBkrP 5001(b); FRCivP 77(b))
37. Dr. Cordero filed an objection and requested that the brief be scheduled for filing only after the transcript had been filed (Add:695). Judge Larimer, pretending that Dr. Cordero had requested a time extension, rescheduled the brief for filing by June 13. (Add:831) Dr. Cordero had to write a motion to request the Judge to comply with the law. (Add:836) Only then did Judge Larimer order that "Appellant shall file and serve his brief within twenty days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court". (Add:839) It took 10 letters to and from Court Reporter Mary Dianetti (Add:912) and several motions to Judge Larimer (Add:911, 951, 993, 1031) for the transcript to be filed seven months later! (Add:1071)
38. What trust can you have that a judge is going to decide a case according to law, let alone impartially, when from the outset he disregards it so blatantly?...and for the second time! Indeed, in January 2003, Judge Larimer, acting likewise in coordination with the Bankruptcy Court, disregarded the rules to schedule Dr. Cordero's brief despite the incompleteness of the record and before even an arrangement with Reporter Dianetti had been reached, and months before the transcript was finally filed. (Add:1086¶16) This occurred precisely in the case underlying the instant one, namely, *Pfuntner v Trustee Gordon et al*, 02-2230 in Bankruptcy Court, from where it was appealed, sub nom. *Dr. Cordero v. Trustee Gordon*, 03cv6021L, WDNY. (Add:1011§A)

2. Parties who need not bother to oppose motions that can spell the end of their careers or incriminate them in a bankruptcy fraud scheme reveal a pattern of conduct born of coordination with judges they know have as much to lose if they granted them

a) Judges Larimer and Ninfo accepted work of dismal quality but in furtherance of the bankruptcy fraud scheme by Reporter Dianetti and Trustee Reiber so they denied motions for their removal

39. While making arrangements for the transcript, Reporter Dianetti refused to certify that the

transcript of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero moved before Judge Larimer for her to be referred to the supervising authority of reporters under 28 U.S.C. §753, to wit, the Judicial Conference of the United States (Add:911), for it to investigate her refusal to certify the transcript's reliability. The Judge denied the motion as concerning a "tempest in a teapot" and ordered Dr. Cordero to obtain the transcript from Reporter Dianetti. He also added that "Cordero has no right to "condition" his request in any manner" (Add:991), mindless of the obvious fact that Reporter Dianetti was asking for \$650 in advance and that as a matter of basic contract law Dr. Cordero did have the right to "make satisfactory arrangements" (FRBkrP 8006) at arms length for the product that he would receive in exchange.

40. Dr. Cordero moved for reconsideration (Add:993), but Judge Larimer denied the motion, likewise without discussing a single one of Dr. Cordero's factual and legal arguments. Instead, the Judge warned him that if he did not request the transcript within 14 days, his case could be dismissed (Add:1019). Thereby he revealed that it did not matter to him whether he or Dr. Cordero received a transcript that was inaccurate, incomplete, or tampered-with, for he did not need to rely on it to know how he would decide the appeal from Peer Ninfo's decision.
41. The transcript that Reporter Dianetti filed was of shockingly substandard quality. In it everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. As a result, the participants at the hearing, though professionals, come across in the transcript as a bunch of speech impaired illiterates. Why would Judge Larimer keep such Reporter on her job? Consider this.
42. Reporter Dianetti received Dr. Cordero's payment on November 2 and already on November 4, 2005, she filed it and sent a copy to him. She neither could have transcribed 192 pages in little over a day nor would have transcribed them while still making payment arrangements with Dr. Cordero on the off chance that he would pay for the transcript despite her refusal to agree that she would certify its accuracy, completeness, and tamper-free condition. This means that she had already transcribed it on somebody else's instructions, somebody who wanted to know what had happened at the evidentiary hearing before Judge Ninfo on March 1, 2005, in order to decide how to handle it, and who upon learning about its incriminating contents tried to keep it from the record, even by violating the rules and Dr. Cordero's right to it.

43. Hence, Judge Larimer must have known that Reporter Dianetti's transcript was of substandard quality, just as he knew her transcript was that she certified as of March 12, but mailed to Dr. Cordero only on March 26, 2003, in the appeal to his Court from Judge Ninfo's decision in *Pfuntner*. (¶38 above; D:234¶14.b; Add:559¶4, 920¶26)
44. Likewise, Judge Larimer was informed (Add:953§I) of the shockingly unprofessional Findings Report that Trustee Reiber (Add:937-939) submitted to Judge Ninfo (Add:1041§I) to recommend the approval of the DeLanos' debt repayment plan (D:59).
45. Nevertheless, he refused to take any corrective action against either of them (Add:991, 1019, 1021, 1155), just as Judge Ninfo did (Add:1094). This shows that what matters to them is not the quality of their work, but rather their willingness to follow instructions as participants in, or to work in line with, the bankruptcy fraud scheme. In exchange, they could count on the Judges' protective bias toward them. This explains why none of Dr. Cordero's motions requesting the replacement and investigation of Reporter Dianetti (Add:911, 973¶¶60.1.c, 3; 993) and Trustee Reiber (D:243¶34.d; Add:882§II, 973¶¶60.1.d-e, 4; 1121¶61.e, 1062¶66.b) caused them to bother to file even a Stick-it note of objection. Yet, each of those motions put their careers at risk. But they knew why the motions would not be granted.

b) Neither Trustee Schmitt nor the DeLanos need oppose motions that, if raised before an impartial judge, could have been granted if only because of their being unopposed, but that they knew the judges here would deny as they did every *single document* that Dr. Cordero requested

46. Similarly, there was no opposition to Dr. Cordero's motions requesting either production of documents by Assistant U.S. Trustee Schmitt (D:244¶e; Add:973¶60.1.a-b) and the DeLanos (SApp:1606, 1637), or nullification of the confirmation of the DeLanos' plan (Add:1121¶61.a-c). Yet, if any of those motions had been granted by default, these non-movants would have risked the penalties of bankruptcy fraud: up to 20 years' imprisonment and devastating fines of up to \$250,000 (18 U.S.C. §§152-157, 1519, and 3571)...but they *are* schemers! They too did not have to bother to respond, for they knew that if ever Judges Larimer or Ninfo had granted any of those motions, they would have incriminated themselves in the bankruptcy fraud scheme.
47. Consequently, Judges Larimer and Ninfo denied Dr. Cordero *every single document* that he requested. (Add:951, 1022; Table on Pst:1261) Neither was interested in obtaining those

documents in order to render decisions based on facts, for both already knew that the DeLanos had committed bankruptcy fraud. Their interest was in preventing Dr. Cordero from obtaining the documentary evidence that would expose such fraud. To secure their interest, they had no qualms about disregarding FRBkrP 7026 et seq. and FRCivP 26 et seq. (D:278§2) so that Dr. Cordero could not discover the whereabouts of the Debtors' known concealed assets worth at least \$673,657 (SApp:1608) and end up incriminating all of them in the scheme. Therefore, they engaged in a cover up.

48. In the same vein, this Court refused twice and with no comments (SApp:1623, 1678) to order any of these parties to produce any of the documents requested by Dr. Cordero (SApp:1606, 1637). If this Court ordered those documents produced, they would lead to the DeLanos' known concealed assets and the DeLanos would be but the first dominoes to fall.
49. Hence, pattern evidence shows that Judge Larimer, Judge Ninfo, other court officers, the trustees, the Court Reporter, and the Debtors coordinated their conduct to deprive Dr. Cordero of the transcript and discoverable incriminating documents. In so doing, the judges denied Dr. Cordero due process of law.
50. Interestingly enough, under RICO, 18 U.S.C. §1961(5), two acts of racketeering activity within ten years form a pattern. Not coincidentally, the District Court has resorted to the subterfuge of WDNY Local Rule 5.1(h) (Add:633) to make filing a RICO claim all but impossible by demanding exceedingly numerous and detailed pre-discovery factual assertions. (§IX.C below) Judge Larimer did not even mention that issue presented by Appellant Dr. Cordero. Nor did he show awareness of Appellant's three other issues, including how the elimination by the judges of three-judge bankruptcy appellate panels in the Second Circuit facilitates the running of a bankruptcy fraud scheme. (§IX.D below) As a result, Judge Larimer left the appeal undecided.

United States Court of Appeals for the Second Circuit

Docket no. 03-5023

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

OPENING BRIEF OF APPELLANT PRO SE RICHARD CORDERO

Kenneth Gordon,
Cross defendant-Appellee
and (no. 03-cv-6021L)

David Palmer,
Third party defendant-Appellee
(no. 03-MBK-6001L)

(excerpt; full brief at
http://Judicial-Discipline-Reform.org/docs/DrCordero_v_Trustee_Gordon_CA2_9jul3.pdf)

VI. Statement of the Case

11. The bankruptcy case of a moving and storage company spawned an adversary proceeding in bankruptcy court, where Dr. Cordero, a former client of the company, was named, together with the trustee, Kenneth Gordon, Esq., and others, defendant. Appearing pro se, Dr. Cordero cross-claimed to recover damages from Trustee Gordon for defamation as well as negligent and reckless performance as trustee. The Trustee moved to dismiss and the court summarily dismissed the cross-claims before disclosure or discovery had taken place and although other parties' similar claims were allowed to stand. Dr. Cordero timely mailed his notice of appeal, but on the Trustee's motion, the District Court dismissed it as untimely filed. Likewise, Dr. Cordero moved the bankruptcy court to extend time to file the notice. Although Trustee Gordon himself acknowledged in his brief in opposition that the motion to extend had been timely filed on January 29, 2003, the bankruptcy court somehow found that it had been untimely filed on January 30, and dismissed it.
12. Dr. Cordero served the Debtor's owner, Mr. David Palmer, with a summons and a third party complaint, but he failed to answer. Dr. Cordero timely applied on December 26, 2002, for default judgment for a sum certain. Only belatedly and upon

Dr. Cordero's request to take action, did the bankruptcy court make a recommendation on February 4, 2003, namely, that the district court not enter default judgment because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.' Dr. Cordero moved the district court to enter default judgment despite the bankruptcy court's prejudgment of the case. Making no reference to that motion, the district court accepted the recommendation because Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain." Dr. Cordero moved the district court to correct its mistake since the application did involve a sum certain. The district court summarily denied the motion.

VII. Statement of Facts

A. In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and to avoid a review of his performance and fitness to serve, files false and defamatory statements about Dr. Cordero with the court and his U.S. trustee supervisor

13. A client -here Appellant Dr. Cordero- who resides in NY City, had entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993 and since then paid its storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about it. Mr. Palmer and his attorney assured him that his property was safe and in his warehouse at Jefferson-Henrietta, in Rochester (A-18). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt -Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.
14. In search for his property, Dr. Cordero was referred to the Chapter 7 trustee- here Appellee Trustee Gordon- (A-39). The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him (A-16,17).
15. Eventually Dr. Cordero found out from third parties (A-48, 49; 109, ftnts-5-8; 352) that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by

Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but even enjoined Dr. Cordero not to contact him or his office anymore (A-1).

16. Dr. Cordero applied to the bankruptcy judge in charge of the bankruptcy case, the Hon. John C. Ninfo, II, for a review of the Trustee's performance and fitness to serve (A-7). The judge took no action save to refer the application to the Trustee's supervisor, an assistant U.S. Trustee (A-29).
17. Subsequently, in October 2002, Mr. Pfuntner brought an adversary proceeding (A-21, 22) against Trustee Gordon, Dr. Cordero, and others. Dr. Cordero, appearing pro se, cross-claimed against the Trustee (A-70, 83, 88), who moved to dismiss (A-135). Before discovery had even begun or any initial disclosure had been provided by the other parties -Dr. Cordero provided numerous documents with his pleadings (A-11, 45, 62, 90, 123, 414)- and before any meeting whatsoever, the judge dismissed the cross-claims by order entered on December 30, 2002 and mailed from Rochester (SPA-1).
18. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003 (SPA-3). It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved to dismiss it as untimely filed (A-156) and the district court dismissed it (SPA-6,9).

B. David Palmer abandons Dr. Cordero's property and defrauds him of the fees; then fails to answer Dr. Cordero's complaint; yet, the courts deny Dr. Cordero's application for default judgment although for a sum certain, prejudice a happy ending to his property search, and impose on him a Rule 55-extraneous duty to demonstrate loss.

19. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees. Mr. Palmer, as Debtor (SPA-25-entry-13,12), was already under the bankruptcy court's jurisdiction, yet failed to answer the complaint of Dr. Cordero, who timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain (SPA-12;A-294). But disregarding Rule 55, never mind the equities between the two parties, both courts denied Dr. Cordero and spared Mr. Palmer default judgment under circumstances that have created the appearance of bias and prejudice, as shown next.

C. Bankruptcy and district court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial

1. The bankruptcy court excused Trustee Gordon's defamatory statements as merely **"part of the Trustee just trying to resolve these issues"**

20. Trustee Gordon submitted statements, some false and others disparaging of Dr. Cordero's character, to the bankruptcy court in his attempt to dissuade it from undertaking the review of his performance and fitness as trustee requested by Dr. Cordero. The latter brought this to the court's attention (A-32, 41). Far from showing any concern for the integrity and fairness of proceedings, the court did not even try to ascertain whether Trustee Gordon had made false representations to the court in violation of Rule 9011(b)(3) F.R.Bkr.P.

21. On the contrary, it excused the Trustee in open court when at the hearing of the motion to dismiss it stated that:

"I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court...it's all part of the Trustee just trying to resolve these issues." (A-274-275)

22. When the court approves of the use of defamation by an officer of the court trying to avoid review, what will it use itself to avoid having its rulings reversed on appeal? How much fairness would an objective observer expect that court to show the appellant?

2. The court disregarded facts and the law concerning genuine issues of material fact when dismissing Dr. Cordero's cross-claims of negligence and recklessness against Trustee Gordon

23. It was Mr. Pfuntner, not Dr. Cordero, who first sued Trustee Gordon claiming that:

"17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the

purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002,” (A-24)

24. Does it get any more negligent and reckless than that? While the Trustee denied the allegation, it raised an issue of fact to be determined at trial. So how could the court disregard similar genuine issues of material fact raised by Dr. Cordero’s cross-claims of negligence and reckless performance as trustee and before any discovery or meeting whatsoever merely dismiss them, thereby disregarding the legal standard for determining a motion to dismiss?

3. The court disregarded the Trustee’s admission that Dr. Cordero’s motion to extend time to file notice of appeal had been timely filed, and surprisingly finding that it had been untimely filed, denied it

25. After Dr. Cordero timely mailed his notice of appeal and Trustee Gordon moved to dismiss it as untimely filed, Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged in his brief in apposition that the motion had been timely filed on January 29 (A-235), the judge surprisingly found that it had been untimely filed on January 30. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly make a mistake on such a critical matter. Thus, who changed the filing date and on whose orders?¹ Why did the court disregard the factual discrepancy and rush to deny the motion? Do court officers manipulate the docket to attain their objectives? There is evidence that they do (paras.36 below).

4. The court reporter tries to avoid submitting the transcript

26. To appeal from the court’s dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript (A-261).
27. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for...“You said that it would

¹ Dr. Cordero stands ready to submit to the Court of Appeals upon its request an affidavit containing more facts and analysis on this issue.

be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283, 286).

28. The confirmation that she was not acting on her own was provided by the fact that the transcript was not sent on March 12, the date on her certificate (A-282). Indeed, it reached Dr. Cordero only on March 28 and was filed only on March 26 (SPA-45, entry 71), a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent.
29. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering the transcript "to the party or judge" –certainly she did not send it to the party- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.
30. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" spots and it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, would either last long in use? Or was she told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript for vetting by a higher-up court officer before mailing a final version to Dr. Cordero? Do you trust court officers that so handle, or allow such handling of, transcripts? Does this give you the appearance of fairness and impartiality?

5. The bankruptcy court disregarded facts and prejudged issues to deny Dr. Cordero's application for default judgment

31. The bankruptcy court recommended denial of the default judgment application by prejudging that upon inspection Dr. Cordero would find his property in the same condition as he had delivered it for storage 10 years earlier in 1993 (SPA-13). For that bold assumption it not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, as shown in subsection 2 above, Mr. Pfunter had written that property had been removed without his authorization and at night from his warehouse premises. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero's property could also have been stolen or damaged. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice.

From one who forms anticipatory judgments, would you expect to receive fair treatment or rather rationalizing statements that he was right?

32. Moreover, the court dispensed with even the appearance of impartiality by casting doubt on the recoverability of “moving, storage, and insurance fees ...especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property,” (SPA-14). How can the court prejudge the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero, since it has never requested disclosure of, let alone held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry? Such a leaning of the mind before considering pertinent evidence is called bias. Would you expect impartiality if appearing as a pro se litigant in Dr. Cordero’s shoes before a biased court?
33. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in paragraph “10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers...” (SPA-14). But that suggestion was never made and Dr. Cordero would have had absolutely no motive to accept it if ever made. What else would the court dare say to avoid review on appeal?

6. The Bankruptcy Clerk and the Case Administrator disregarded their obligations in the handling of the default application

34. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: “**the clerk shall enter** the party’s default,” (emphasis added; SPA-76 upon receiving Dr. Cordero’s application of December 26, 2002 (SPA-10). Yet, it was only on February 4, 41 later and only at Dr. Cordero’s instigation (SPA-15), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay.
35. It is not by coincidence that he entered default on February 4, when the bankruptcy court made its recommendation to the district court. Thereby the recommendation appeared to have been made as soon as default had been entered.² It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.
36. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero’s application upon receiving it. Where did she keep it until

². See footnote 1.

entering it out of sequence on “EOD 02/04/03” (SPA-42-entry-51; 43-entries-46, 49, 50, 52, 53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer.³ Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it? (25 above).

37. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

7. The district court repeatedly disregarded an outcome-determinative fact and the rules to deny the application for default judgment

38. The district court accepted the recommendation and in its March 11 order denied entry of default judgment on the grounds that it did not involve a sum certain (SPA-16). To do so, it disregarded five papers stating that it did involve a sum certain:

- 1) the Affidavit of Amount Due (A-294);
- 2) the Order to Transmit Record and Recommendation (SPA-12);
- 3) the Attachment to the Recommendation (SPA-14);
- 4) the March 2 motion to enter default judgment (A-314,327), and
- 5) the motion for rehearing re implied denial of the earlier motion (A-342, 344-para.6).

39. Dr. Cordero moved the district court to enter default judgment notwithstanding such prejudgment of the outcome of a still sine die inspection (A-314). The district court did not acknowledge that motion in any way whatsoever, but instead accepted the bankruptcy court’s recommendation. Moreover, it stated that Dr. Cordero “must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate...the Bankruptcy Court is the proper forum for conducting [that] inquest,” (SPA-16).

40. Dr. Cordero moved the district court for a rehearing (A-342) of his motion, denied by implication, so that it would correct its outcome-determinative error because the matter did involve a sum certain and because when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55. Likewise, a bankruptcy court that

³ See footnote 1.

showed such prejudgment could not be the “proper forum” to conduct any inquest (A-342). The district court curtly denied the motion “in all respects,” (SPA-19). From a district court that merely rubberstamps the bankruptcy court’s recommendation without paying attention to its facts, let alone reading papers submitted by a pro se litigant who spent countless hours researching, writing, and revising, would you expect the painstaking effort necessary to deliver justice?

8. The bankruptcy court disregarded Mr. Pfuntner’s and his attorney’s contempt for two orders, reversed its order on their ex-parte approach, showed again no concern for disingenuous submissions to it, but targeted Dr. Cordero for strict discovery orders

41. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfuntner’s warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties (A-365, 368). Nonetheless, the court never answered it or informed Dr. Cordero of the most convenient date.
42. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner’s attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed.
43. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Mr. MacKnight contacted the court on March 25 or 26 ex parte -in violation of Rule 9003(a) F.R.Bkr.P. (A-372). Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.
44. Dr. Cordero raised a motion on April 3 to ascertain this reversal of the court’s position and insure that the necessary transportation and inspection measures were taken (A-378). On April 7, the same day of receiving the motion (SPA-46-entries-75,76) and thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing-as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester (A-386).

45. Then Mr. MacKnight raised a motion (A-389). It was so disingenuous that, for example, it was titled “Motion to Discharge Plaintiff from Any Liability...” and asked for relief under Rule 56 F.R.Civ.P. without ever stating that it wanted summary judgment while pretending that “as an accommodation to the parties” Plaintiff had not brought that motion before. Yet, it was Plaintiff who sued parties even without knowing whether they had any property in his warehouse, nothing more than their names on labels (A-364). Dr. Cordero analyzed in detail the motion’s mendacity and lack of candor (A-400). Despite its obligations under Rule 56(g) (SPA-78) to sanction a party proceeding in bad faith, the court disregarded Mr. MacKnight’s disingenuousness, just as it had shown no concern for Trustee Gordon’s false statements submitted to it. How much commitment to fairness and impartiality would you expect from a court that exhibits such ‘anything goes’ standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?
46. Nor did the court impose on Plaintiff Pfuntner and Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court ordered Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

9. The bankruptcy court’s determination not to move the case forward

47. Although the adversary proceeding was filed on September 27, 2002, the court has failed to comply with Rule 16(b) F.R.Civ.P., (SPA-75) which provides that it “shall...enter a scheduling order...” When the court disregard its procedural obligations and allows a case to linger for lack of management, would you expect it to care much for your rights as a pro se litigant who lives hundreds of miles away?

Table of Notices

to the 2nd Circuit Court of Appeals and Judicial Council the Circuit Judges, and other officers of Evidence of a Bankruptcy Fraud Scheme in the Bankruptcy and District Courts, WDNY since May 2, 2003

excerpt from Appellant's brief

Dr. Richard Cordero v. David and Mary Ann DeLano, dkt. 06-4780-bk, CA2

- I. Appeal of *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, sub nom. *In Premier Van et al.*, no. 03-5023, CA2:
 - A. of May 2, 2003;
 - B. writ for mandamus *In re Richard Cordero*, no. 03-3088, CA2, of September 12, 2003;
 - C. motion to quash the order of Judge Ninfo of August 30, 2004, to sever a claim from *In re Premier Van et al.*, in order to try it in the bankruptcy case *DeLano*, no. 04-20280, WBNY, thus making a mockery of the appellate process, of September 9, 2004 (Add:D:440);
 - D. motion for leave to file an updating supplement of evidence of bias in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury, of November 3, 2003 (D:425);
 - E. petition to CA2 for panel rehearing and hearing en banc, of March 10, 2004.
- II. Judicial misconduct complaint against Judge Ninfo, no. 03-8547, CA2:
 - A. of September 2, 2003;
 - B. letters to the members of the Judicial Council of:
 - i. February 11 and 13, 2004;
 - ii. March 22, 2004;
 - iii. July 30, 2004;
 - C. appeal of the dismissal to the Judicial Council, of July 13, 2004.
- III. Judicial misconduct complaint against Former Chief Judge John M. Walker, Jr., no. 04-8510, CA2:
 - A. of March 19 2004;

- B. letter to then next chief Judge Dennis Jacobs, of March 24, 2004;
 - C. letter to Circuit Judge Robert Sack, of March 25, 2004;
 - D. appeal of its dismissal to the Judicial Council, of October 4, 2004;
 - E. letter to the members of the Council, of October 14, 2004;
 - F. letter to each member of the Council requesting that each make a report under 28 U.S.C. §3057(a) to the Acting U.S. Attorney General that an investigation should be had in connection with offenses against U.S. bankruptcy laws.
- IV. Appeal of both complaints to the Judicial Conference of the United States:
- A. letter to Circuit Justice Ruth Ginsburg, of November 26, 2004;
 - B. letter to Circuit Judge Ralph K. Winter, Chair of the Committee to Review Circuit Council Conduct and Disability Orders:
 - i. of January 8, 2005;
 - ii. of February 7, 2005;
 - iii. of March 24, 2005.
 - iv. of March 25, 2005;
- V. Comments in response to CA2's invitation for public comments on the reappointment of Judge Ninfo to a second term as bankruptcy judge:
- A. of March 17, 2005;
 - B. of August 4, 2005;
 - C. letter to each of the members of the CA2 and of the Judicial Council:
 - i. of March 18, 2005;
 - ii. of August 4 and 5, 2005;
 - iii. of September 6, 2005.
- VI. Request to the Judicial Council to abrogate [WDNY Local Rule 5.1\(h\) and 83.5](#) that make it practically impossible to file a RICO claim and to record events that occur in the court and 'its environs':
- A. to now Chief Judge Jacobs and to members of the Judicial Council, of January 8, 2006;
 - B. to the Judicial Council, of January 7, 2006.

Statement of Facts

providing evidence showing that a federal judgeship has become a safe haven for wrongdoing due to lack of an effective mechanism of judicial conduct control and calling for the formation of a virtual firm of lawyers and investigative journalists to help prepare pro bono a class action based on a representative case charging that Chief Judge John M. Walker, Jr., and Circuit Judge Dennis Jacobs of the U.S. Court of Appeals for the Second Circuit have engaged in a series of acts of disregard for the law, the rules, and the facts, and of systematic dismissal of judicial misconduct complaints forming a pattern of non-coincidental, intentional, and coordinated wrongdoing that protects peers and other schemers involved in a bankruptcy fraud scheme

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I. Evidence gathered in 12 cases over 5 years supporting Statement & representative case

1. The herein discussed query whether a federal judgeship is a safe haven for wrongdoing and the concrete charges of such wrongdoing arise from evidence collected during the past five years from 11 related cases. (ToEC:1) Such evidence indicates that the wrongdoing is motivated by a most insidious corruptor: money, the enormous amount of money at stake in fraudulent bankruptcies. (findings leading to the [Bankruptcy Abuse Prevention and Consumer Prevention Act \(BAPCPA\)](#) of 2005, Pub.L. 109-8, 119 Stat. 23 and [Pst:1395](#))

¹ The letters preceding the page number # identify the cases and their tables of exhibits. (ToEC:1fn. & 5§IV).
*The blue text links are active in <http://Judicial-Discipline-Reform.org/StatFacts1.htm> et seq. 1 of 10

2. In just one of those cases the judges have refused even to ask for the whereabouts of over \$670,000 (T_oEC:110) earned or received by the ‘bankrupt’ *banker*, as shown by his own documents...and according to PACER.uscourts.gov (Public Access to Court Electronic Records) the trustee in his case had at the time 3,909 *open cases*! The judges’ refusal to take or skip a necessary step to decide a case is only one use of the means enabling money to have its evil effect, to wit, the most powerful corruptor, power itself, here unsupervised, discipline-free, in practice absolute judicial power exercised by federal judges who have in fact become a class of people above the law.
3. The evidence in those 12 cases shows that judges have systematically exercised judicial power through bias and disregard for the rule of law that is intended to prescribe limits to its use. Risk-free abuse of judicial power in a setting awash with money has led certain judges, their staff, and bankruptcy trustees to support a bankruptcy fraud scheme. While their exercise of it is immune from discipline, it is not harmless. It has had injurious consequences for Dr. Richard Cordero, Esq., depriving him of his legal rights in cases to which he is a party pro se and causing him enormous waste of effort, time, and money as well as inflicting upon him tremendous emotional distress.
4. Repeatedly, Dr. Cordero has submitted to Chief Judge John M. Walker, Jr., and Circuit Judge Dennis Jacobs of the Court of Appeals for the Second Circuit (CA2), who have supervisory duties over the integrity of 2nd Circuit courts, substantial evidence of the pattern of support by U.S. judges therein of the bankruptcy fraud scheme and its effect on him. Consistently they have disregarded that evidence, thereby condoning the other judges’ continued support for the scheme and the schemers and allowing their bias and denial of due process to further injure Dr. Cordero.
5. In so doing, Judges Walker and Jacobs have shown their own bias toward their peers and staffs, including their own staff (T_oEC:19§C), to the detriment of Dr. Cordero and have also denied him due process of law in their dealings with him. In addition, by so protecting those officers they have breached their oath of office to apply the law, let alone do so equally “without respect to persons” (28 U.S.C. §453), which gives rise to a duty that inures to the benefit of every third party, such as Dr. Cordero, who comes before them with the reasonable expectation of having their cases decided impartially in accordance with law. Moreover, they have failed to discharge their duty as chief judge and as members of the Judicial Council of the Second Circuit to safeguard the integrity of the courts and their officers in the Circuit, a duty that also runs to the benefit of every person that resorts to the courts for the proper administration of justice.
6. There is ample and *official* evidence of coordinated and systematic disregard by judges of misconduct by their peers. (T_oEC:39>973 & Comment) To establish such disregard and its consequences a representative case can center on C.J. Walker and Judge Jacobs because the evidence against them is as abundant as their disregard of judicial misconduct has been blatant.

II. The pattern of wrongful acts in support of a bankruptcy fraud scheme began with Judge Ninfo’s summary dismissal of Dr. Cordero’s cross-claims against Trustee Kenneth Gordon in *Pfuntner v. Tr. Gordon et al.*

7. Dr. Cordero is currently a resident of New York City. However, in the early 1990’s he resided in Rochester, NY. Before leaving that city in 1993, he entrusted personal and professional property to a moving and storage company. For almost 10 years he paid storage and insurance fees for the safekeeping of such property.
8. At the beginning of 2002, Dr. Cordero contacted by phone Mr. David Palmer, the owner of

Premier Van Lines, Inc., the moving and storage company in Rochester, NY, that was storing his property. He wanted to resolve a billing issue and find out the current name of the insurance carrier. Mr. Palmer assured him that his property was safe at the Jefferson Henrietta Warehouse. Its manager, Mr. David Dworkin, did likewise and even billed Dr. Cordero for the monthly fees. (A:353-1&2) After Mr. Palmer became unreachable, Mr. Dworkin kept assuring Dr. Cordero that his property was safe and that he would find out the name of its insurer. Only much later did Mr. Dworkin reveal to him that Premier had gone bankrupt and was already in liquidation!

9. As it turned out, more than a year earlier, on March 5, 2001, Mr. Palmer had filed a voluntary petition for Premier's bankruptcy under [11 U.S.C. Chapter 11](#) (*In re Premier Van Lines, Inc.*, no. 01-20692, WBNY, docket at [A:565](#); [nywb.uscourts.gov](#); hereinafter *Premier*). His case had landed before Bankruptcy Judge John C. Ninfo, II, WBNY. Soon thereafter Mr. Palmer failed to comply with the obligations of his bankruptcy and even stopped appearing in its proceedings. Hence, on December 28, 2001, Trustee Kenneth Gordon, Esq., the Standing Trustee for liquidations under [Chapter 7](#), was appointed to liquidate Premier. (A:572/63)
10. Trustee Gordon's performance was so negligent and reckless that he failed to find out that Mr. James Pfuntner owned a warehouse in Avon, Rochester, where Premier had stored its clients' property, such as those of Dr. Cordero. To begin with, just as Mr. Palmer failed to inform Dr. Cordero of his filing for bankruptcy protection for Premier, the Trustee did not inform Dr. Cordero of his liquidation of it; consequently, Dr. Cordero was deprived of his right to file a claim as creditor of Premier. By failing thus to inform Dr. Cordero, the Trustee also deprived him of the opportunity to decide what to do with his property. Moreover, Trustee Gordon could have found out the possibility of such property being in Mr. Pfuntner's warehouse by just examining *Premier's* docket ([A:567/13](#), [17](#), [19](#), [21](#), [23](#); [571/52](#)), not to mention through diligent examination under [11 U.S.C. §704\(4\)](#) of Premier's financial affairs and its business records, to which he had access ([A:109 ftnts-5-8](#); [A:45](#), [46](#), [352](#)).
11. As a result, Trustee Gordon failed to discover the income-producing storage accounts that belonged to the estate or to act timely ([A-575:94](#); cf. [A:46-48](#); [A:575/87](#), [89](#)). So he closed the case as "No distribution" ([A:577/107](#) & entries for 10/24/2003), although he had not only classified it as an "Asset case" ([A:572/70](#), [573/71](#); [575/94](#), [95](#)), but had also applied for authorization to Judge Ninfo and received it to hire an auctioneer, Mr. Roy Teitsworth ([A:576/97](#))...and then what happened? Where is the accountant's report for which \$4,699 was paid? ([A:575/90](#)) Nobody would answer, for these were job-threatening questions ([28 CFR §58.6\(7\)](#)) that no outsider was supposed to ask. ([A:835§B7](#)) Interestingly enough, a query on PACER of Kenneth Gordon as trustee returned that between April 12, 2000, and November 3, 2003, he was the trustee in [3,092](#) cases! How many of them did he handle as he did Premier?
12. Likewise, Mr. David Gene DeLano, Assistant Vice President for M&T Bank handled negligently and recklessly the liquidation of the storage containers that Mr. Palmer had bought with a loan from M&T in which the latter had kept a security interest. He assured Dr. Cordero that he had seen the storage containers holding his property at the Jefferson Henrietta Warehouse; that those containers had been sold to Champion Moving & Storage; and that he should contact and from them on deal with Champion concerning his property in those containers. ([Tr.149/25-150/6](#), [101/17-19](#), [109/3-5](#), [111/9-24](#), [141/8-13](#)) Dr. Cordero did so only to find out that Champion had never received such containers. Thus, he had to search for his property. Eventually he found out that the containers had never been at the Jefferson Henrietta Warehouse! Instead, they had been abandoned by Mr. Palmer at Mr. Pfuntner's warehouse in Avon. ([A:46](#); [Pst:1285¶70](#))

13. Dr. Cordero was referred to Trustee Gordon to find out how to retrieve his property. But the Trustee would not give him any information and even enjoined him not to contact his office anymore ([A:353-25, 26](#)), thus violating his duty under [11 U.S.C. §704\(7\)](#) to a party in interest.
14. Dr. Cordero found out that *Premier* was before Judge Ninfo and applied to him for a review of Trustee Gordon's performance and fitness to serve as Premier's trustee. ([A:353-28, 29](#)) The Judge, however, took no action other than to pass that application on to the Trustee's supervisor, namely, Assistant U.S. Trustee Kathleen Dunivin Schmitt. ([A:29](#)) Her office is in the same small federal building as that of Judge Ninfo's Bankruptcy Court, Trustee Gordon's box, the District Court, the U.S. Attorney's Office, and the FBI Bureau; this allows for daily contacts and the development of a web of personal relationships among their officers. By contrast, Dr. Cordero lives hundreds of miles away in NYC and is, thus, a 'diverse citizen'. Not surprisingly, Trustee Schmitt conducted a 'quick contact' with her supervisee, Trustee Gordon, that was as superficial as it was severely flawed. ([A:53, 104](#)) Nor did Judge Ninfo take action upon Dr. Cordero bringing to his attention ([A:32, 38](#)) that Trustee Gordon had filed with him false statements and statements defamatory of Dr. Cordero to persuade the Judge not to take any action on Dr. Cordero's Application to review his performance ([A:19, 41§II](#)).
15. Meantime, Mr. Pfuntner had commenced an adversary proceeding on September 27, 2002, against the Trustee, Dr. Cordero, M&T Bank, and a hockey club to recover administrative and storage fees ([A:22](#)) from them (*Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY; docket at [A:1551](#)). Dr. Cordero cross-claimed against Trustee Gordon and M&T Bank ([A:70, 83, 88](#)) and also brought in as third-party defendants Messrs. Palmer, Dworkin, and DeLano and Jefferson Henrietta Warehouse. ([Add:534/after entry 13; 891/fn.1](#))
16. Trustee Gordon countered with a motion under [Rule 12\(b\)\(6\)](#) of the Federal Rules of Civil Procedure to dismiss only Dr. Cordero's cross-claims against him. ([A:135, 143](#)) It was argued on December 18, 2002. By then almost three months had gone by since the commencement of *Pfuntner*, but the required [Rule 16](#) and [26](#) meeting of the parties and disclosure had not taken place despite Dr. Cordero having disclosed numerous documents as exhibits to his papers. ([A:11-18, 33-36, 45-49, 63-64, 65, 91-94](#))- much less had there been any discovery. Yet, disregarding the record's lack of factual development, Judge Ninfo summarily dismissed the cross-claims notwithstanding the genuine issues of material fact that Dr. Cordero had raised concerning the Trustee's negligence and recklessness in liquidating Premier ([A:148](#)). Similarly, the Judge disregarded the consideration that after discovery and at trial Mr. Pfuntner's claims against the Trustee could lend support to Dr. Cordero's claims against the Trustee.
17. Judge Ninfo even excused the Trustee's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", ([A:275/10-12](#)) thus condoning his use of falsehood; astonishingly acknowledging in open court his own acceptance of unethical behavior; and showing gross indifference to its injurious effect on Dr. Cordero.
18. That dismissal constituted the first of a long series of similar acts of disregard for the law, the rules, and the facts in which Judge Ninfo as well as other judicial and clerical officers at both the Bankruptcy and the District Court have participated, all consistently to the benefit of those in the web of personal relationships and to Dr. Cordero's detriment. Such acts were initially aimed at preventing Dr. Cordero's appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. This fact would be followed by a common sense question: What motive did he have to do so?

19. Answering that question would bring up a very incisive one: Had these two officers engaged in similar conduct in any of the other cases on which they had worked together? They had had the opportunity to do so, for a subsequent PACER query showed that between April 12, 2000, and June 26, 2004, Trustee Gordon had been the trustee in [3,383 cases](#), out of which 3,382 had come before Judge Ninfo! ([A:1406§C](#)) Astonishing!, for how could a single trustee take care of examining the debtors' financial affairs and ascertaining the good faith of their petitions and dealing with the creditors and collecting the assets and liquidating them and holding auctions, and reviewing accountants' reports and making distribution and filing reports and attending hearings, and and and of each of such an overwhelming number of cases? ([D:458§V](#)) This would beg the question why had Trustee Schmitt and her supervisor, U.S. Trustee for Region 2 Deirdre Martini allowed one person to take on so many cases in such a short period of time? And how many millions of dollars worth of assets has Trustee Gordon been in charge of liquidating? How many other questions would it take to pierce the web to reveal the motives linked to their personal relationships?

A. C.J. Walker and J. Jacobs have been made aware of the evidence of judges' bias and disregard for the rule of law but have refused to investigate them, thus failing to safeguard judicial integrity and protect Dr. Cordero from their abuse

20. Dr. Cordero made Chief Judge Walker aware of these and similar concerns. Indeed, the Chief Judge was a member of the panel that was drawn –randomly?- to decide his appeal from *Pfuntner* in *Premier Van et al.*, no. 03-5023, CA2. (docket at [A:1285](#)) As such, the Chief was supposed to read Dr. Cordero's brief of July 9, 2003 ([A:1303](#)), which also included appellate arguments concerning the arbitrary, unlawful, and suspicious way in which Judge Ninfo ([A:302, 306](#)) and District Judge David G. Larimer, WDNY, ([A:315, 339, 343, 350](#)) denied Dr. Cordero's application for default judgment against Premier Owner David Palmer ([A:290-95](#)), who had nevertheless been defaulted by Bankruptcy Clerk of Court Paul Warren ([A:303; 304](#)).
21. Moreover, Chief Judge Walker was the officer with whom Dr. Cordero lodged his misconduct complaint against Judge Ninfo of August 8, 2003, ([C:1, 63](#)) under the Judicial Conduct and Disability Act. That statute imposes on the circuit chief judge the duty to "expeditiously review" such complaints. ([28 U.S.C. §352\(a\)](#)) Anyway, the Chief should have investigated a complaint like that which cast doubt on the integrity of a judge and the fairness of justice that he administered.
22. What is more, the Chief Judge was a member of the panel that decided Dr. Cordero's petition of September 12, 2003, for a writ of mandamus, no. 03-3088, CA2, ([A:615](#)) requesting that Judge Ninfo be disqualified for bias and disregard for the rule of law and that *Pfuntner* be transferred outside his web of personal relationships to an impartial court, such as the U.S. District Court in Albany, NDNY. More still, he learned of additional charges through Dr. Cordero's motion of November 3, 2003, to update the evidence of Judge Ninfo's bias. ([A:801](#)) Even more, the Chief had the opportunity to hear about Judge Ninfo's misconduct during Dr. Cordero's oral argument of *Premier Van et al.* on December 11, 2003; and even read the argument's written version that Dr. Cordero handed out to him and the other panel members on the day of argument. ([C:296](#))
23. Nevertheless, CJ Walker did nothing other than deny those requests. ([A:876, 664](#)) Yet, he had the duty to review or "promptly appoint a special committee to investigate" the complaint ([§353\(a\)](#)). Instead, he let *six months* go by without taking any action on it. So on February 2, 2004, Dr. Cordero wrote to him to inquire about the complaint's status ([C:105](#)), pointing out that the duty of promptness was imposed on the Chief not only under the Act, but also under the Circuit's

own rules, that is, Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §351 et seq. (C:75) This time the Chief did something else: He had Dr. Cordero's letter returned to the sender! (C:109)

24. More than a month and a half later Chief Judge Walker had still taken no action on the complaint. By contrast, Judge Ninfo went on to engage in even more flagrantly wrongful conduct in another case to which Dr. Cordero was made a party, namely, the voluntary petition for bankruptcy under 11 U.S.C. Chapter 13 of M&T Bank Assistant Vice President David DeLano of all people! (*In re DeLano*, no. 04-20280, WBNY; C:1431, 1435, 1467; docket at D:496) Consequently, Dr. Cordero filed a judicial misconduct complaint against Chief Judge Walker on March 19, 2004. (C:271) As required by law and Circuit rule, he addressed it to the next judge eligible to become the chief judge, to wit, Circuit Judge Dennis Jacobs.

III. CJ Walker and J. Jacobs are protecting their peers by refusing to *Follow the money!* to find over \$670,000 unaccounted for in just one out of one trustee's more than 3,900 cases, i.e., *In re DeLano*, for following it could lead to the exposure of a bankruptcy fraud scheme and the schemers

25. Dr. Cordero brought to Judge Jacobs' attention not only Chief Judge Walker's failure to take action on the complaint against Judge Ninfo, but also how his inaction had condoned Judge Ninfo's misconduct and allowed him to engage even more flagrantly in bias and disregard for the law, the rules, and the facts in the handling of *DeLano*. A judge mindful of his duty, not only under §351, but also as a member of the Judicial Council, to safeguard the integrity of judicial process and the proper administration of justice would have conducted an investigation, for the *DeLano* petition and its handling by Judge Ninfo and other court officers and trustees are so egregious as to reveal the force that joins them and links the cases: a bankruptcy fraud scheme.
26. Indeed, Mr. David and Mrs. Mary Ann Delano are not average debtors. Mr. David DeLano has worked in financing for 7 years and as an officer at two banks for 32 years: 39 years professionally managing money!...and counting, for he is still working for M&T Bank as a manager in credit administration (Tr:15/17-16/15). As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, Mr. Delano is a member of a class of people who should know how not to go bankrupt.
27. As for Mrs. DeLano, she was a specialist in business Xerox machines. As such, she is a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines.
28. Hence, the DeLanos are professionals with expertise in borrowing, dealing with bankruptcies, and learning and applying technical instructions. They should have been held to a high standard of responsibility...but instead they were allowed to conceal assets because they know too much.
29. This means that because of his 39-year long career in finance and banking, Mr. DeLano has learned how borrowers use or abuse the bankruptcy system, and more importantly, how trustees and court officers handle their petitions so that rightfully or wrongfully they are successful in obtaining bankruptcy relief from their debts. Actually, Mr. DeLano works precisely in the area of bankruptcies at M&T Bank, collecting money from delinquent commercial borrowers and even liquidating company assets (Tr:17.14-19). In fact, he was the M&T officer that liquidated the storage containers in which M&T kept an interest to secure its loan to Mr. Palmer. So he knows how the latter was treated by Judge Ninfo in *Premier*, which gave rise to *Pfuntner*.

30. In preparation for their golden retirement, the DeLanos filed their joint voluntary bankruptcy petition and, of course, it came before Judge Ninfo. Based on what and whom Mr. DeLano knew, they could expect their petition to glide smoothly toward being granted (D:266¶¶37-39) The fact that among their 21 creditors in Schedule F they themselves named Dr. Cordero (C:1448) must have carried no significance at all other than that thereby they would be able to discharge his claim against Mr. DeLano arising in *Pfuntner*. After all, Dr. Cordero was their only non-institutional creditor, lives hundreds of miles away in NYC, and was unsecured to boot.
31. But a most unforeseen event occurred: Dr. Cordero went through the trouble of examining their petition, and more surprisingly yet, he even realized how incongruous the declarations were that the DeLanos had made in its Schedules (C:1437-1454) and Statement of Financial Affairs (C:1455-1461). Most unexpectedly, not only did he put in writing his realization, but he also traveled all the way to Rochester to attend the meeting of their creditors on March 8, 2004 (D:23), the only one to do so! (D:68, 69) While there he filed with Judge Ninfo's clerks his objection to the confirmation (C:291) of their debt repayment plan (C:1467) and even invoked 11 U.S.C. §1302(b) and §704(4) and (7) to request Chapter 13 Trustee George Reiber to investigate their financial affairs and produce documents to show the in- and outflow of their money.
32. Money the DeLanos do have, as Trustee Reiber, Judge Ninfo, Assistant Trustee Schmitt, and Region 2 Trustee Martini knew or could have readily known had they only cast a glance at their implausible petition. (C:1411) Hence, the alarms went off, for these officers were aware that Mr. DeLano could not be allowed to go down on a charge of bankruptcy fraud since he knows about their intentional and coordinated disregard for the law, the rules, and the facts in handling bankruptcy petitions, that is, of their support for the bankruptcy fraud scheme. Therefore, if Mr. DeLano's petition were checked and as a result, he were charged with bankruptcy fraud and he and his wife ended up facing up to 20 years imprisonment and ruinous fines under 18 U.S.C. §§151-158, and 1519 and 3571, he would consider it in his interest to enter into a plea bargain to incriminate top schemers in exchange for leniency. Consequently, the schemers closed ranks to protect Mr. DeLano from being investigated or having to produce incriminating documents.
33. Yet, even a person untrained in bankruptcy could realize the incongruity and implausibility of the DeLanos' declarations in their bankruptcy petition. For instance:
- a. The DeLanos earned \$291,470 in just the 2001-2003 fiscal years preceding their petition of January 27, 2004 (C:1419; 1499);
 - b. but they declared having only \$535 in hand and accounts (C:1439); yet, they and their attorney, Christopher Werner, Esq., knew that they could afford to pay \$16,654 in legal fees (C:1060) for over a year's maneuvering to avoid producing the documents requested by Dr. Cordero, which would incriminate them for concealment of assets; their tough stance was rewarded by Judge Ninfo, who without any written request allowed even higher legal fees, \$18,005! (C:1057) But then Att. Werner is not just any attorney: according to PACER, as of February 28, 2005, he had appeared before Judge Ninfo in 525 cases out of 575! (TOEC:91¶3) Trustee Reiber rewarded Att. Werner too by requesting another \$9,948 for him on December 7, 2005, and lowering the recovery rate from 22¢ to less than 13¢ on the \$ (Pst:1175). Outrageous arrogance of power endowed with immunity!
 - c. The DeLanos amassed a whopping debt of \$98,092 (C:1449), although the average credit card debt of Americans is \$6,000; and spread it over 18 credit cards so that no issuer would have a stake high enough to make litigation cost-effective (C:1401).

- d. Despite all that borrowing, they declared household goods worth only \$2,910 (C:1439) ...that's all they pretend to have accumulated throughout their combined worklives, including Mr. DeLano's 39 years as a bank officer, although they earned over a 100 times that amount, \$291,470, in only the three fiscal years of 2001-03 (C:1499)...Unbelievable!;
- e. They also strung together mortgages since 1975, through which they received \$382,187 (Add:1058) to buy their home; yet in 2005, 30 years later, they lived in the same home but owed \$77,084 and had equity of merely \$21,415 (C:1438). *Mindboggling!* (Add:1058¶54)
34. Although the DeLanos have received over \$670,000, as shown by even the few documents that they reluctantly produced at Dr. Cordero's instigation (ToEC:110), the officers that have a statutory duty to investigate evidence of bankruptcy fraud or report it for investigation not only disregarded such duty (ToEC:111), but also refused to require them to produce (Add:1022) documents as obviously pertinent to any bankruptcy petition as the statements of their bank and debit card accounts...for such documents would show the flow of the DeLanos' receipts and payments and thereby reveal the fraud that they had committed and that the officers had covered up. Judge Jacobs too disregarded the Statement that Dr. Cordero sent him analyzing these incongruous declarations (C:1297§§15-17) and had it returned to the sender (C:1317).
35. What has motivated these officers to spare the DeLanos from having to produce incriminating documents? (D:458§V) All have been informed of the incident on March 8, 2004, that to a reasonable person, and all the more so if charged with the duty to prevent bankruptcy fraud, would have shown that the DeLanos had committed fraud and were receiving protection from exposure: Trustee Reiber unlawfully allowed his attorney, James W. Weidman, Esq., to conduct the meeting of creditors (28 CFR §58.6(10);§341) where the latter unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos' having committed fraud, and when he would not reveal what he knew, Att. Weidman, with the Trustee's approval, rather than let him examine them under oath, as §343 requires, while officially being tape recorded, put an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)
36. Judge Jacobs too was informed of this incident (C:272). Yet he did not conduct any investigation or ask for any documents, such as the tape of that meeting of creditors or, after the effort to impede the holding of the adjourned meeting failed, the transcript of such meeting, which contains incriminating statements by Attorney Werner of his having destroyed documents of the DeLanos. (C:1299¶¶21-33) Nor did he respect his duty of promptness in handling a misconduct complaint. The one of March 19, 2004, against his colleague, Chief Judge Walker, was in its seventh month when on September 24 Judge Jacobs "dismissed [it] as moot [because] the Complainant's judicial misconduct [against Judge Ninfo] was dismissed by order entered June 9, 2004". (C:392) Yet it took Judge Jacobs another 2½ months to dismiss it!? And still he got wrong the date of that earlier dismissal that he himself had written, and that was entered, on June 8 (C:144, 148), a mistake revealing the lack of care with which he wrote an otherwise perfunctory decision (cf. C:711).
37. As CJ Walker had done, Judge Jacobs condoned with his inaction Judge Ninfo's misconduct, thus encouraging him to engage in more brazen bias and disregard for the rule of law: Dr. Cordero submitted a statement on June 9, 2004, to J. Ninfo showing on the basis of even the few and incomplete documents that the DeLanos had produced (ToEC:62¶¶5-11, D:165-189; C:1415) that they had fraudulently concealed assets, and requesting that they be referred to the FBI and that Trustee Reiber be removed (D:193). J. Ninfo reacted by joining the DeLanos in a process abusive maneuver that used a) a motion to disallow Dr. Cordero's claim (D:218; cf. D:249; ToED:210§II);

b) an order directing Dr. Cordero to take discovery of that claim in *Pfuntner* (D:272; cf. D:440) only for *every single document* that he requested (D:287, 310, 317) to be denied by both the DeLanos (D:313, 325) and J. Ninfo (D:327; cf. ToEA:153§7) and c) a sham evidentiary hearing on March 1, 2005 (Pst:1255§E; cf. C:193§§1-3) that ended as predetermined in disallowing Dr. Cordero's claim and stripping him of standing to participate further in *DeLano* (D:20§IV, ToEC:109).

38. Dr. Cordero made Chief Judge Walker and Judge Jacobs aware of these developments by appealing to the Judicial Council and writing to Judge Jacobs (C:995, 1000, 1025). This time they acted promptly: They reappointed Judge Ninfo to a new 14-year term as bankruptcy judge! (ToEC:§H)
39. Meanwhile, Dr. Cordero appealed Judge Ninfo's disallowance of his claim to the District Court, WDNY, Judge Larimer presiding. This Judge showed again, as he had in *Pfuntner* (ToEC>C:1107-8 >Comment), that he supports the bankruptcy fraud scheme. He refused to order the DeLanos to produce *even a single document* that could shed light on the 39-year veteran banker's incongruous and implausible declarations. (ToEC:111; Add:951, 1022, ToEAdd:231§VI) He even attempted to prevent Dr. Cordero from obtaining the transcript of the sham evidentiary hearing (C:1001, 1083; cf. ToEA:135§3), for what happened there incriminates Judge Ninfo as Mr. DeLano's biased Chief Advocate. Such advocacy derives from the fact that Mr. DeLano's attorney in *Pfuntner* is Michael Beyma, Esq., of Underberg & Kessler (A:1552; Pst:1289§f), the law firm of which Judge Ninfo was a partner when he was appointed to the bench (Add:636); so he felt Mr. DeLano to be his client, whereby he forfeited his position as an impartial arbiter who should have no interest in the controversy before him. The transcript also shows that Mr. DeLano's testimony corroborates Dr. Cordero's claim against him. (Pst:1281§d; ToEC:55>Comment>2nd ¶)

IV. Call for a virtual firm of lawyers and investigative journalists to help prepare pro bono a class action centered on a representative case against these judges to expose the systematic dismissal of complaints supporting a bankruptcy fraud scheme and reveal how high and to what extent wrongdoing has reached

40. Congress adopted the Bankruptcy Abuse Prevention Act to "restor[e] personal responsibility and integrity in the bankruptcy system [and] respond to...the absence of effective oversight to eliminate abuse in the system." *HR Rep. 109-31, p.2* For its part, the Administrative Office of the U.S. Courts (AO) has produced the 1997-2005 Reports of Complaints Filed and Action Taken under the Judicial Conduct Act (C:973), which together with its previous annual Reports shows that the judges' systematic dismissal for over a decade of §351 judicial misconduct complaints could not have occurred but for their unlawful coordination to insulate themselves from such complaints. (ToEC>C:973>Comment) The relation between those official findings is what the 12 cases referred to here show, to wit, the abuse has developed into a bankruptcy fraud scheme and judges have mishandled §351 complaints to, among other things, protect it and the schemers.
41. Now there is a need to expose the bankruptcy fraud scheme and the systematic dismissal of judicial misconduct complaints so as to lay bare the motive or benefit driving federal judges to tolerate or engage in such intentional and coordinated wrongdoing. A **first step** to that end is this presentation of the evidence gathered over the past five years in 12 cases and contained in the commented records of exhibits (ToEC:1 et seq.) and the exhibits. The **second step** is the formation, called for herein, of a virtual firm of lawyers and investigative journalists digitally meeting at Judicial-Discipline-Reform.org to pro bono research difficult legal issues and organize the investigation *Follow the money!* from filed bankruptcy petitions, many available through

PACER, to wherever it ended up in preparation for the **third step**: a class action centered on the representative case against C.J. Walker and J. Jacobs, brought on behalf of those similarly injured by the scheme and the systematic dismissal of their complaints, and charging denial of due process and violation of, among others, the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §1961; C:1291) by judges who may remain in office only “during good Behaviour” (Const. Art. III sec.1; 28 U.S.C §44(b)), but who enjoy no blanket immunity from being subject to “Equal Justice Under Law” (C:1823); their governing bodies (T_oE_C:107) and staffs (T_oE_C:19§C, 28§E & 46§D); private and U.S. bankruptcy trustees (T_oE_C:111); other officers (cf. T_oE_C:§K; C:1552, 1568) in the web of personal relationships (C:1546, 1565, 1566); bankruptcy lawyers and their law firms (cf. D:258); and bankruptcy petitioners (¶33 above; T_oE_A:135§4).

42. The class action will confront the most powerful judges. Indeed, for decades since before the Judicial Conduct Act of 1980, the Supreme Court has known of the lack of an effective judicial impeachment mechanism (T_oE_C:60>Comment, C:1384) and of the break down of the Act’s self-discipline mechanism (T_oE_C:24>Comment, C:573). To know it, Late Chief Justice Rehnquist, who was also the presiding member of the Judicial Conference (28 U.S.C §331¶1), the body of last resort under the Act (id. §354(b)), need not read the AO’s Annual Reports on the Act (id. §604(h)(2)) or the Conference’s reports (C:1771). He knew that in 24 years since the Act the Conference had issued under it only 15 orders! (C:1611) Yet he waited until May 2004 to charge Justice Stephen Breyer with chairing a committee to study it. (C:574-577) The Breyer Committee held no hearings (cf. T_oE_C:66§L) and took over 27 months only to issue a **report** that clears his lower peers of the systematic dismissal of complaints apparent from the official reports.
43. All the Justices are also circuit justices of the circuits to which they have been allotted (28 U.S.C. §42, 45(b); C:149) so they may attend (C:980y-83; cf. 980z-10) their councils’ meetings where misconduct complaints are discussed (C:980y-84, z-76) and can learn the nature and number of orders related thereto, which must be reported to the Administrative Office (id. §332(c-d, g); C:980y-87, z-79). Hence, they know that such complaints are systematically dismissed. Actually, the Justices must be presumed to have realized from the cases that they deal with daily at the Supreme Court that ‘power corrupts and in the absence of any control over its exercise, power becomes absolute and corrupts absolutely’. Did they think that while wielding such power the 2,133 federal judges would remain immune to the type of “Culture of Corruption” that has engulfed the 535 members of Congress?, even bankruptcy judges, whose decisions affect the hand-changing of \$billions? (D:458§V, Add:621§1) Since the Justices cannot have ignored ongoing misconduct of judges abusing their uncontrolled power, why have they tolerated it?
44. Once in a lifetime the opportunity presents itself for a person to take extraordinary action for the common good. When it is long-term, fraught with grave risks, but capable of improving society with reforms that give practical meaning to the notions of integrity in government and fairness in its treatment of its people, the action becomes a noble mission. For he or she who rises to the challenge, there is public honor, gratitude, and remembrance. This is one such opportunity and a momentous one too, for it must reach all the way to the top of the Third Branch of Government to identify the motives of those in charge of the system of administration of justice for having allowed institutionalized wrongdoing by judges. Are you up to the mission to engage in highly skillful and professionally responsible legal research and analysis or investigative journalism of social and financial networks in order to answer the critical question arising from the evidence thus far collected: **Is a federal judgeship a safe heaven for wrongdoing and, if so, how high and to what extent has intentional and coordinated wrongdoing reached?**

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that provide the evidence gathered in 12 cases over 6 years showing that a federal judgeship has become a safe haven for wrongdoing and justifying an investigation to determine how high and to what extent wrongdoing has reached; and that warrant the call for forming a virtual firm of lawyers and investigative journalists centered on Judicial Discipline Reform.org to help prepare pro bono a class action based on the representative case charging that Chief Judge John M. Walker, Jr., of the Court of Appeals for the Second Circuit (CA2) and CA2 Judge Dennis Jacobs have engaged in a series of acts of disregard of evidence and of systematic dismissal of judicial misconduct complaints forming a pattern of non-coincidental, intentional, and coordinated wrongdoing that supports a bankruptcy fraud scheme and protects the schemers

by
Dr. Richard Cordero, Esq.

I. Cases providing evidence for the investigation & the representative case

	Case name	Filing date	Closing date or status	Docket no.	Court	File:pg.# * of brief docket	
1.	<i>In re Premier Van Lines</i> (Ch. 7 bkr.)	3/5/1	10/24/3	01-20692	WBNY	cf. A:72§1	A:565
2.	<i>Pfuntner v. Trustee Gordon et al.</i> (AdvP)	9/27/2	pending	02-2230	WBNY	A:70	A:1551
3.	<i>Cordero v. Trustee Gordon</i>	1/15/3	3/27/3	03cv6021L	WDNY	A:158	A:458
4.	<i>Cordero v. Palmer</i>	2/4/3	3/27/3	03mbk6001L	WDNY	A:314	A:462, but see ToEA:156>A:462b
5.	<i>In re Premier Van et al.</i>	5/2/3	1/26/5dism'd	03-5023	CA2	C:169	C:422
6.	<i>In re Richard Cordero</i> (mandamus)	9/12/3	denied 10/8/3	03-3088	CA2	A:615	A:665g
7.	<i>Misconduct complaint v. Bkr. J. Ninfo, WBNY</i>	9/2/3	6/8/4 dism'd	03-8547	CA2	C:1, 63; E:1	ToEC:7§§A,D
8.	<i>Misconduct complaint v. Chief J. Walker, CA2</i>	3/30/4	9/24/4dism'd	04-8510	CA2	C:271	ToEC:13§§B,F
9.	<i>Cordero v. Trustee Gordon et al.</i>	1/27/5	cert. denied	04-8371	SCt	A:1601	A:2229
10.	<i>In re David & Mary Ann DeLano</i> (Ch. 13 bkr.)	1/27/4	on appeal	04-20280	WBNY	cf.C:1295§§A-B	D:496
11.	<i>Cordero v. DeLano</i>	4/22/5	on appeal	05cv6190L	WDNY	Pst:1231	Pst:1181
12.	<i>Dr. Richard Cordero v. David & Mary DeLano</i>	10/16/6	pending	06-4780	CA2	CA2:1700	CA2_dkt

*As of 4apr7. Page 1 of ToEC:pg#, ...A:, D:, Add:, and Pst:# at http://Judicial-Discipline-Reform.org/docs/Tables_of_Exhibits.pdf

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Cordero v. Palmer, docket 03mbk6001L, WDNY..... A:462 (but see TOEA:156>462b)
In re Premier Van et al., docket 03-5023, CA2 C:422
In re Richard Cordero, docket 03-3088, CA2 A:665g
Cordero v. Gordon et al., docket 04-8371, Sup. Ct. A:2229

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In re DeLano, docket 04-20280, WBNY..... D:496
Cordero v. DeLano, docket 05cv6190L, WDNY..... Pst:1181
Dr. Richard Cordero v. David and Mary Ann DeLano, dkt. 06-4780-bk, CA2, up to
date at.....http://Judicial-Discipline-Reform.org/CA2_dkt/DeLano_dkt_CA2.pdf
cf. briefhttp://Judicial-Discipline-Reform.org/DeLano_record/brief_DeLano_CA2.pdf

II. RETRIEVAL **Bank of Hyperlinks**

JDR’s call for a Watergate-like *Follow the money!* investigation into a bankruptcy fraud scheme supported by coordinated judicial wrongdoing:

C:1/E:1; C:271; C:441; C:551; C:711; C:821; C:981; C:1081; C:1285; C:1331; C:1611; C:1741

Pfuntner:**A:1; 261; A:353; A:734; A:1061; A:1301; A:1601; A:1675; A:1765** **E:1-60; E:1-62**

DeLano: **D:1; D:103; D:203; D:301; D:425; Add:509; Add:711; Add:911; Pst:1171; SApp:1501**

Transcript of the evidentiary hearing in *DeLano* held in Bankruptcy Court, WBNY, on March 1, 2005: **Tr**

Downloadable Bank of Hyperlinks

http://judicial-discipline-reform.org/Bank%20of%20Links.htm#Table_of_Exhibits.htm