**Dr. Richard Cordero**

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November 20, 2004

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

I have submitted to the Judicial Conference a formal petition for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. In addition, I am sending you herewith a copy of my petition so that you take cognizance of the facts and legal issues and move your colleagues on the Conference to consider it and grant my request for relief. The high stakes warrant your attention.

Indeed, the petition concerns the evidence that I submitted of judicial misconduct linked to a bankruptcy fraud scheme. It involves U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY. The evidence thereof has been developing for over two years and keeps mounting since the underlying cases are still pending. I submitted it to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, but he did not conduct even a §352(a) limited inquiry of the complaint, let alone appoint a §353(a) special committee to investigate the evidence. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions by the CA2 Judicial Council.

As a result of taking action without any report of a special committee or conducting any investigation, the Judicial Council both "aggrieved" me under §357(a) and lacked jurisdiction under §354(a)(1). It denied me the legal benefit of protection from judicial misconduct to which I am entitled under §§351 et seq. and its own Complaint Rules. To afford such protection by administering judicial discipline through self-policing was the intent of both Congress and the Council when enacting their respective act and rules. By disregarding its own legal obligations, the Council knowingly left me to suffer further abuse of my legal rights and bias at the hands of Judge Ninfo, who has caused me to spend an enormous amount of effort, time, and money and has inflicted on me tremendous aggravation, for I am a the only pro se party and non-institutional non-local party in two cases before him. Those very concrete and personal consequences of the CA2 Council's disregard for its legal obligations have also "aggrieved" me under §357(a). All this provides the legal basis for the Judicial Conference to take jurisdiction of this petition.

Doing so would allow the Conference to review the systematic denial of petitions by judicial councils, which is so indisputable as to have justified the appointment by Chief Justice Rehnquist of Justice Breyer to head a committee to review it. To its members I am also submitting this matter as a test case because the Council's denials are particularly egregious given the compelling evidence that supports reasonable suspicion of corruption. I trust that you will take your duty to safeguard the integrity of the judiciary seriously enough to review the accompanying documents carefully and move the Conference to consider the petition formally. I also respectfully request that you make a report of this evidence to the Acting U.S. Attorney General under 18 U.S.C. 3057(a). Meantime, I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

| | Last name | Members of the Judicial Conference of the United States to whom of copy of the petition for review was sent |
|---|---|---|
| 1. | Restani | Chief Judge Jane A. Restani, U.S. Court of International Trade |
| 2. | Mayer | Chief Judge Haldane Robert Mayer, U.S. Court of Appeals for the Federal Circuit |
| 3. | Hogan | Chief Judge Thomas F. Hogan, U.S. District Court for the District of Columbia |
| 4. | Ginsburg | Chief Judge Douglas H. Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit |
| 5. | Forrester | Senior Judge J. Owen Forrester, U.S. District Court for the Northern District of Georgia |
| 6. | Edmondson | Chief Judge J. L. Edmondson, U.S. Court of Appeals for the Eleventh Circuit |
| 7. | Russell | Judge David L. Russell, U.S. District Court for the Western District of Oklahoma |
| 8. | Tacha | Chief Judge Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit |
| 9. | Ezra | Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii |
| 10. | Schroeder | Chief Judge Mary M. Schroeder, U.S. Court of Appeals for the Ninth Circuit |
| 11. | Rosenbaum | Chief Judge James M. Rosenbaum, U.S. District Court for the District of Minnesota |
| 12. | Loken | Chief Judge James B. Loken, U.S. Court of Appeals for the Eighth Circuit |
| 13. | Stadtmueller | Judge J. P. Stadtmueller, U.S. District Court for the Eastern District of Wisconsin |
| 14. | Flaum | Chief Judge Joel M. Flaum, U.S. Court of Appeals for the Seventh Circuit |
| 15. | Zatkoff | Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan |
| 16. | Boggs | Chief Judge Danny J. Boggs, U.S. Court of Appeals for the Sixth Circuit |
| 17. | Feldman | Judge Martin L. C. Feldman, U.S. District Court for the Eastern District of Louisiana |
| 18. | King | Chief Judge Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit |
| 19. | Norton | Judge David C. Norton, U.S. District Court for the District of South Carolina |
| 20. | Wilkins | Chief Judge William W. Wilkins, U.S. Court of Appeals for the Fourth Circuit |
| 21. | Vanaskie | Chief Judge Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania |
| 22. | Scirica | Chief Judge Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit |
| 23. | Scullin | Chief Judge Frederick J. Scullin, Jr., U.S. District Court for the Northern District of New York |
| 24. | Laffitte | Chief Judge Hector M. Laffitte, U.S. District Court for the District of Puerto Rico |
| 25. | Boudin | Chief Judge Michael Boudin, U.S. Court of Appeals for the First Circuit |
| 26. | Rehnquist | Mr. Chief Justice William Rehnquist |
| 27. | | [no copy sent Chief Judge Walker, U.S. Court of Appeals for the Second Circuit] |

# Judicial Conference of the United States

## PETITION FOR REVIEW

under 28 U.S.C. §357(a)

of the actions of

the Judicial Council of the Second Circuit

## In re: Judicial Misconduct Complaints

**CA2 docket no. 03-8547**
**and no. 04-8510**

submitted by

**DR. RICHARD CORDERO**
Petitioner and Complainant
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

**CA2 docket no. 03-8547**

and **no. 04-8510**

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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## I. Questions Presented for Review

1. On August 11, 200*3*, Dr. Richard Cordero submitted a judicial misconduct complaint under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351-364. (hereinafter the Misconduct Act or the Act) about WBNY U.S. Bankruptcy Judge John C. Ninfo, II, concerning his participation together with other court officers and parties in a series of acts of disregard for the law, the rules, and the facts so numerous and consistently detrimental to Dr. Cordero, the only non-local party as well as the only pro se one, and favorable to the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias against Dr. Cordero. During the following year, Dr. Cordero addressed to the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., and then the Judicial Council of that Circuit, updating evidence showing how that pattern of illegality and bias continued to develop and was linked to a bankruptcy fraud scheme that generated the most powerful drive for wrongdoing: money, lots of money! (see infra Exhibit, page 31=E-31)

2. Nevertheless, the Chief Judge did not conduct even a limited inquiry of the complaint under §352(a), let alone appoint a special committee under §353 to investigate it, and even refused updating evidence (E-7; E-9), exhibits (E-28), and even a table of exhibits! (E-29-30) As a result, no report by a special committee was filed under §353(c) with the Judicial Council of the Second Circuit. Yet, it took 10 months for the complaint to be dismissed by Acting Chief Judge Dennis Jacobs on June 8, 2004 (E-10, 11). Dr. Cordero submitted on July 8 his petition for review and resubmitted it reformatted on July 13 (E-23). The Council denied it on September 30. (E-36-37; Table of Key Documents and Dates in the Procedural History, page i after this brief)

3. Dr. Cordero filed a misconduct complaint about Chief Judge Walker on March 19, 2004, reformatted and resubmitted on March 29 (E-39). It was dismissed also belatedly six months later on September 24 (E-44-45) and without any investigation, as was the petition for review of

October 4 (47), dismissed by the Judicial Council on November 10, 2004 (E-54-55).

**a)** Since action by a judicial council under §354 is expressly predicated "upon receipt of a report filed under section 353(c)", did the Judicial Council lack jurisdiction to deny and dismiss the complaint under §354(a)(1)(B)?;

**b)** Did it fail to discharge its duty under §354(a)(1)(C) requiring that it "shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit" by failing to take either of the two actions otherwise open to it, namely, to conduct an investigation of its own or to refer the complaint together with the record and its recommendations to the Judicial Conference under §354(b)(1)?;

**c)** Did the Judicial Council show dereliction of its duty, generally, by failing to investigate as part of a pattern of systematic dismissals of complaints and denials of petitions without investigation (E-24), and in particular, by failing to remove a bankruptcy judge for misconduct under §354(a)(3)(B) and 28 U.S.C. §152(e), whereby it showed partiality toward one of its peers to the detriment of a complainant and the integrity of the business of the courts in its circuit? (E-128-I);

**d)** Did the Chief Judge and the Acting Chief Judge err by not handling the complaint „promptly and expeditiously" (E-39), as required by the Misconduct Act (cf. E-7) and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (E-16-18; hereinafter the Complaint Rules or the Rules)?

**e)** Did the Chief Judge show lack of good judgment and due diligence in informing himself of the „totality of circumstances" as they continued to develop in the complained-about court during the long period of inaction on his part when he refused updates although not required by law to do so (E-52, E-53), thus forcing complainants to file them as successive complaints and making it easier for himself and the Judicial Council to dismiss them piecemeal?

**f)** Did he thereby fail both to render justice to a complainant that was being denied due process of law and to safeguard the integrity of the business of the Court and the courts in his circuit?

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## II. THE JUDICIAL CONFERENCE HAS JURISDICTION OVER THIS APPEAL BECAUSE THE COMPLAINANT WAS "AGGRIEVED" BY THE JUDICIAL COUNCIL

4. The Misconduct Act"s jurisdictional provision for the Judicial Conference applicable to this petition provides as follows:

> **28 U.S.C. §357. Review of orders and actions**
>
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.
>
> **(b) Action of Judicial Conference.**- The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

5. In turn, section 354 provides as follows:

> **§354. Action by judicial council**
>
> **(a) Actions upon receipt of report.-**
>
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-
>
> **(A)** may conduct any additional investigation which it considers to be necessary;
>
> **(B)** may dismiss the complaint; and
>
> **(C)** if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

6. Dr. Cordero was aggrieved by the Judicial Council because it dismissed his petition for review:

**a)** without jurisdiction for the reason that it had not received any report of a special committee under §353(c) given that the chief judge of the Court of Appeals for the Second Circuit failed to appoint any such committee under §353(a) or even conduct a §352(a) "limited inquiry";

**b)** conducted no investigation of its own and since the chief judge had conducted none either, it was not in a position to determine the merits of his complaint and in light thereof, what action could be considered necessary;

**c)** by dismissing his complaint without any investigation having been conducted at all, it failed its legal obligation under §354(a)(1)(C) that it "**shall** take…action…to assure the effective and expeditious administration of the business of the courts" (emphasis added) intended for the benefit of the public at large, including Complainant Dr. Cordero; and

**d)** thereby, it has further aggrieved Dr. Cordero by knowingly and indifferently leaving him at the mercy of the complained-about Judge Ninfo and other court officers and parties that have engaged in a series of acts of disregard for legality so long, for more than two years!, and so consistently against Dr. Cordero, the only non-local and the only pro se party, and to the benefit of the local parties that no reasonable observer informed of the facts could deem them coincidental and unbiased, but instead a responsible Council would have discharged its duty to investigate whether, as claimed, they were intentional and coordinated and formed part of a bankruptcy fraud scheme involving judicial misconduct.

7. The CA2 Judicial Council considered that Dr. Cordero was "a complainant…aggrieved by a final order of the chief judge" under §352(c) so that it took jurisdiction of his petitions for review and affirmed the chief judge"s dismissals (E-37, E-55). The Judicial Conference can likewise consider Dr. Cordero "a complainant…aggrieved by an action of the judicial council" under §357(a) since the grounds for this petition contain, among others, the same grounds as the petition to the Council, namely, a dismissal of the complaint without any investigation in disregard of the Council"s duty under the Misconduct Act and the Complaint Rules and knowing that by so proceeding it was leaving Dr. Cordero exposed to the same abuse and bias at the hands of the same judge and other court officers and parties.

## A. The reasonable construction of "aggrieved" in light of the statutory purpose of the Misconduct Act

8. The appointment last May 25, by U.S. Supreme Court Chief Justice William Rehnquist of Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee because of the history of disfunctionality of its complaint mechanism supports the likelihood that the chief judge and the Judicial Council also failed to deal with the instant complaint properly. Indeed, when applauding this appointment, the Chairman of the Judiciary Committee of the

House of Representative, F. James Sensenbrenner, Jr., stated that:

> Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation.[1]

9. At the Committee‟s first organizational meeting on June 10, 2004, Justice Breyer stated when commenting on the importance of the Misconduct Act that:

> The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability.[2]

10. It follows that the integrity of the judiciary is a public good and in safeguarding it Justice Breyer puts the Act at a par with the Constitution. When its complaint procedures and remedies are rendered ineffective by the failure of those charged with investigating whether there is an instance of judicial misconduct, it is reasonable to hold that a complainant is aggrieved just as he is aggrieved when deprived of his constitutional right to judicial process independent from interference from officers of either of the other two branches of government.

11. In going about his task of fixing a broken complaint mechanism, it is likely that Justice Breyer will steer the Committee to examine the Misconduct Act by applying the same principles of statutory construction that he advocated in a 2001 speech and that are applicable here to determine the meaning that Congress intended for the term "aggrieved" as an element of the jurisdictional basis for the Judicial Conference:

> How are courts, which must find answers, to interpret these silences [in statutes]? Of course, courts will first look to a statute's language, structure, and history to help determine the statute's purpose, and then use that purpose, along with its determining factors, to help find the answer. [3]

12. Justice Breyer applied such principles even to the construction of the Constitution. In its First Amendment the Constitution enshrines the right of „the people to petition the government for a redress of grievances". Similarly, the Misconduct Act gives the right to petition one branch of government, the judiciary, to "any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". The purpose of the petition is to obtain relief through disciplinary action. This is reflected in the non-fortuitous fact, even if not legally compelling, that the Act appears in Title 28, enacted into law by Congress, of the U.S. Code under the Chapter 16 title, "Complaints Against Judges and Judicial Discipline".

13. The key means for achieving that purpose is the investigation of complaints. Such investigation

is conducted by each of the three levels of the judiciary charged with the duty to achieve such purpose, namely, the chief judges, the judicial councils, and the Judicial Conference. Whether they appoint special committees or investigate themselves, they have the manpower and subpoena power to go behind what the complainant at the receiving end of the misconduct can ever find out and state in his complaint. Hence, the investigation of complaints is the indispensable means to achieve the Congressional purpose of ascertaining judicial misconduct and taking disciplinary action.

14. Only through the investigation of complaints can the Misconduct Act ensure the accomplishment of "the business of the courts", which is to "administer justice without respect to persons …under the Constitution and laws of the United States", 28 U.S.C. §453. When the law is disregarded, justice is not administered, but is rather denied, especially where the law is systematically disregarded, whether by judges complained-about or by chief judges, judicial councils, or the Judicial Conference who systematically fail to investigate judicial misconduct complaints.

15. It is reasonable to assume that when Congress drafted and passed the Misconduct Act it did not want the Act to become dead letter: useless to curb misconduct on the part of judges and ineffective as a source of judicial discipline for the protection of complainants and the public. It is also reasonable to conclude that any complainant denied such protection would be aggrieved by the failure of a chief judge or a judicial council, not to mention by the failure of both, to investigate his complaint. His grievance would not only consist in the frustration of his legitimate expectation that judges, of all people, would "faithfully and impartially discharge and perform all [their] duties…under the Constitution and laws", §453. The complainant would also be aggrieved by the practical consequence that by so disregarding their duties, those judges would knowingly and indifferently leave him exposed to further abuse and bias at the hands of the judge complained-about. Such grievance renders the complainant an "aggrieved" one within the meaning of §357(a) and provides the basis for the Judicial Conference to take jurisdiction of his complaint.

16. Indeed, it is only reasonable to assume that Congress did not want to see its Act eviscerated by the failure to investigate of all those to whom it entrusted its application upon considering them capable of self-policing. Consequently, where the chief judge and the judicial council have failed to discharge their duty to investigate a complaint as a prerequisite to disposing of it, Congress would expect at least the Judicial Conference to rise to its self-policing duty by taking

the opportunity of a petition by a complainant aggrieved by such failure and investigate the judge and the acts complained about.

17. This expectation is particularly reasonable with respect to the instant complaint because its gravamen is not only that one judge misconducted himself in his dealings with one litigant – which in any event should constitute enough ground for the Judicial Conference to take jurisdiction and investigate the complaint-. It is also that the available evidence shows that the judge is participating with others in a bankruptcy fraud scheme motivated by the most powerful driver of wrongdoing: money! Hence, Congress would expect the purpose of the Act to be pursued in the final instance by the Judicial Conference especially where the aggrieved complainant stands for the general public that can reasonably be deemed aggrieved by widespread judicial and extra-judicial misconduct that undermines the integrity of the process of law and the bankruptcy system. (E-128I-II)

18. Such stakes are large enough to justify the Judicial Conference in taking jurisdiction and conducting an investigation where none has been conducted. To do so it is entitled to give §357 an expansive interpretation, for the alternative to doing so is for the Judicial Conference to join the chief judge and the judicial council in their failure to discharge their duty to give effect to the Misconduct Act. That cannot be what Congress intended. Whatever different interpretation was given to §357 in the past was wrong, as shown by the fact that "the practical tendency" of dismissing complaints without investigation has been to insulate peer judges from responsibility for their misconduct to the detriment of complainants. That constitutes a breach per se of the duty to "administer justice without respect to persons". The need to appoint the Breyer Commit-tee is confirmation that such dismissals are tendentious and contrary to the Act"s purpose.

19. The defeat so far of the Act"s purpose warrants that now §357 be interpreted differently, if need be. The reinterpretation can be justified by the principle illustrated by Justice Breyer when he stated in the context of the Fourteenth Amendment that it "uses the word "reasonable," -- a word that permits different results in different circumstances"[4]. Likewise, terms such as "aggrieved" and "action" in §357 can be given a different construction so that the Judicial Conference may breathe life into the dead letter of the Act in order to achieve its Congressional purpose: to ascertain misconduct and enforce discipline for the protection of the complainant and the public"s confidence in the judiciary.

20. Just as in *Brown v. Board of Education*, "the Court began to enforce a law that strives to treat every

citizen with equal respect", as Justice Breyer stated in a speech[5], the Judicial Conference can take jurisdiction of this petition to send a clear message that instead of systematically giving peer judges the benefit of the doubt, thus holding in practice that a judge can do no harm, it will „do equal right by judges and any other person", cf. §453, because in practice judges are just as susceptible to human frailties as anybody else. Hence, they will not be spared investigation when the evidence reasonably expected from and submitted by a complainant casts suspicion of their having engaged in wrongdoing.

21. The instant complaints contain enough evidence to cast reasonable suspicion over Judge Ninfo and other court officers and parties of having engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing as part of a bankruptcy fraud scheme. Therefore, they should have investigated. Chief Judge Walker should have done so „promptly and expeditiously". Despite his failure to do so, the Judicial Council too failed to investigate both and left Dr. Cordero to suffer more abuse and bias. How could the Complainant not be aggrieved by their actions and the Judicial Conference not have the duty to step in to investigate?

## III. STATEMENT OF FACTS

### A. The categories of evidence that raise reasonable suspicion of wrongdoing that should be investigated

22. The evidence of judicial misconduct linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been attached as exhibits, though all others referred to therein are available on request. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to pursue that evidence to collect more and evaluate it under the standard of the preponderance of the evidence applied by the Judicial Conference, as it stated in its misconduct Memorandum and Order No. 98-372-001, at 18. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, a trustee sued for negligence and recklessness who had before him some 3,000 cases! –how many do you have?-; an already defaulted bankrupt defendant against whom

an application for default judgment was brought; parties who have disobeyed his orders, even those that they sought or agreed to; and debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

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

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

### 1) Judge Ninfo and others have protected parties from incriminating discovery and trial

23. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (E-1) in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY dkt. no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

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

**a)** Indeed, the statistics on PACER as of November 3, 2003[6,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[7] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

25. Could you handle competently such an overwhelming number of cases, increasing at the rate of

1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee‟s motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon‟s negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3:B-E; E-86:II).

26. Judge Ninfo denied Dr. Cordero‟s timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY dkt. no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero‟s property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero‟s complaint. In his denial of Dr. Cordero‟s application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Mr. Pfuntner!

    **a)** Judge Ninfo would not compel Mr. Palmer to answer Dr. Cordero‟s claims even though his address is known and he submitted himself to the court‟s jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4:C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4:C-D).

27. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero‟s expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet,

for months Mr. Pfuntner had shown contempt for Judge Ninfo‟s first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5:E; E-90:III)

28. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

### 2) The DeLano Debtors have engaged in bankruptcy fraud

29. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; docket no. 04-20280, WBNY (E-153). The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

**a)** Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

**b)** The DeLanos incurred scores of thousands of dollars in credit card debt;

**c)** carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

**d)** during which they were late in their monthly payments at least 232 times documented by

even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

**e)** have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

**f)** owe also a mortgage of $77,084;

**g)** but have near the end of their work lives equity in their house of only $21,415;

**h)** however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

**i)** yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

**j)** the rest of their tangible personal property is just two cars worth a total of $6,500;

**k)** their cash in hand or on account declared in their petition was only $535;

**l)** but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

**m)** claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

**n)** but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-185);

**o)** refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65:III).

30. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64:II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underre-porting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64:III) opposing Trustee Reiber"s motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero"s claim. (E-73; E-117:B) How extraordinary! given that:

**a)** The DeLanos had treated Dr. Cordero as a creditor for six months;

**b)** They were the ones who listed Dr. Cordero"s claim in Schedule F…for good reason because

**c)** Mr. DeLano has known of that claim against him since November 21, 200*2,* when Dr. Cordero brought him into the Pfuntner case as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115:A)

31. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano"s other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33:II)

32. An impartial observer could reasonably realize that the DeLanos‟ motion to disallow Dr. Cordero‟s claim is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; E-185) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos‟ attorney, Christopher Werner, Esq., to issue Dr. Cordero‟s document production order requested on July 9 (E-69:¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92:IV), he refused to even docket it (E-80; E-84:I; 90:III) and only issued a watered down version of Dr. Cordero‟s proposed order on July 26 (E-76; E-81) that he then allowed the DeLanos to disobey! If not for leverage, what was it issued for?

33. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero‟s claim has been determined, *including all appeals*. (E-107; E-121:III) That could take years! during which the other 20 creditors are prejudiced because they cannot begin to receive payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interest of creditors and the public so as to protect the DeLanos needs to be investigated.

34. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor‟s repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos‟ case go forward concurrently with the determination of their motion to disallow Dr. Cordero‟s claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121:III-IV) The stakes must be very high indeed!…and all the trustees know it.

### 3) Trustee Reiber and Att. James Weidman have violated bankruptcy law

35. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-149). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[8] *open* cases! He cannot be all the time where he should be. This raises questions:

36. Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? (E-68:V) They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors‟ compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamp petitions? Something is not right here.

37. Actually, nothing is right. Thus, at the March 8 meeting of creditors, Trustee Reiber‟s attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman‟s decision, vouched for the DeLanos‟ honesty, and stated that their petition had been submitted in good faith. (E-40-41)

38. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65:III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64-II) and perfunctorily (E-65:III).

39. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out

of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66:IV)

40. Trustee Reiber has refused to hold an adjourned meeting of creditors. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos‟ motion to disallow Dr. Cordero‟s claim has been finally determined. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo.

41. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos‟ petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini (E-71:¶32; E-93:III), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate and all have countenanced his failure to investigate needs to be investigated.

## B. How a bankruptcy fraud scheme works

42. The above-described few elements of the evidence, when reviewed as a „totality of circumstances‟ instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

43. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is

particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender‟s resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

44. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

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

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

47. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of “the actual, necessary expenses incurred”, §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let‟s say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along

with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

48. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:
    **a)** Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;
    **b)** got the DeLanos‟ petition ready for confirmation by the court without ever requesting a single supporting document;
    **c)** chose to dismiss the case rather than subpoena the documents requested but not produced;
    **d)** has refused to trace the substantial earnings of the DeLanos‟; and
    **e)** after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.

49. Moreover, there is something fundamentally suspicious when:
    **a)** a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for $291,470;
    **b)** allows the local parties to disobey his orders with impunity;
    **c)** before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero‟s claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud (E-121:IV); and
    **d)** yet shields them from discovery by suspending all further process until their motion to disallow is finally determined.

50. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That warrants an investigation.

51. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building or live in the same small community in Rochester or Buffalo, NY. (E-135-147) They too may fear the consequences of admitting that right under

their noses such a scheme developed. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation…starting by subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

## IV. The actions by the Chief Judge and the Judicial Council

52. The Judicial Council limited itself to responding to Dr. Cordero"s petitions (E-23; E-47) with forms dated September 30 (E-37) and November 10 (E-55) that carry the boilerplate DENIED for the reasons stated in the order dated June 8 (E-11) and September 24, 2004 (E-45). By so doing, not only did it fail to give even the appearance that justice was being done, but it also did not provide any reasons for its action that could be discussed here.

53. As for the dismissals, both by Acting Chief Judge Jacobs, whereby the Chief Judge was insulated from §359 restrictions (E-24-25) although he recused himself (E-127), his reasons are discussed in the petitions of July 13 (E-23) and October 4 (E-47). However, to the discussion of his reason that Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling (E-13), it is pertinent to add the following passage from a Judicial Conference memorandum:

> Although a judge indeed may not be sanctioned out of disagreement with the merits of rulings, a judge certainly may be sanctioned for a consistent pattern of abuse of lawyers appearing before him. The fact that that abuse is largely evidenced by the judge's rulings, statements, and conduct on the bench does not shield the abuse from investigation under the Act. To the contrary, allegations that the judge has been habitually abusive to counsel and others may be proven by evidence of conduct on the bench, including particular orders or rulings, that appears to constitute such abuse.[at 15]…The sanctions are not based upon the legal merits of the judge's orders and rulings on the bench, but on the pattern of conduct that is evidenced by those orders and rulings.…If a judge's behavior on the bench, including directives to counsel and litigants, were wholly beyond the reach of the Act, the Act would be gutted. at 16, In re: Complaints of Judicial Misconduct or Disability, No. 98-372-00.

54. Judge Jacobs also wrote that Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…(E-13). Dr. Cordero rebutted that other court officers, trustees, attorneys, and judges that work for or with Judge Ninfo or appear before him in that small federal building in Rochester (E-86:II), and all the more so if they also participate in the bankruptcy fraud scheme, have followed his example of disregard for legality and bias against Dr. Cordero (E-25). The common sense likelihood that others joined in and compounded judicial misconduct is

implicit in the following passage from another memorandum of the Judicial Conference:

> While the identity of the complainant will necessarily become known to the judge complained against, a complainant may also fear retaliation from the judge's judicial colleagues, former law clerks, and other associates, as well as other adverse consequences, such as acquiring a reputation as a malcontent; at 8 in No. 94-372-001.

55. Copies of these memoranda had to be obtained from the Administrative Office of the U.S. Courts. The Judicial Conference should know this because, by contrast, the Chief Judge of the Court of Appeals for the Second Circuit impaired Dr. Cordero‟s preparation of his petition to the Circuit‟s Judicial Council by making it impossible to consult precedent constituted by orders and supporting memoranda of Second Circuit chief judges and the Judicial Council disposing of other complaints. (E-15, E-19) Although Rule 17(b) of the Circuit‟s Complaint Rules provides that such materials and dissenting opinions, statements, and the docket-sheet record thereof "will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals" (E-18), the Chief Judge kept them, except those for the last three years, not in the clerk‟s office, not stored elsewhere in the Court‟s building, not stored in any annex to the building, not stored in any building in the City of New York, not even stored in the State of New York, or in any other state of the Circuit, but rather shipped them away to the State of Missouri to be kept in the vaults of the National Archives! And there was no docket-sheet record at all. (E-20)

56. Moreover, if while reading the few materials available at the Court you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

57. One thing is sure: Chief Judge Walker creates an institutional climate of disrespect for the law when he shows contempt for the Misconduct Act and his own Circuit‟s Rules and 1) fails to make and keep complaint materials publicly available, 2) fails to deal with complaints „promptly and expeditiously‟, 3) arbitrarily refuses updates to complaints, 4) fails to investigate complaints, 5) fails to safeguard the "business of the courts" of dispensing justice, 6) fails to discipline biased judges who abuse parties, 7) fails to protect complainants and indifferently lets them continue suffering enormous waste of effort, time, and money (E-90:III) and tremendous emotional distress (E-43) due to his peers‟ misconduct. Can a complainant be "aggrieved" when

he makes the Circuit"s Judicial Council aware of this situation, but it takes no action other than to rubberstamp **DENIED** on his plea for relief? Will the Judicial Conference tolerate self-policing by the judiciary that degenerates into arrogant self-immunity and disregard for duty? (E-128-II)

## V. Relief requested

58. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

**a)** construe 28 U.S.C. §357(a) so as to grant this petition for review;

**b)** investigate the complained-about judicial misconduct and its link to a bankruptcy fraud scheme;

**c)** include in the investigation the following cases:

1) Mr. Palmer"s Premier Van Lines, Chp. 7 bankruptcy case, dkt. no. 01-20692, WBNY;

2) Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY; adversary proceeding appealed in:

i. Cordero v. Gordon, dkt. no. 03-CV-6021, W***D***NY and

ii. Cordero v. Palmer, dkt. no. 03-MBK-6001, District Judge David Larimer presiding;

3) Premier Van Lines, dkt. no. 03-5023, in the Court of Appeals for the Second Circuit; and

4) In re David and Mary Ann DeLano, Chp. 11 bankruptcy case, dkt. no. 04-20280, WBNY;

**d)** appoint investigators from outside the Rochester and Buffalo area, who are unacquainted with those that may be investigated and who can investigate zealously, efficiently, and exhaustively regardless of who is participating in wrongdoing or just looking the other way;

**e)** make a simultaneous report to the Acting U.S. Attorney General, such as under 18 U.S.C. §3057(a), and request that the Department of Justice join its investigation and also appoint investigators from outside the DoJ and FBI offices in Rochester and Buffalo (E-135-147);

**f)** take a position on whether:

1) the appearance of impartiality on the part of Judge Ninfo and District Judge Larimer (E-4:D) no longer obtains so that they should be disqualified from the cases in c) above; and

2) the three cases assigned to Judge Ninfo –c)1), 2) and 4) above- and the appeals therefrom assigned to Judge Larimer –c)2)i) and ii)- should be removed in the interest of justice under 28 U.S.C. §1412 to an impartial court for trial by jury, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;

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

Respectfully submitted, under penalty of perjury,

on November 18, 2004

59 Crescent Street
Brooklyn, NY 11208

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

[1] News Advisory released on May 26, 2004; www.house.gov/judiciary; Contact: Jeff Lungren/Terry Shawn, 202-225-2492.

[2] http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html; For Further Information Contact: Public Information Office of the U.S. Supreme Court at 202-479-3211.

[3] "Our Democratic Constitution", Stephen Breyer, Associate Justice, Supreme Court of the United States, The Fall 2001 James Madison Lecture, New York University Law School, New York, New York, October 22, 2001; http://www.supremecourtus.gov/publicinfo/speeches/sp_10-22-01.html.

[4] Associate Justice Stephen G. Breyer, "Liberty, Security, and the Courts", Association of the Bar of the City of New York, New York, New York, April 14, 2003; http://www.supremecourtus.gov/publicinfo/speeches/sp_04-15-03.html.

[5] "*Brown*: One Constitution.....One People.....One Nation", Stephen Breyer, Associate Justice, Supreme Court of the United States, 50th Anniversary of *Brown v. Board of Education,* Topeka, Kansas, May 17, 2004; http://www.supremecourtus.gov/publicinfo/speeches/sp_05-17-04b.html.

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

[7] Id.

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

# KEY DOCUMENTS AND DATES IN THE PROCEDURAL HISTORY

of the judicial misconduct complaints filed with
the Chief Judge and the Judicial Council of the Second Circuit
docket nos. 03-8547 and 04-8510
submitted in support of a petition for review to
**the Judicial Conference of the United States**
by Dr. Richard Cordero

Judicial misconduct complaint about WBNY Bankruptcy **Judge** John C. **Ninfo**, II, docket no. 03-8547

| **Judicial misconduct complaint** | | | | **Petition for review** | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Submission | Resubmission | Acknow-ledgment | Dismissal | Submission | Resubmission | Acknow-ledgment | Letter to Jud. Council | Update to Jud. Council | Denial |
| August 11, 03 | August 27, 03 | Septem. 2, 03 | June 8, 04 | July 8, 04 | July 13, 04 | July 16, 04 | July 30, 04 | August 27, 04 | Septem. 30, 04 |
| - | 1 | - | 10 & 11 | - | 23 | 28 | 29 | 31 | 36 &37 |
| page numbers of documents included among the exhibits | | | | | | | | | |

Judicial misconduct complaint about CA2 **Chief Judge** John M. **Walker**, Jr., docket no. 04-8510

| **Judicial misconduct complaint** | | | | **Petition for review** | | | | |
|---|---|---|---|---|---|---|---|---|
| Submission | Resubmission | Acknow-ledgment | Dismissal | Submission | Acknow-ledgment | Exhibits to Jud. Council | Rejection of exhibits | Denial |
| March 19, 04 | March 29, 04 | March 30, 04 | Sept. 24, 04 | October 4, 04 | October 7, 04 | October 14, 04 | October 20, 04 | November 10, 04 |
| 39 | - | - | 44 & 45 | 47 | - | 52 | 53 | 54 & 55 |
| page numbers of documents included among the exhibits | | | | | | | | |

# TABLE OF EXHIBITS

submitted to

**the Judicial Conference of the United States**

in support of a
petition for review of the actions of
the Judicial Council of the Second Circuit
concerning judicial misconduct complaints
docket nos. 03-8547 and 04-8510
by Dr. Richard Cordero


**I. Complaint About WBNY Judge J.C. Ninfo, CA2 docket no. 03-8547 ..... ii**

**II. Complaint About CA2 Chief Judge J.M. Walker, Jr., docket no. 04-8510 ..... iv**

**III. Descriptive and Evidentiary Documents Supporting Both Complaints and Pointing to a Judicial Misconduct and Bankruptcy Fraud Scheme ..... iv**

**IV. Basis for Requesting that the Investigators Be Appointed From Outside the Buffalo or Rochester Offices ..... vi**

**V. The DeLanos' Bankruptcy Petition ..... vi**


Exhibits=E

## I. Complaint about WBNY Judge J.C. Ninfo, CA2 docket no. 03-8547


1. Dr. Richard **Cordero**'s judicial misconduct **complaint about** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on **August 11**, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit ..... 1

2. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence ..... 7

3. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made ..... 9

4. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** about Judge **Ninfo** ..... 10

5. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** about Judge **Ninfo**, CA2 docket no. 03-8547 ..... 11

6. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review ..... 15

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8. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints ..... 19

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August 11, 2003

# STATEMENT OF FACTS

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York

## I. The court's failure to move the case along its procedural stages

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, Pfuntner v. Trustee Kenneth Gordon, et al., dkt. no. 02-2230, which derived from bankruptcy case In re Premier Van Lines, Inc., dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29[1])and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as December 26, 2002, and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2, 2003. At those hearings Dr. Cordero will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

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[1] This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#. [Not included here, but available upon request.]

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13th month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23, 2003, hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

## II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case

### A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that

he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-48, 49; 109, ftnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

**B. The Court Reporter tries to avoid submitting the transcript of the hearing**

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

### C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

### D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

### E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

### F. Court officers have disregarded even their obligations toward the Court of Appeals

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

## III. The issues presented

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

Whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on
August 11, 2003, and, after being reformatted, on August 27, 2003

Dr. Richard Cordero

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February 2, 2004

Hon. John M. Walker, Jr.
Chief Judge
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Judicial conduct complaint 03-8547

Dear Chief Judge,

In August 2003, I filed a judicial conduct complaint under 28 U.S.C. §§372 and 351 concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York. Your Clerk of Court, Ms. Roseann B. MacKechnie, through her Deputy, Ms. Patricia Chin-Allen, acknowledged the filing of it by letter of September 2, 2003. To date I have not been notified of any decision that you may have taken in this matter.

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

Indeed, this follows from the provisions of the law itself. Thus, 28 U.S.C. 372(c)(1) provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge shall transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall **promptly**- (A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added).

Despite these provisions in law and rules requiring prompt and expeditious action, this is the seventh month since the filing of my complaint but no notice of any action taken has been given to me or perhaps not action has been taken at all. Therefore, with all due respect I request that you let me know whether any action has been taken concerning my complaint and, if so, which, in order that I may proceed according to the pertinent legal provisions.

In the context of the misconduct complained about, I hereby update the evidence thereof through incorporation by reference of my brief of November 3, 2003, case 03-5023 [www.ca2.uscourts.gov], supplementing the evidence of bias against me on the part of Judge Ninfo. This Court granted leave to file this brief by order of November 13, 2004.

Similarly, in that complaint I submitted that the special committee should investigate whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to my detriment, the only non-local pro se party. To buttress the need for that investigation, I point out that since December 10, 2003, I have requested from the clerk's office of Judge Ninfo's court copies of key financial and payment documents relating Premier Van Lines, which must exist since they concern the accounts of the debtor and the payment of fees out of estate funds and are mentioned in entries of docket no. 01-20692. Yet, till this day the clerk has not found them and has certainly not made them available to me.

1. The court order authorizing payment of fees to Trustee Kenneth Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72.
2. The court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97.
3. The financial statements concerning Premier prepared by Bonadio & Co., accountants, for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16.
4. The statement of M&T Bank of the proceeds of its auction of assets of Premier's estate on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89.
5. The information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70.
6. The Final report and account referred to in entry no. 67 and ordered to be filed in entry no. 62.

A court that cannot account for the way it handles money to compensate its appointees and make key decisions concerning the estate calls for an investigation guided by the principle of "follow the money" in order to determine whether it "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts".

Sincerely,

Dr. Richard Cordero

Cc: Letter of acknowledgment from Clerks MacKechnie and Chin-Allen; and order granting the motion to update evidence of bias.

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

**JOHN M. WALKER, JR.**
**CHIEF JUDGE**

**ROSEANN B. MACKECHNIE**
**CLERK OF COURT**

February 4, 2004

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

Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your letter, with attachments, dated February 2, 2004, addressed to Chief Judge John M. Walker, Jr.

I am returning your documents to you. A decision has not been made in the above-reference matter. You will be notified by letter when a decision has been made.

Sincerely,
Roseann B. MacKechnie, Clerk

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

Enclosures

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

June 8, 2004

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Judicial Conduct Complaint, Docket No. 03-8547

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed June 8, 2004, dismissing your judicial conduct complaint.

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

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

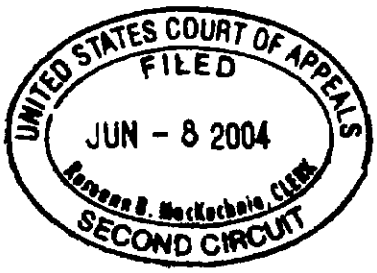
The petition for review must be received in the Clerk's Office **no later than July 9, 2004.**

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

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

ORIGINAL

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT




----------X

In re:
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 03-8547

----------X

**Dennis Jacobs, Acting Chief Judge:**

On August 28, 2003, Complainant filed a complaint with the Clerk's Office of the U.S. Court of Appeals for the Second Circuit, pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 351 (formerly § 372(c)) (the "Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a Bankruptcy Court Judge (the "Judge") of this Circuit with misconduct.

**Background**

A review of the docket sheet in this case indicates that in September 2002, Complainant, in addition to several others, was named as a defendant in an adversary proceeding in Bankruptcy Court. After his cross-claims against the trustee were dismissed in December 2002, Complainant filed a motion for default judgment as well as a notice of appeal. In February 2003, the Bankruptcy Court denied a motion for an extension of time to file the notice of appeal, and in March 2003, the District Court granted a motion by the trustee to dismiss the appeal. Since that time, Complainant has filed numerous motions, including a motion for reconsideration, a renewed motion for default judgment,

a motion for sanctions, and a motion to recuse. The motion for reconsideration was denied, and it appears from the docket sheet that hearings were scheduled on the other motions. One was conducted in October 2003, after which Complainant's motion for recusal was denied. In addition, the Second Circuit recently denied Complainant's related mandamus petition.

**Allegations**

The Statement of Facts recites that the Judge "fail[ed] to move the case along its procedural stages." Specifically, Complainant alleges that the Judge failed to hold conferences, issue orders, schedule discovery, rule on motions, "impose[] consequences on a [defaulted] party;" and that the Judge took no action on Complainant's request that the judge review the trustee's performance and fitness to serve. Complainant also alleges that the Judge dismissed his cross-claims "with no regard to the legitimate questions of material fact regarding the [t]rustee's negligence and recklessness[.] Indeed, [the Judge] even excused [the trustee's] defamatory and false statements . . . thus condoning the [t]rustee's use of falsehood and showing gross indifference to its injurious effect on [Complainant]." He also asserts that the Judge has exhibited "bias and prejudice against" him and that the Judge allowed the other parties "to violate two discovery orders and submit disingenuous and false statements while charging [Complainant] with burdensome obligations." He adds that the District Court Judge, who is not named on the complaint form, "totally disregarded the fact that the damages have nothing to do with a Rule 55 application for default judgment where liability is predicated on defendant's failure to appear."

The Statement of Facts further alleges that: the Trustee's performance was "negligent and reckless; the court reporter "tried to avoid submitting the transcript"; the "Clerk of Court and Case

Administrator disregarded their obligations in handling [Complainant's] application for default judgment"; and that the court officers made efforts to "derail" Complainant's appeals "to the detriment of [his] legal rights."

**Disposition**

Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." *See* Local Rules 1(b) and 4(c)(1).

Complainant's statements concerning the treatment of motions, the handling of scheduling matters, and various rulings amount to a challenge to the merits of a decision or a procedural ruling. However, "[t]he complaint procedure is not intended to provide a means of obtaining a review of a judge's or magistrate's decision or ruling in a case. The judicial council of this circuit . . . does not have the power to change a decision or ruling. Only a court can do that." Local Rule 1(e); *see* Local Rule 1(b) (the Act does not cover "wrong decisions - even very wrong decisions - in the course of hearings, trials or appeals"). Allegations relating to the merits of the case must be pursued through normal appellate procedures. Similarly, a judicial misconduct complaint may not be used to force the Bankruptcy Judge to rule on Complainant's motions or other aspects of the case. *See* Local Rule 1(e).

Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Local Rule 4(c)(3).

Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges of the United States courts of appeals, district courts, and bankruptcy courts, as well as

United States magistrate judges. *See* Local Rule 1(c).

For the reasons stated above, the complaint is dismissed. The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

DENNIS JACOBS
Acting Chief Judge

Signed: New York, New York
June 8, 2004

# Dr. Richard Cordero

**Ph.D., University of Cambridge, England**
**M.B.A., University of Michigan Business School**
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**59 Crescent Street**
**Brooklyn, NY 11208-1515**
**tel. (718) 827-9521; CorderoRic@yahoo.com**


June 19, 2004

Hon. John M. Walker, Jr.
Chief Judge of the U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re request for complaint orders & materials required to be publicly available

Dear Mr. Chief Judge,

Last Wednesday, June 16, I went to the Take-in Room 1803 of the Court and requested of the head of that Room, Ms. Harris, to see the judicial misconduct orders and supporting memoranda. Ms. Harris did not know what I was talking about so I showed her the printed set of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers and drew her attention to Rule 17(a) and (b). After searching for them, Ms. Harris could not produce them. Those orders have not been made available to me yet although they are supposed to be made publicly available by this Court.

Indeed, on that occasion Ms. Harris told me that she would have to find out when I could see them and would call me the following morning to let me know. At that time I wrote down my name, phone number, and Rules that I was invoking. I pointed out to Ms. Harris that I also wanted to find out whether I could get access to the reports provided for under Rule 4(g). Ms. Harris failed to call me on Thursday morning and when I called her in the afternoon she still had not asked. She told me that she would ask and call me within the hour to let me know. She failed to do so too. When I called her again she said that she had been told that the orders had to be examined to determine whether they complied with the requirement concerning the disclosure of the name of the complainant and the complained-about judge. I told her that her statement was wrong since the determination of whether to disclose those names is made before the orders are requested by a member of the public, not upon his request; otherwise, the orders are not in fact been made publicly available, as required. Ms. Harris would not give me the name of the person who gave her that statement, but transferred me to Mr. Fernando Galindo.

Mr. Galindo said that he would find out what orders could be made available to me and call me the next morning. I brought to his attention that I am working to a filing deadline imposed by this Court and need to have access to those orders without further delay. Yet, Mr. Galindo failed to call me on Friday morning. When I called him in the afternoon, he said that he had talked to his Clerk of Court and had been told that the orders had to be submitted to you to determine which complied with the name disclosure requirement and could be made available to me. For the reasons that I had already explained to him on Thursday, I told Mr. Galindo that his statement was wrong, that the Court was not in compliance with its own Governing Rules, and was making me waste time that I need to prepare to meet the deadline.

Therefore, I respectfully request that:

1. pursuant to Rule 17(a), the "the docket-sheet record of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council" be made available to me;
2. it be determined whether I can obtain access to the reports under Rule 4(g); and
3. the deadline of July 9, for me to file a petition for review of the Order, filed June 8, 2004, dismissing my judicial conduct complaint, docket no. 03-8547, be extended by the same number of days from June 16 to the day of your mailing your reply, plus an additional three days, cf. FRAP 26(c).

Sincerely,

Dr. Richard Cordero

# RULES OF THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT GOVERNING COMPLAINTS AGAINST JUDICIAL OFFICERS UNDER 28 U.S.C. § 351 et. seq.

## Preface to the Rules

Section 351 et. seq. of Title 28 of the United States Code provides a way for any person to complain about a federal judge or magistrate judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see Rule 18(c).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under § 351. The chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in any of these ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of the chief judge and six other judges of the court of appeals and the chief judge of each of the district courts within the Second Circuit.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

## Chapter I: Filing a Complaint

### RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

**(a) The Purpose of the Procedure.** The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges or magistrate judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties.

referred to in documents made public pursuant to rule 17.

## RULE 17. PUBLIC AVAILABILITY OF DECISIONS

**(a) General Rule.** A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee or of it is disposed of by council order dismissing the complaint for reasons other than mootness, or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge or magistrate judge complained about without such judge's consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate judge will be disclosed.

(4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate judge is to be disclosed.

(5) The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) **Manner of Making Public.** The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at the United States Courthouse, Foley Square, New York, New York 10007. The clerk will send copies of the publicly available materials to the Administrative Office of the United States Courts, Office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) **Decisions of Judicial Conference Standing Committee.** To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.

(d) **Special Rule for Decisions of Judicial Council.** When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) **Complaints Referred to the Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

## RULE 18. DISQUALIFICATION

(a) **Complainant.** If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. If the complaint is filed by a judge, or identified by the chief judge pursuant to 28 U.S.C. § 351(a), that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

# Dr. Richard Cordero

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**M.B.A., University of Michigan Business School**
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**59 Crescent Street**
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**tel. (718) 827-9521; CorderoRic@yahoo.com**


June 30, 2004

Hon. John M. Walker, Jr.
Chief Judge of the U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re CA2 violation of Rule requiring public availability of complaint orders

Dear Mr. Chief Judge,

Since June 16, I have requested that the judicial misconduct orders and related material that are required to be made publicly available under Rule 17(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers be made available to me. I even put in writing my request to you in my letter of June 19, 2004, a copy of which is attached hereto. Therein I brought to your attention, among other things, that my judicial conduct complaint, docket no. 03-8547, was dismissed by an Order, filed June 8, 2004, and that the deadline for me to file a petition for review is July 9. I have not yet received your answer to my letter. Thus, since sending that letter and for the purpose of finding out whether your answer had been sent and, if not, when it would be, I placed calls that went unanswered to Chief Deputy of the Clerk of Court Fernando Galindo, to whom my initial request was transferred from the In-take Room 1803 where the orders and related materials should have been publicly available.

Finally, on June 29, Mr. Galindo called me to let me know that the orders would be available to me on June 30. During the conversation and in response to my questions elicited by the implications of Mr. Galindo‟s statements, it came out that the orders are not being made available, except for the marginal fraction of those issued in the current and previous two years out of those that have been issued since the enactment of the Judicial Conduct and Disability Act of 1980. When I inquired about where I could consult the others, Mr. Galindo let me know, for the first time too, that I would have to request in writing that they be retrieved from storage and to that end, pay a fee of $35. Actually, when I went to the In-take Room of the Court on June 30 and inquired about retrieving the stored bulk of those orders, the Head of that Room, Mrs. Harris, let me know that it would cost $45 to retrieve them and it would take at least 10 days. But my deadline is July 9! So I asked to speak with Chief Deputy Galindo.

Through the Chief Deputy‟s explanation of why it would take so long to obtain access to those orders, it came out that the "publicly available" orders are not stored in the Court‟s building, they are not stored in any annex to the building, they are not stored in any building in the City of New York, they are not even stored in the State of New York, for they are stored in the state of Missouri, in the National Archives! This is a clear violation of Rule 17(b), which provides thus:

> Rule 17(b) The records referred to in paragraph (a) will be made public by placing them in a **publicly accessible file** in the office of the clerk of the court of appeals at the **United States Courthouse, Foley Square, New York, New York 10007**. The clerk will send copies of the publicly available materials to the **Administrative Office of the United States Courts, office of the General Counsel, Thurgood Marshall**

> **Federal Judiciary Building, One Columbus Circle, N.E. Washington, DC 20544**, where such materials will also be *available for public inspection.* In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published. (emphasis added)

The specificity of those addresses as the places where those records will be maintained in a file and the clearly stated purpose for keeping them there raise the reasonable expectation that if a person goes to either of those addresses and asks to consult those records, they will then and there "be available for public inspection"…not pursuant to a written request, after payment of a $45 fee, and at least 10 days later or whenever it is that they arrive from Missouri. The unambiguous language used in Rule 17(b) shows that the Judicial Council intended for those records to be kept on site and available upon demand as materials of current interest. That language is incompatible with considering such records as only of historical value to be preserved in an archive. It must be reasonably presumed that the Judicial Council was aware that our legal system is based on precedent and that those records would be used, among other purposes, to prepare petitions for review that comply with its own requirements in Rule 6(a), where the Council provided that:

> A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

Chief Deputy Galindo tried to explain the archiving of the orders in Missouri by saying that there is no space in the Court"s building to keep them there. To begin with, the Rules of the Judicial Council establish a procedural right for the benefit of the public. The Court cannot abridge that right on the by comparison irrelevant administrative consideration of space. This is particularly so given that those records are not publicly available elsewhere, as opinions are available by subscription to a reporter, and at the public libraries, and through internet access to WestLaw or Lexis.

But even the Chief Deputy"s explanation is factually untenable. Indeed, the marginal fraction of orders made available are kept in three 2" round ring binders. As shown in the attached copy of the OfficeDepot catalog page that deals with binders, such binders can hold 375 pages. What is more, the same 2" binder with locking rings can hold 540. Yet, the Court uses the round ring binders that have the smallest sheet capacity of the four types available on the market. Worse yet, the Court does not use any of those binder to its full capacity, for the criterion that it uses is rather the year in which the record was made. Not only is that an equally irrelevant storage criterion in light of the intended purpose of making the records publicly available, but it is also an administratively wasteful criterion. As a result, each of those three binders for the years 2002, 2003, and 2004, respectively, was more than three quarters empty. Bottom line is: the Court has not made the reasonable effort, even in application of its irrelevant excuse of lack of space, to use to the fullest the space that it has arbitrarily set aside to "comply", or more factually to avoid complying, with the legal requirement that it made those records publicly available.

But not even the irrelevant criterion of limited filing space can justify why the Court does not make available "A docket-sheet record of orders of…".Chief Deputy Galindo admitted that he could not produce such record. Again, given that there is no digest of such orders, such as the digests prepared for the published opinions and which are invaluable for engaging in legal research, the docket-sheet record is a necessary, if sorely poor, legal research tool.

Likewise, in what I have thus far being able to consult, I have not found any of the "dissenting opinions or separate statements by members of the judicial council", which under Rule 17(a) are to be made publicly available. It is very suspect that judges in three-member panels who regularly write dissenting opinions, when they get together in the larger body of the Judicial Council they write no dissenting opinions or separate statements. By the same token, the nine-member Supreme Court should write no dissenting opinions.

In brief, I am discovering information about the Court"s violation of Rule 17 piecemeal and only because I have kept asking questions. The word violation is used advisedly, for the law recognizes that a man intends the reasonable consequences of his acts. The consequences of the Court"s handling of those orders are that they are not made publicly available and dissuade any person from requesting and consulting them.

I also asked Chief Deputy Galindo whether I would be allowed to bring in a portable photocopier, plug it in, and copy the orders. He said that first I would have to find out whether the Marshals would allow me to bring it in and if they did, he would find out from you. I found out that the Marshals will allow me to bring a portable photocopier into the building if they receive an authorization from you.

Therefore, I respectfully request that:

1. the Court recognize that it has denied public access to the records that it is required to make publicly available under Rule 17;
2. it has made me waste two weeks waiting for such access although it knows that it has not made the records publicly available;
3. it bring at its own expense such orders to the Courthouse on Foley Square and make them publicly available there upon demand and at no charge;
4. make available the docket-sheet record;
5. extend the deadline for me to file my petition for review by two weeks and the additional three days provided under FRAP 26(c) if notice is given to me by letter;
6. it authorize the Marshals to allow me to bring in a portable photocopier;
7. allow me to plug in such photocopier in the review room opposite the counter in the In-take Room 1803 or another room similarly accessible and suitable for the intended purpose;
8. provide an answer before I have done the necessary research and writing to comply with the deadline of July 9;
9. disclose all other bits and pieces of information about its handling of such records so that I am not subject anymore to any more unfair and very upsetting surprises.

Sincerely,

Dr. Richard Conders

# Dr. Richard Cordero

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**M.B.A., University of Michigan Business School**
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July 1, 2004

Mr. Fernando Galindo
Chief Deputy of the Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

As agreed, I went today to the In-take Room 1803 and filed a second letter to Chief Judge Walker concerning both the new obstacles to my accessing all the "publicly available" judicial misconduct orders and my unanswered June 19 letter requesting them. Thanks to you, there was no problem. I guess you must have talked to Mrs. Harris, the head of that Room. When she saw me, she came over and took charge of my filing; she also date-stamped my copy of that second letter. I asked her to let you know that I had brought it, as yesterday you had requested that I put also those concerns in writing to the Chief Judge and I stated to you that I would.

Then, as if enough obstacles to my accessing those orders had not been raised despite the impending date of July 9 for filing my petition of review to the Judicial Council of the dismissal of my misconduct complaint, the following happened. Mrs. Harris asked me whether I was done with the available misconduct orders. I said no and that I wanted to check out the 2003 binder. She told me to fill out a card and give her my I.D. card. It was about quarter past noon when I went with the binder through the entrance of the doorless glass panel, which is parallel to and across from the In-take counter, to the adjoining reading room, where I sat at a table and began to read and take notes. Sometime later a male clerk came in and asked me whether I was waiting for somebody or something similar. I said no. He also told me that there was no sleeping in the room. I realized that I must have been nodding. He went out of the reading room and back to the clerk‟s room behind the counter. I went on reading and taking notes for several hours.

Then somebody called me. I looked to my right and it was Mrs. Harris standing by the other reading table next to mine. She said that I was sleeping and that there was no sleeping in the reading room. I told here that I had not gone there to sleep, but rather that I must have fallen asleep. She replied that I had already been warned and that if I fell asleep again, she would call the marshals. I said nothing and she left. I went on reading and taking notes…in shock!

Mrs. Harris would call the marshals on me because I was nodding in the reading room, thereby treating me as if I were a homeless bum that had gone there just looking for a place where to sleep, though I was reading documents that I had checked out through her! What a disproportionate, heavyhanded, and embarrassing public exercise of raw power! Because I was nodding, she would have the marshals escort me out of the reading room and thus, of the courthouse, for it is reasonable to assume that she would not call them to ask that they bring me a cup of coffee or take me down to their room in the lobby to share their coffee with me. What a humiliating experience that would have been! Would the Chief Judge stop listening to and asking questions during a court session to tell a person who he knew was there waiting to deliver oral argument, and thus, engaged in bona fide business of the court, that he would call the marshals on him because he was nodding?

I was nodding shortly after noon due to, among other understandable reasons, mental fatigue. Indeed, I was trying to concentrate on reading and analyzing the orders despite the many distractions in the reading room, which, by contrast, Mrs. Harris, or the other clerks for that matter, could not escape noticing and yet tolerated, as they do routinely. To begin with, a corner office of the In-take Room shares one side with the reading room, from which it is divided by a wood panel that, like the glass panel to which it is perpendicular, does not reach the ceiling. Just as on many previous occasions on which I have been there, a radio was turned on to popular rock music and could distinctly be heard across and over the panel some ten feet away at the table at which I was reading. Ask yourself what is more offensive: that the clerks keep a radio on in an office where clerks of a court of appeals must carefully pay attention to their processing of documents that affect directly and substantially the life, liberty, and property of members of the public or that a member of the public nods while reading those documents?

Likewise, in the clerks‟ room the clerks were talking business among themselves and with people that came in to file or check out documents and they also bantered among themselves. A female clerk that sits by a window and right outside Mrs. Harris‟ cubicle was talking particularly loud and frequently. The clerks‟ talk and banter could on that occasion, as it can normally, be clearly heard across and over the glass panel, which has no door closing off the reading from the clerks‟ room. What would be a more justifiable housekeeping measure:

1. for Mrs. Harris to instruct her clerks to keep their voices down and limit their banter so that they can concentrate on their important work and not distract readers, or
2. to instruct a clerk or the clerks to keep an eye looking across the glass panel to see if a reader nods, stop what they are doing to go there and tell him not to nod, and keep an eye to see whether he commits nodding again so that they can stop what they are doing and report it to Mrs. Harris, for her to stop what she is doing and go from her cubicle to the reading room to tell the reader that he has already been warned against nodding and next time he nods she will call the marshals, for them to stop their work of protecting federal employees and the public in the building by mainly operating the metal detectors to prevent criminals, particularly terrorists, from bringing in weapons, such as bombs or detonating devices in cellular phones or portable photocopiers, and come up to the 18th floor to take custody of a reader threatening everybody in the reading and clerks‟ rooms with nodding?

Your turn. Would you, Mr. Galindo, or Clerk of Court MacKechnie or Chief Judge Walker want to stand up and defend before the jury Mrs. Harris‟s personnel and resource management and public relations skills as well as her priorities and discretion in exercising power? If not, let me bring to your attention other sources of noise that I was trying to shut off my mind while trying to concentrate on the reading and that contributed to the mental fatigue that made me nod.

To my right were people dropping coins into, and operating, the two console photocopiers some eight feet away from me. Right above me was a noisy utility pipe, which conducts perhaps the air of the roaring air conditioner by the windows; that pipe can be seen because a 2 sq. ft. tile of the covering ceiling is missing. To my left was a young woman some four feet from me by the window keyboarding on a beeping pager.

That she was able to bring it in past the marshals may point to her being an employee. A young man walked in and sat next to her by the row of computers through which other people could access court documents. They began to chat about what they had eaten with their friends and their next activities, just as loudly as if they were in their living room, not a reading room. I

turned around and looked at the young man several times, but he did not get the hint. So I went to the counter and told the male clerk that had first warned me against nodding that this couple was talking loudly and that "It is very distracting." Yet, neither he nor Mrs. Harris came into the reading room to ask them to stop their banter, let alone call the marshals on the young woman to confiscate her pager and interrogate her on how she had gotten it into the building past security.

Could Mrs. Harris‟ nonsensical and discriminatory treatment of people in the reading room be explained by the fact that the day before I had pointed out to her that her statement about the archiving of misconduct orders was not in harmony with Rule 17 of the Rules Governing Misconduct Orders and she rebuked me in public for trying to tell her what the Rules were? When you and I talked subsequently, you admitted that neither you nor the clerks were familiar with those Rules and I brought to your attention Mrs. Harris‟ all the more unjustified rebuke. You said that you would talk to her about it. Was she retaliating against me? To that end, was she inventing a prohibition on nodding, which is not posted anywhere in the reading room? Note that, by contrast, at least 5 types of notices, including one on "No eating or drinking in this area", are posted, some in several copies, throughout the room, thus revealing the relative unimportance of nodding.

I cannot control nodding, specially in such a noisy environment, just as neither you, nor Mrs. MacKechnie, nor Chief Judge Walker can give any assurance that none of you will nod, be it while reading, watching TV, or even doing something as dangerous as driving a car, for nodding is an involuntary physiological state. But I can deliberately not go to that reading room to avoid exposing myself to the humiliating experience and grave consequences of having the marshals lead me away upon Mrs. Harris charging me with the crime of nodding while reading.

Therefore, for my protection and the Court‟s from the poor judgment and excesses of its agents while performing by its appointment and under color of apparent authority, I respectfully request that you give me assurances:

1. that if I go to the reading room to read court documents and it happens that I nod, neither Mrs. Harris nor any other clerk will disturb me, let alone call the marshals on me;
2. that neither Mrs. Harris nor them will rebuke me for any reasonable conduct on my part, such as pointing to a Court rule as support for a procedural right that I invoke;
3. that on the contrary, Mrs. Harris and the other clerks will treat me with the professionalism and courtesy that anybody that goes to that room, including a prudent and polite person like myself, is entitled to, particularly from public servants employed by an institution headed by officers whose function it is precisely to judge people by the standard of the conduct of a reasonable person;
4. that you take notice of the positive aspects of my comments about noise in the reading room and will consider the possibility of taking appropriate remedial action; and
5. I also request that your assurances, though expected to be given timely generally, be given taking particular account of the timeliness required by the Court-imposed deadline of July 9 for me to research, write, print, and file my petition for review.

Sincerely, Dr. Richard Cordero

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

**JOHN M. WALKER, JR.**
**CHIEF JUDGE**

**ROSEANN B. MACKECHNIE**
**CLERK OF COURT**

July 9, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

This letter is to acknowledge receipt of your petition for review.

I am returning your petition for review, unfiled. It is not in the proper form under these rules. Rule 6(b) states the petition for review must be in the form of a letter. Rule 6(e) states "The letter should set forth a brief statement." It has been the long-standing practice of this court to use the authority of Rule 2(b) as a guideline and establish the definition of ***brief*** as applied to the ***statement of grounds for petition*** to five pages. "It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition."

Please resubmit ONLY your petition letter, **by no later than July 24, 2004.** If your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken. Should that be the case, please note that the Rules do not provide for any further relief in this matter.

Sincerely,

Fernando Galindo
Acting Clerk of Court

Enclosures

# Dr. Richard Cordero

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

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


July 8, resubmitted on July 13, 2004

Mr. Fernando Galindo
Acting Clerk of Court
U.S. Court of Appeals, 2nd Circuit
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

I hereby petition the Judicial Council for review of the Chief Judge"s order of June 8, 2004, dismissing my judicial misconduct complaint, docket no. 03-8547 (the Complaint).

**The dismissal of the Complaint was so out of hand that it did not even acknowledge the two issues presented or how a pattern of non-coincidental, intentional, and coordinated wrongful acts by judicial and non-judicial officers is within the scope of 28 U.S.C. §351 et seq. and this Circuit's Rules Governing Judicial Misconduct Complaints (collectively referred to as the Complaint Provisions) and in need of investigation by a special committee**

The dismissal of my complaint is an example of why Supreme Court Chief Justice William Rehnquist appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee and why, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation" (Exhibits-67, 69[1]).

[1] The source for this and every other statement made in this letter is contained in a 125-page bound volume of exhibits. When timely submitted on July 8, it was prefaced by my original 10-page petition letter. Nevertheless, both that letter and the exhibits were returned to me with your letter of July 9 emphasizing that I should "resubmit ONLY your petition letter...[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." Your letter invokes "the authority of Rule 2(b) as a guideline [to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages".

However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) in the context of petition letters, it would have so provided. By not doing so, it indicated that "brief" is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page letter, containing a table of contents, headings, and quotations from §351 et seq., the Rules, and statements by persons to support my arguments and facilitate their reading. Moreover, the July 9 letter is inconsistent in that it applies by analogy to petition letters the Rule 2(b) 5-page limit on complaints but fails to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint.

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the court has failed to give petitioners notice thereof. Yet, this court has had the opportunity to give them notice of its practice in the notification that it is required under Rule 4(f)(1) to give them of the dismissal and their right to appeal; it should have done so in light of the public notice requirement under §358(c). Instead, the court lets petitioners waste their time guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness.

Likewise, "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant". Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed. They should be available to any judicial council member under

Given that such systematic dismissal of complaints regardless of merits has been recognized as a problem so grave as to warrant action by the top officers of the judicial branch, there is little justification for considering seriously the stock allegations for dismissing my Complaint. The latter is just another casualty added to a phenomenon that defies statistical probabilities: While the 2003 Report of the Administrative Office of the U.S. Courts highlights that another record was set with federal appeals filings that grew 6% to 60,847, and civil filings in the U.S. district courts of 252,962 (E-66), the three consecutive reports of the Judicial Conference for March 2004, and September and March 2003 (E-60), astonishingly indicate that, as the latter report put it, the Conference "has not received any petitions for review of judicial council action, …nor are there any petitions for review pending from before that time" (E-59).

It is shocking that the judicial councils would abuse so blatantly their discretion under §352(c) to deny all petitions for review of chief judges" orders, thus barring their way to the Judicial Conference; (E-59; cf. Rule 8(f)(2)). One can justifiably imagine how each circuit makes it a point of honor not to disavow its chief judge and certainly never refer up its dirty laundry to be washed in the Judicial Conference. It is as if the courts of appeals had the power to prevent each and every case from reaching the Supreme Court and abused it systematically. In that event, instead of the Supreme Court reporting 8,255 filings in the 2002 Term –an increase of 4% from the 7,924 in the 2001 Term (E-66)- the Court would be caused to report 0 filings in a term! (E-60-65) Sooner or later the Justices would realize that such appeals system was what the current operation of the judicial misconduct complaints procedure is: a sham!

This is so evident here because Chief Judge Walker has repeatedly violated unambiguous obligations even under his own Circuit"s Rules (E-119). To begin with, the Chief Judge violated his obligation under §352(a) to act "promptly" and "expeditiously" (E-76-77), taking instead 10 months to dispose of the Complaint (E-71) despite the circumstantial and documentary evidence that not even a Rule 4(b) "limited inquiry" was conducted (E-22-24). Secondly, Chief Judge Walker lacked authority under the Complaint Provisions to delegate to Judge Dennis Jacobs, who actually disposed of the Complaint, his obligation under §352(b) and Rule 4(f)(1), to handle such complaints and write reasoned orders to dispose of them. Thirdly, the Chief Judge violated his obligation under Rule 17(a) to make misconduct orders "publicly available", keeping all but those of the last three years, neither in the shelves, nor in a storage room of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, but rather in the National Archives in Missouri! (E-28, 29, 33)

For violating so conspicuously the Complaint Provisions, the Chief Judge has a personal interest: to facilitate the dismissal of the related complaint against him submitted to Judge Jacob by Dr. Cordero on March 19, 2004, dkt. no. 04-8510 (E-22). If under that complaint the Chief Judge were investigated, the severe §359(a) Restrictions on individuals subject of investigation would be applicable and weigh him down even for years until the complaint"s final disposition.

Indeed, if the Complaint, the one about Bankruptcy Judge John C. Ninfo, II, (E-71) were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker too disregarded for 10 months the law imposing on him the promptness obligation, thereby allowing

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Rule 8(c). To that end, I am submitting the exhibits as a separate volume. But if it were to prevent the filing of the petition letter, consider that volume withdrawn, send it back to me, and file the letter, as we agreed on July 12.

the continuation of „a prejudice "to the administration of the business of the courts"" so serious as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, dismissed too without investigation, would have been investigated by a law-abiding officer not biased toward his peers. Similar questions could spin the investigation out of control quite easily.

Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than himself, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed. The fact is that the Complaint was dismissed by another, that is, Judge Jacobs, who likewise has disregarded his obligation to handle "promptly" and "expeditiously" the complaint of March 19, 2004, about his peer, the Chief Judge (E-22).

The appearance of a self-serving motive for dismissing the Complaint arises reasonably from the totality of circumstances. It is also supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Nor can they do so reliably. Their interest in preventing a precedent that one day could be applied to them if they were complained about as well as their loyalties in the context of office politics will induce or even force insiders to close ranks against an „attack" from an outsider. Only independent investigators whose careers cannot be affected for better or for worse by those investigated or their friendly peers can be expected to conduct a reliable investigation.

Instead the constant found in Judge Jacobs" dismissal of the Complaint was the sweeping and conclusory statements found in other dismissals ordered in the last three years (E-57):

1) Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." [Citing a standard and saying that it was not met, without discussing what the requirements for meeting it have been held to be –our legal system is based on precedent, not on „because I say so"- and how the evidence presented failed to meet it, does not turn a foregone conclusion into a reasoned order.]

2) Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling. [This is a particularly inane dismissal cop-out because when complaining about the conduct of judges as such, their misconduct is most likely to be related to and find its way into their decisions. The insightful question to ask is in what way the judge"s misconduct biased his judgment and colored his decision.]

3) Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. [Brilliantly concise legal definition and careful application to the facts of the lazy catch-all term „frivolous"!]

4) Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…

That last statement is much more revealing because it shows that Judge Jacobs did not even know what the issues presented were, namely 1) whether Judge Ninfo summarily dismissed Dr. Cordero"s cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of the Debtor"s Owner, namely, David Palmer; and 2) whether Judge Ninfo

affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of Dr. Cordero, the only non-local and pro se party.

Judge Jacobs failed to recognize the abstract notion of motive and how it could lead Judge Ninfo to take decisions that only apparently had anything to do with legal merits. What is less, he did not even detect, let alone refer to, the concrete and expressly used term "pattern". Had he detected it, he could have understood how acts by non-judges, and thus not normally covered by the Complaint Provisions, could form part of unlawful activity coordinated by a judge, which would definitely constitute misconduct, to put it mildly. But he remained at the superficial level of considering each individual act in isolation and dismissing each singly. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart so that they can be looked at collectively?

Circumstantial evidence is so indisputably admitted in our legal system that cases built on it can cause a person to lose his property, his freedom, and even his life. Such cases look at the totality of circumstances. The Complaint describes those circumstances as a whole. It is supported by a separate volume of documentary evidence consisting of more than 500 pages –referred to as A-#– which was discussed in greater detail in another separate 54 page memorandum that laid out the facts and showed how they formed a pattern of activity. This memorandum is referred to as E-# in the 5-page Complaint, which is only its summary. Just the heft of such evidence and its carefully intertwined presentation would induce an unbiased person –one with no agenda other than to insure the integrity of the courts and to grant the complainant a meaningful hearing– to entertain the idea that the Complaint might be a thoughtful piece of work with substance to it that should be read carefully. Judge Jacobs not only failed to make reference to that material, but he did not even acknowledge its existence. Is it reasonable to assume that he did not waste time browsing it if he only intended to write a quick job, pro-forma dismissal?

The totality of circumstances presented in the Complaint is sufficient to raise reasonable suspicion of wrongdoing. There is no requirement that the complainant, who is a private citizen, not a private investigator, build an airtight criminal case ready for submission by the district attorney to the judge for trial. That is the work that a special committee would begin to do upon its appointment by a chief judge or a judicial council concerned by even the appearance of wrongdoing that undermines public confidence in their circuit‟s judicial system. Unlike the complainant, such committee can conduct a deeper and more extensive investigation because it has the necessary subpoena power.

A more effective investigation can be mounted in cooperation with the FBI through a simultaneous referral to it. Indeed, the FBI has not only subpoena power, but also the required expert manpower and resources to interview and depose large numbers of persons anywhere they may be and cross-relate their statements; engage in forensic accounting and trace bankruptcy debtors‟ assets from where they were to wherever they may have ended up; and flush out and track down evidence of official corruption, such as bribes. What motives could Chief Judge Walker and Judge Jacobs have had to fail to set in motion either investigation given the stakes?

Had they appointed a special committee, it would have found at least the following:

1) Chapter 7 Trustee K. Gordon was referred to Judge Ninfo for a review of his performance and fitness to serve; then sued for failure to realize that storage contracts were income pro-

ducing assets of the estate, which would have allowed him to find Dr. Cordero‟s property lost by the debtor. Disregarding the genuine issues of material fact, the Judge dismissed all claims. Was he protecting a well-known Trustee who had no time to find out anything, for according to Pacer[2], the Trustee has *3,383 cases!*, all but one before Judge Ninfo? (E-126)

2) What is more, Chapter 13 Trustee George Reiber has, again according to Pacer, 3,909 *open* cases! He also cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith. So on what basis does he accept petitions and ready them for confirmation of their plans of debt repayment by Judge Ninfo, before whom he appears time and again?

3) A petition for bankruptcy, dated January 26, 2004, was filed by David and Mary Ann DeLano; (E-82 et seq.). Though internally riddled with red flags as to its good faith (E-79), it was accepted by Trustee Reiber without asking for a single supporting financial document; and was readied for confirmation by Judge Ninfo (E-22-24). This is a test case that will blow up the cover of everything that is wrong in that bankruptcy district.

My Complaint too is a test case whether, as expected, this petition is denied, upon which I will submit it to Justice Breyer‟s Committee; or it is granted and a special committee is appointed. If the latter happens, it is necessary that its investigation appear to be and actually be independent as much as possible. Thus, I respectfully request that:

1) Neither the Chief Judge appoint himself nor Judge Jacobs be appointed to the review panel;

2) The review panel refer the petition to the full membership of the Judicial Council;

3) The Judicial Council itself take the "appropriate action" under Rule 5 of appointing a special committee to investigate and that neither Chief Judge Walker nor Judge Jacobs be members of such committee, but its members be experienced investigators unrelated to the Court of Appeals and the WDNY Bankruptcy and District Courts and be capable of conducting an independent, objective, and zealous investigation;

4) The special committee be charged with conducting an investigation to determine:

   the involvement in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts on the part of judges, administrative staff, debtors as well as both private and U.S. trustees in WDNY and NYC;

   the link between judicial misconduct and a bankruptcy fraud scheme involving the approval for legal and illegal fees of numerous meritless bankruptcy petitions; and

   the participation of district and circuit judges in a systematic effort to suppress misconduct complaints in violation of §351 et seq. and this Circuit‟s Complaint Rules;

5) This matter be simultaneously referred to the FBI for cooperative investigation; and

6) This petition together with the Complaint and the documentary evidence submitted with each be referred to the Judicial Conference of the United States; (cf. Rule 14(a) and (e)(2).

Sincerely,

Dr. Richard Cordero

[2] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

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

**JOHN M. WALKER, JR.**
**CHIEF JUDGE**

**ROSEANN B. MACKECHNIE**
**CLERK OF COURT**

July 16, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

We hereby acknowledge receipt of your revised petition for review, dated February 13, 2004 and received in the Clerk's Office on February 14, 2004.

Your petition for review of the June 8, 2004 Order of the Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351.*

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

Your exhibits volume is returned.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

**Dr. Richard Cordero**

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

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

July 30, 2004

[to the judges of the
Judicial Council of the Second Circuit]

Re: judicial misconduct complaint, docket no. 03-8547

Dear Judge…,

Last July 8, I submitted and on July 13 resubmitted to the Clerk of Court of the Court of Appeals for the Second Circuit a petition for review of the dismissal on June 8 of my complaint, filed on August 11, 2003. In connection with that petition, this letter is a communication properly addressed to you under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq., which provides thus:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

In support of my petition, I submitted bound with it exhibits, which were returned to me unfiled. Upon resubmitting the petition, I submitted the exhibits in a separate bound volume, which was also returned to me unfiled while the petition was accepted. I was not allowed to attach to the petition even the table of exhibits.

There is no provision, whether in the Rules or in §351 et seq., that prohibits the submission of exhibits with a review petition. On the contrary, by analogy to Rule 2(d) allowing the submission of documents as evidence supporting a complaint, they should have been filed. They should also have been accepted in application of the general principle that evidence, such as that contained in exhibits, accompanying a statement of arguments submitted to judges for determination of their legal validity, is not only welcome as a means to lend credence to such arguments, but also required as a way to eliminate a party"s unfounded assertions and allow the judges to ascertain on their own the meaning and weight of the arguments" alleged source of support. The exhibits should also have been accepted so that the clerk of court could make them available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" How can the clerk make documents available if she does not even file them?

In any event, what harm could conceivably result from filing exhibits with a petition for review? Why would the clerk take it upon herself in the absence of any legal or practical justification, to deprive a petitioner of his right to do what he is not prohibited from doing, whether expressly or by implication, and in the process deprive the members of the Judicial Council of what could assist them in performing their duty to assess the merits of a petition?

Therefore, I am hereby communicating to you the table of exhibits so that you may request any or all of them from the clerk of court, to whom I am resubmitting them once more, or from me directly. For context and ease of reference, I am also including a copy of the petition.

Sincerely,

Dr. Richard Cordero

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

**John M. Walker, Jr.**
**Chief Judge**

**Roseann B. MacKechnie**
**Clerk of Court**

August 13, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Your letter, dated July 30, 2004, addressed to Chief Judge John M. Walker, Jr., has been forwarded to this office for response.

Your petition for review of the dismissal of your judicial misconduct complaint in the above-referenced matter is pending before the judicial council. Copies of the documents filed in this matter were forwarded to the council members for their review in accordance with the Rules governing this procedure.

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

Sincerely,
Roseann B. MacKechnie, Clerk

By: _____
Patricia Chin-Allen, Deputy Clerk

**Dr. Richard Cordero**

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

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

August 27, 2004

[to the judges of the
Judicial Council of the Second Circuit]

Update to review petition re complaint about J. Ninfo, dkt. no. 03-8547

Dear Judge…,

Last July 16 my petition was filed (Exh. 1, infra) for review of the dismissal of the above-captioned complaint, filed on August 11, 2003. This is a permissible communication with you[1] that updates it with recent events that raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo and the 3,382 that Trustee Kenneth Gordon likewise has.

This update is compelling because of the strongly suspicious way in which Judge Ninfo has handled the flagrantly bogus petition of David and Mary Ann DeLano, docket no. 04-20280: Mr. DeLano has been for 15 years and still is a bank *loan* officer, that is, he is an insider of the lending industry and an expert in how to assess and maintain his borrowing clients‟ creditworthiness; yet he owes with his wife more than $98,000 on 18 credit cards; in the last three years alone they earned $291,470, yet declared household goods worth only $2,910, and cash totaling merely $535.50. Where is the rest of their earnings during a lifetime of work? (See §I, infra.)

Disregarding the law again, Judge Ninfo has refused to require the DeLanos to produce documents to show the whereabouts of hundreds of thousands of dollars unaccounted for (§I ¶2) Although they listed me as a creditor in their petition of January 26, 2004, and their attorney has treated me as such for 6 months, at the latter‟s instigation Judge Ninfo has now taken steps to remove me as a creditor and has stayed all proceedings in their case (Exh. 2, entry 61), including my request for account statements that could show concealment of assets. To that end, he has required that I prove in this case the claim that I brought against Mr. DeLano in Pfuntner v. Gordon et al, docket no. 02-2230, precisely the case that I appealed to and is in the Court of Appeals and that gave rise to this complaint because, among other things, 11 months after its filing he had failed to comply with FRCivP Rule 26, so that no discovery was ever taken of Mr. DeLano and other parties. Yet, Judge Ninfo requires me to try that Pfuntner case within this DeLano case (§II), thus making a mockery of the Appeals Court and process by forestalling the order that I requested for the removal of the Pfuntner case to Albany due to his participation in the pattern of wrongdoing and his bias against me. Why would Judge Ninfo not ask the DeLanos to produce concurrently their financial documents and instead ignores their contempt for his own July 26 order of production? (§III) Did money drive the decision in this and other similar cases?

What else would it take for you to feel that this petition presents evidence of misconduct, let alone, of a threat to the judicial system, that warrants the appointment of a special committee?

Sincerely,

Dr. Richard Cordero

## I. Numbers and circumstances of the DeLanos' bankruptcy petition are so incongruous that Judge Ninfo had to realize that it was bogus yet it was approved by Trustee Reiber, who did not want to investigate it just as the DeLanos disobeyed his order for document production, whereupon he had the obligation to safeguard the integrity of the financial system and the duty under 18 U.S.C. §3057(a) to report them to the U.S. Attorney as under suspicion of collusion to commit bankruptcy fraud...but instead he took steps to remove Dr. Cordero as creditor, the only one who requested and analyzed documents and discovered evidence of concealment of assets, debt underreporting, accounts non-reporting, and a voidable preferential transfer to the Debtors' son!

1. Judge for yourself from the following salient numbers and circumstances whether Judge John C. Ninfo, II, WBNY, had reason to suspect the good faith of the DeLanos" bankruptcy petition:

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

| 2001 | 2002 | 2003 | total |
|---|---|---|---|
| $91,229 | 91,655 | 108,586 | $291,470.00 |

   i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!; why kind of purchases could they possibly have made with all those 18 credit cards?;
   j) their cash in hand or on account declared in their petition was only $535.50;
   k) the rest of their tangible personal property is just two cars worth a total of $6,500;
   l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;
   m) make a $10,000 loan to their son, declare it uncollectible, and do not provide even its date;

n) and offer to repay only 22 cents on the dollar without interest for just 3 years.

2. In Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let"s assume that in 1989 the combined income of Bank Loan Officer DeLano and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let"s assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what they owned before 1989, let alone their credit card borrowing and two loans totaling $118,000. Where did the money go? Where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement have they been planning for and where?

3. It is reasonable to assume that Trustee Reiber"s attorney, James Weidman, Esq., knows. The Trustee has the duty to conduct 11 U.S.C. §341 meetings of creditors personally, cf. 28 CFR §58.6. However, in violation thereof he appointed Att. Weidman to conduct the one held in this case last March 8 in Rochester. He became quite nervous when out of the 21 creditors of the DeLanos, Dr. Cordero was the only one to turn up at the meeting and tried to examine them. But Att. Weidman prevented Dr. Cordero from doing so by terminating the meeting after he had asked only two questions of the DeLanos but would not reveal what he knew when Att. Weidman asked him repeatedly –as if Dr. Cordero were under examination!- what evidence he had that the DeLanos had committed fraud. What did he know that he could not afford Dr. Cordero to find out from the DeLanos under oath? That same day Dr. Cordero complained in open court to Judge Ninfo about this violation, but he unquestioningly adopted Att. Weidman"s pretense that he had ran out of time…after just two questions from the only creditor!

## II. Indisputable evidence supports the reasonable assumption that other clients of Bank Loan Officer DeLano went bankrupt and were accommodated by the trustees without regard for the Bankruptcy Code and Rules and with Judge Ninfo's approval, so that Mr. DeLano knew that his meritless petition would be approved without examination by Trustee Reiber and the Judge; but Dr. Cordero analyzed the DeLanos' documents and put it together, whereupon the DeLanos moved to disallow his claim in order to remove him from the case with the assistance of Judge Ninfo, who stayed all bankruptcy proceedings and required him to prove his claim by first trying another case that is on appeal to the Court of Appeals and under consideration by the Judicial Council

4. How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants" financial documents, have thought that it would be deemed in good faith to submit his palpably meritless petition? Did Mr. DeLano put his knowledge and experience as a bank loan officer to good use in living it up with his family and closing down all collection activity of 18 credit card issuers by filing for bankruptcy? Did he have any reason to expect Trustee Reiber not to analyze his petition but just to rubberstamp it „approved"?

5. There is evidence for the assumption that Mr. DeLano knew how clients of his at M&T Bank had ended up filing for bankruptcy and being accommodated by the trustees and Judge Ninfo. Indeed, one such client was David Palmer, the owner of the moving and storage company Premier Van Lines. On its behalf, Mr. Palmer filed for voluntary bankruptcy under Chapter 11, docket no. 01-20692, precisely on the day when a judgment was going to be enforced against him, which smacks of abuse of bankruptcy law to avoid a single debt. Nevertheless, Judge Ninfo stayed the enforcement. A few months later, Mr. Palmer disappeared from all further proceedings. Although his home address at 1829 Middle Road, Rush, New York 14543, was known, Judge Ninfo would not bring him back into court to face his obligations. His case was converted to one under Chapter 7 and entrusted to Chapter 7 Trustee Kenneth Gordon, who according to PACER, has other 3,382 case before Judge Ninfo.*
6. Trustee Gordon was sued by James Pfuntner, the owner of the warehouse where Mr. Palmer abandoned his clients‟ property, including Dr. Cordero‟s, which was contained in storage containers bought by Mr. Palmer with a loan made to him by M&T Bank Loan Officer DeLano. Warehouser Pfuntner also sued others, including Dr. Cordero and M&T Bank. Mr. DeLano handled that matter so negligently and recklessly that Dr. Cordero brought him as a third-party defendant into Pfuntner v. Gordon et al., docket no. 02-2230, by a complaint served on November 21, *2002*. Since then Mr. DeLano has known the nature of Dr. Cordero‟s claim against him, but never contested it except by filing together with M&T Bank a general denial.
7. That is why Mr. DeLano included Dr. Cordero as a creditor in his petition of January 26, 2004. He treated Dr. Cordero as a creditor for 6 months and tolerated his requests for documents since so few were actually produced to the point that Trustee Reiber moved on June 15 to dismiss the case for "unreasonable delay". Even so, Dr. Cordero analyzed those documents and on July 9 filed a statement indicating bankruptcy fraud, particularly concealment of assets. Soon thereafter the DeLanos came up with an idea to eliminate the threat that Dr. Cordero posed.
8. Mr. DeLano, a lending industry insider, knew that by distributing his borrowing among 18 credit cards he would make it cost-ineffective for any issuer to incur the expense of having lawyers object to his repayment plan, let alone travel to the meeting of creditors, or request and analyze documents…but Dr. Cordero, with all his objections, requests, and document analysis, threatened to spoil it all for the DeLanos, his attorney, Trustee Reiber, and Judge Ninfo. So to get rid of him, they moved to disallow his claim. For his part, Judge Ninfo stayed any bankruptcy proceedings to prevent any further discovery of documents, which could have shown their approval of a fraudulent petition and open the door for an investigation that could uncover their judicial misconduct and bankruptcy fraud scheme.

## III. A series of inexcusable acts of docket manipulation form part of the pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit

* As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

9. At a hearing last July 19, Judge Ninfo asked Dr. Cordero to convert his July 9 requested order for the DeLanos to produce documents into a proposed order and fax it to him so that he could sign and issue it immediately to the DeLanos. Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed. Dr. Cordero‟s letter of protest of July 21, though acknowledged by a clerk received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received.

10. Judge Ninfo‟s requests on other occasions of documents, whose contents he likewise knew, for Dr. Cordero to prepare and submit only to do nothing upon receiving them show that the Judge never intended to issue that proposed order. Was it just to up the ante with the DeLanos?

11. The fact is that upon Dr. Cordero‟s protest, Judge Ninfo issued an order on July 26, one inexcusably watered down by comparison with Dr. Cordero‟s proposed order. Indeed, despite the evidence of concealment of assets by the DeLanos, the Judge‟s order failed to require them to produce bank or *debit* account statements that could have revealed their earnings‟ trail and whereabouts; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could possibly justify preventing document production from being used to ascertain the facts and the petition‟s good faith?

12. However watered down Judge Ninfo‟s order of July 26 was, the DeLanos did not comply with it and did so with total impunity! Dr. Cordero complained about it at the hearing on August 25[2] to argue the DeLanos‟ motion to disallow Dr. Cordero‟s claim. Judge Ninfo found nothing more revealing to say than that if Dr. Cordero had not claim, he could not ask for documents. Thereby the Judge showed that he accorded priority to the DeLanos‟ interest in getting rid of Dr. Cordero over his own duty to insure respect for court orders and to protect the benefit that inures to all other creditors as well as to the integrity of the bankruptcy system from Dr. Cordero‟s work of document analysis and discovery of a bankruptcy fraud scheme.

August 27, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

[1] The Judicial Council is entitled to accept and review this update because it constitutes a communication properly addressed to you and your colleagues under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq.:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

[2] The transcript of this hearing as well as of that on August 23 to argue Trustee Reiber's motion to dismiss and Dr. Cordero's motion to remove the Trustee must be read by any investigators of this matter, for they are most revealing of how Judge Ninfo argued from the outset the motions of the DeLanos and the Trustee and became Dr. Cordero's opposing counsel, thus abdicating his role as neutral arbiter. But given the manipulation of the transcript of the hearing on December 18, 2002, already complained about, the accuracy of those transcripts must be checked against the stenographer's tapes themselves.

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

**John M. Walker, Jr.**
**Chief Judge**

**Roseann B. MacKechnie**
**Clerk of Court**

October 6, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Enclosed please find a copy of the September 30, 2004 Order of the Judicial Council of the Second Circuit denying your petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

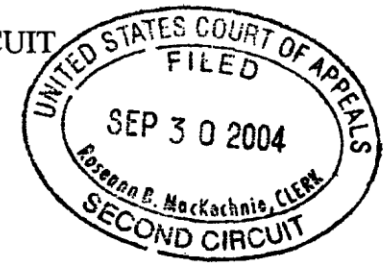
Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT




In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 03-8547

Before the Judicial Council of the Second Circuit:

A complaint having been filed on August 8, 2003, alleging misconduct on the part of a Bankruptcy Judge of this Circuit, and the complaint having been dismissed on June 8, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on July 14, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated June 8, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Bankruptcy Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: September 30, 2004
New York, New York

**Dr. Richard Cordero**

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

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

March 19, 2004

# STATEMENT OF FACTS

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

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

**of the Court of Appeals for the Second Circuit**

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

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

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

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

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

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, Pfuntner v. Gordon et al, docket no. 02-2230, which was brought and is pending before Judge Ninfo. The facts underlying this

[1] The separate volume of evidentiary documents is not included here.

evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

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

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

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

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

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

him a copy of his written objections.

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

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

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

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

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

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

territory of the Second Circuit and which they defend by engaging in non-coincidental, intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

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

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

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

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

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

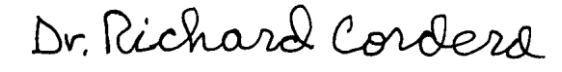
Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

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

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

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

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



March 19, 2004

59 Crescent Street
Brooklyn, NY 11208

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

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

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 28, 2004

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

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

Dear Mr. Cordero:

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

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

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

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

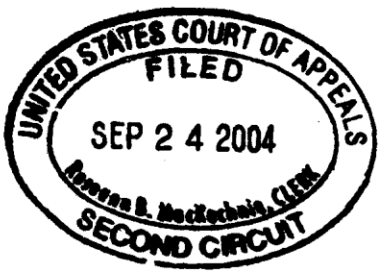
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT




----------X

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

----------X

**DENNIS JACOBS, Acting Chief Judge:**

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

**Background and Allegations:**

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

**Disposition:**

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

Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004

# Dr. Richard Cordero

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

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


October 4, 2004

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Petition for review re complaint about C.J. Walker, 04-8510

Dear MacKechnie,

I hereby petition the Judicial Council for review of the Chief Judge"s order of September 24, 2004, dismissing my judicial misconduct complaint, docket no. 04-8510 (the Complaint).

The Complaint was submitted on March 19, 2004. It states that in violation of 28 U.S.C. §351 et seq. (the Act) and this Circuit"s Rules Governing such complaints (the Rules) the Hon. Chief Judge John M. Walker, Jr., failed to act „promptly and expeditiously" and investigate a judicial misconduct complaint. Indeed, by that time it was already the eighth month since I had submitted my initial complaint of August 11, 2003, docket no. 03-8547, but the Chief Judge had taken no action. That complaint charged that U.S. Bankruptcy Judge John C. Ninfo, II, together with court officers at the U.S. Bankruptcy Court and District Court, WDNY, had disregarded the law, rules, and facts so repeatedly and consistently to my detriment, the sole non-local party, a resident of New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against me. That initial complaint was dismissed by the Hon. Circuit Judge Dennis Jacobs 10 months after its submission although it was not investigated at all. Judge Jacobs alleges that such dismissal has rendered this Complaint moot and warrants that it be dismissed too.

## I. Since nothing wrong under the Misconduct Act or Rules was found in the initial complaint, its dismissal cannot amount to "appropriate corrective action" that would render moot this Complaint, which charges a different kind of misconduct

1. The first remark that follows from the paragraph above is that the initial complaint and this Complaint charge misconduct that is different and independent from each other: The former concerns a pattern of wrongdoing by Judge Ninfo; the latter the disregard for the promptness obligation and the duty to investigate a misconduct complaint by Chief Judge Walker. The dismissal of the former does not negate the misconduct of the latter and, consequently, does not render it moot. The Complaint remains to be determined on its own merits.

2. In addition, who ever heard that dismissing a case or a complaint amounts to taking "appropriate corrective action" under the Act or any other legal provision for that matter? It was Judge Jacobs himself who dismissed the initial complaint on the allegations that **a)** Dr. Cordero "has failed to provide evidence of any conduct „prejudicial to the effective and expeditious administration of the business of the courts""; **b)** Dr. Cordero"s "statements…amount to a challenge to the merits…however „[t]he complaint procedure is not intended to provide a means of obtaining a review""; **c)** "the allegations of bias and prejudice are unsupported and therefore rejected as frivolous"; and **d)** "The Act applies only to judges of the United States" rather than to other parties complained-about. Since Judge Jacobs found the counts of the complaint unsubstantiated and frivolous, and its issues and other parties outside the Act"s scope, how can he possibly have taken "appropriate corrective action" to correct nothing wrong and in need of no correction!?

3. The dismissal of the Complaint, just as that of the initial complaint, is another glaring example of a quick job rejection of a misconduct complaint where the dismissal grounds have not been given even a substandard amount of reflection. Judge Jacobs not only did not "expeditiously review…and conduct a limited inquiry", as provided under §352(a), much less "promptly appoint…a special committee to investigate the facts and allegations", as provided under §353, but he also did not even review the basis of his instant September 24 dismissal, that is, his own earlier dismissal to the point that he got wrong its date, which is not June 9, but rather June 8.

## II. None of the elements of the doctrine of mootness is found in the context of the initial complaint and this Complaint so that the doctrine is inapplicable

4. The quick job dismissal of the Complaint conclusorily jumps to its mootness from the dismissal of the initial complaint without pausing to consider the elements of the doctrine of mootness. It just refers to §352(b)(2) and to "intervening events" without indicating what events those are. Presumably, the dismissal of the initial complaint is meant.

5. However, the earlier dismissal is not final because it is the subject of the petition for review of July 8 -resubmitted on the 13th- to the Judicial Council. That dismissal could be vacated and the mootness allegation would be so fatally undermined that it would fall of its own weight. Thus, it would be utterly premature to allege that the intervening dismissal of the initial complaint has rendered the Complaint moot. The initial complaint is still in play and so is this Complaint.

6. If the Judicial Council calls for an investigation of the initial complaint, it can find that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing. If so, it would have reason to investigate why Chief Judge Walker failed to conduct even a limited inquiry despite not only the abundant evidence of such wrongdoing, but also the high stakes, namely, the integrity of this circuit‟s judicial system, which should have caused him as the circuit‟s foremost steward to take the complaint seriously if only out of prudence.

7. The Council‟s reason to investigate the Chief Judge would be strengthened by the fact that he had knowledge of the evidence of wrongdoing not only because of his duty to review the initial complaint and the many documents submitted in its support, but also because he is a member of the panel reviewing Dr. Cordero‟s appeal from Judge Ninfo‟s decisions and in that capacity he must have reviewed Dr. Cordero‟s numerous briefs, motions, and writ of mandamus describing the pattern of wrongful acts of Judge Ninfo and others. By so investigating the Chief Judge, the Council would be proceeding in line with the Complaint‟s request for relief. Since the Council could grant, whether implicitly or formally, that relief, the Complaint that asks for it is not moot.

8. Moreover, no other intervening event has changed the issues of the initial complaint and rendered a decision on the merits on this Complaint meaningless and thereby moot. Far from it, intervening events have only provided more evidence of judicial misconduct. In fact, if the Complaint had been read, it should have been noticed that it described the events that took place on March 8, 2004, seven months after the initial complaint, concerning Judge Ninfo‟s handling of a different type of case, that is, not an adversary proceeding, but rather a Chapter 13 bankruptcy petition filed on January 27, 2004, over five months after the initial complaint, by David and Mary Ann DeLano, docket no. 04-20280.

9. In this vein, on August 27, 2004, Dr. Cordero sent to each member of the Judicial Council an update to the petition for review of the dismissal of the initial complaint. Its very first paragraph states that:

> …recent events…raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo [out of Trustee Reiber's 3,909[1] cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383[2] cases].

10. Those intervening events have only strengthened the initial complaint by pointing to a powerful motive for the misconduct and bias: money, lots of it generated by *thousands* of cases that each of two trustees has before one judge. If you were a private trustee who is paid a fee percentage from the payments of bankruptcy debtors to their creditors, which means that you are not a federal employee paid by the federal government, could you possibly handle appropriately such an overwhelming workload? Similarly, with whom is it more likely that Judge Ninfo has developed a modus operandi that he would not want to disrupt: with these trustees as well as bankruptcy lawyers that have so many cases before him that they appear before him several times in a single session[3], or with an out of town pro se defendant that dare demand that he apply the law and even challenge his rulings all the way to the Court of Appeals?

11. But Judge Jacobs chose not to read about these events. This is a fact based on the letter of August 30 of Clerk Patricia Chin-Allen, signing for Clerk of Court Roseann MacKechnie, that

> Judge Dennis Jacobs, [sic] has forwarded your unopened letter [sic] to this office for response…Your papers are returned to you without any action taken.

12. This provides factual support to the above statement that in dismissing this Complaint, Judge Jacobs did not bother to read even his earlier order of June 8 dismissing the initial complaint. In forwarding unopened that letter, he disregarded the point made in footnote 1 of the July 8 petition for review of the dismissal of the initial complaint:

> "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant".

13. Just as Rule 8 entitles a complainant to communicate with the members of the Judicial Council, so it engenders the corresponding obligation for the members to read such communications. Those who read the August 27 update must have realized that it described relevant intervening events that raised definite and concrete facts and issues susceptible of judicial determination in their own right; they also provided further grounds for investigating the initial complaint. Thereby the intervening events precluded any allegation that the initial complaint"s dismissal, which is challenged and pending review, had rendered this Complaint moot.

14. Likewise, a judicial determination of the Complaint is still appropriate because Dr. Cordero has neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

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

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

[3] Obviously, Judge Ninfo does not acquire immunity under the Misconduct Act or Rules only because he participates in widespread misconduct together with parties outside their scope of application.

15. Nor has mootness resulted from the relief requested becoming impossible. On the contrary, the update linking judicial misconduct to a bankruptcy fraud scheme has only rendered more necessary for the Council to investigate both complaints with FBI assistance, as requested.

16. The cause for misconduct has not ceased either. Far from it, the DeLano case has provided Judge Ninfo with the need to engage in further disregard for legality and more bias against Dr. Cordero, who is one of the DeLanos‟ creditors and the one who showed their concealment of assets. Hence, the situation that gave rise to the initial complaint is a continuing one that has not only the probability, but also the likelihood of generating subsequent complaints. Since the same misconduct can recur, it prevents the Complaint from becoming moot; *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc., 120 S.Ct. 693, 528 U.S. 167, 145 L.Ed.2d 610 (2000)*. Thus, the Judicial Council should decide the two current complaints, just as a court would decide a case despite its apparent mootness if the dispute is ongoing and typically evades review. *Richardson v. Ramirez, 94 S.Ct. 2655, 418 U.S. 24 41 L.Ed.2d 551 (1974)*.

## III. The violation of the promptness obligation and the duty to investigate is so capable of repetition that it has been repeated in the handling of this Complaint

17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle „promptly and expediently‟ the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.

18. Judge Jacobs‟s unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is “capable of repetition”. The Council should not evade its review as moot precisely because the Chief Judge‟s violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade, 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973)*.

19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Stephen Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.

20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate “conduct prejudicial to the effective and expeditious administration of the business of the courts”. What is more, mishandling complaints has severe practical consequences on the complainants and the public‟s perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero‟s case, the judges‟ contempt for these complaints has let him suffer for over two years Judge Ninfo‟s arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous

amount of effort, time, and money and inflicted upon him tremendous aggravation. It cannot be fairly and justly held that his suffering and cost have been rendered „moot" because the Chief Judge and Judge Jacobs chose to treat contemptuously their obligations and duties under the law.

## IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as "admitting of specific relief through a decree of conclusive character", cf. *Aetna Life Ins. Co. v. Haworth, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937)*, and that it:

    a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;

    b. Include in their scope of investigation:

        1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;

        b) what he should have known, as the circuit"s foremost judicial officer;

        c) when he should have known it; and

        d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and

        2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;

    c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;

    d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;

    e. Take action on the complaints in light of the results of their investigation;

    f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer"s Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

Let the Council take the opportunity afforded by these two complaints and petitions to honor its oath of office and apply the law impartially, blind to who the parties are and concerned only with being seen doing justice, as it proceeds, not to protect its peers, but rather to safeguard the integrity of the judicial system for the benefit of the public at large.

Sincerely, Dr. Richard Cordero

**Dr. Richard Cordero**

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

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

October 14, 2004

Chief Judge John M. Walker, Jr.
Member of the Judicial Council
U.S. Court of Appeals, 40 Centre St.
New York, NY 10007

Re: Exhibits for review petition re complaint about C.J. Walker, 04-8510

Dear Chief Judge Walker,

This is a communication with the members of the Judicial Council permissible under this Circuit"s Rules Governing Misconduct Complaints, which contains "Rule 8, Review by the judicial council of a chief judge"s order", where §8(e)(2) refers to "any communications that may be addressed to the members of the judicial council by the complainant".

On August 11, *2003*, I filed a complaint about WBNY Judge John C. Ninfo, II, concerning his disregard together with others for the law, rules, and facts in a series of instances so numerous and consistently detrimental to me (44.II; 48.III, infra), the only non-local party, and favorable to the local ones (22.IV; 50.IV), as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Although intervening events confirmed the charges of the complaint (65-67), eight months later I had still not heard from Chief Judge John M. Walker, Jr., despite his duty under 28 U.S.C. §351 et seq. and the Circuit"s Rules to act "promptly" and "expeditiously". Hence, on March 19, I submitted a complaint about the Chief Judge (65) on the grounds of his disregard for that promptness obligation and his duty to investigate a complaint, whereby he allowed Judge Ninfo"s wrongdoing and bias to continue to take an enormous toll on my effort, time, and money and inflict upon me tremendous aggravation. That complaint, which was also subject to the promptness obligation, was dismissed over six months later, on September 24; it was not investigated either (7). I submitted a petition for review on October 4 (1; 2).

Because the Clerk of Court refused to accept the first petition if accompanied with exhibits, this communication provides you with some documents that evidence intervening events linking judicial misconduct to a bankruptcy fraud scheme involving the most powerful driver of wrongdoing: lots of money (26.V; 51.V). I trust that if you would examine these documents, you would realize the need to investigate a series of events that undermine the integrity of both the judicial and the bankruptcy systems in WDNY and in the Court of Appeals (cf. 9¶¶1-5).

The perfunctory way in which these complaints have been handled is evidenced not only by their belatedness and lack of investigation: **1)** The Court"s letter of July 16 states that a petition for review was received in February; but I submitted the petition concerning my complaint about Judge Ninfo in July (59). **2)** The Judicial Council"s denial of last September 30 of my petition refers to a complaint filed on August 8, 2003; but none was filed on that date (60). **3)** The Acting Chief Judge dismissed on September 24 the complaint about the Chief Judge on the basis of his own dismissal of the complaint about Judge Ninfo, stating its dismissal date as June 9, which is wrong (8). If I came to your court and made so many mistakes, would you take me seriously? **4)** The Council in its September 30 letter merely "DENIED" my petition without providing any opinion. Is that the easy way out in which it insures that justice is seen to be done? Therefore, I respectfully request that under Rule 8(a) you cause this petition and the previous one to be placed on the Council"s agenda and the respective complaints to be investigated (cf. 63).

Sincerely, Dr. Richard Cordero

E-52

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

**JOHN M. WALKER, JR.**
**CHIEF JUDGE**

**ROSEANN B. MACKECHNIE**
**CLERK OF COURT**

October 20, 2004

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

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

Dear Mr. Cordero:

The "Exhibits for review petition concerning complaint . . . " has been forwarded to this office by Chief Judge John M. Walker, Jr. for response.

You cannot supplement the file in the judicial complaint procedure. There is no motion practice in this procedure

Once a decision has been filed concerning your petition for review you will be notified by letter.

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

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

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

**JOHN M. WALKER, JR.**
**CHIEF JUDGE**

**ROSEANN B. MACKECHNIE**
**CLERK OF COURT**

November 10, 2004

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

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

Dear Mr. Cordero:

Enclosed please find a copy of the November 10, 2004 Order of the Judicial Council of the Second Circuit denying the above-referenced petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

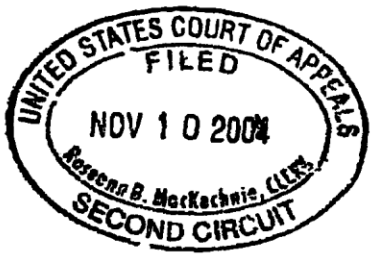
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT

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In Re:

CHARGE OF JUDICIAL MISCONDUCT Docket number: 04-8510

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Before the Judicial Council of the Second Circuit:

A complaint having been filed on March 29, 2004, alleging misconduct on the part of Circuit Judge of this Circuit, and the complaint having been dismissed on September 24, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on October 5, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated September 24, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Circuit Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: November 10, 2004
New York, New York

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

# Objection to Confirmation of the Chapter 13 Plan of Debt Repayment

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

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

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

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

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

7. But that is not enough for them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## V. Provisions that any modified plan should contain

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

makes plan payments to creditors. Cf. B.C. §1326(c). Consequently, the DeLanos‟ current and future employers and any entity that pays income to them should be ordered to pay all of it to the trustee. Cf. B.C. §1325(c).

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

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

## VI. Notice of claim and request to be informed

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

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

March 4, 2004

Dr. Richard Cordero

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

## CERTIFICATE OF SERVICE

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

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

MOTION TO DISMISS
CHAPTER 13 PETITION

BK NO. 04-20280

George M. Reiber, Trustee, in the above named case, moves this Court as follows:

To dismiss the debtor's petition in the above case pursuant to 11 U.S.C. Section 1307 of the Bankruptcy Code for unreasonable delay which is prejudicial to creditors, or convert to a Chapter 7 proceeding. Debtor has failed to turn over the documents requested by the Trustee in the attached letters. The last confirmation hearing was scheduled on April 26, 2004. Upon information and belief, this petition has not been previously converted to or from another Chapter.

/S/
George M. Reiber
3136 S. Winton Road
Rochester, New York 14623
(585) 427-7225

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before the Honorable John C. Ninfo, II, Bankruptcy Judge, 100 State Street, Rochester, New York, on the 19th day of July, 2004 at 3:30 in the afternoon of that day or as soon thereafter as counsel can be heard.

/S/

Dated: June 15, 2004
Rochester, New York

To: Debtor
Debtor's Attorney
U.S. Trustee

Certificate of Service by Mail of SNT, /S/_____Clerk. Copies of this motion were personally mailed by me on June 15, 2004 to David & Mary Ann Delano, Christopher Werner, Esq., US. Trustee



JC:95

# UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

## Statement in Opposition to Trustee's Motion To Dismiss the DeLano Petition

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

1. Last June 15, Chapter 13 Trustee George Reiber, Esq., moved the court to dismiss the above captioned DeLano bankruptcy petition because of Debtor DeLanos‟ unreasonable delay in submitting financial documents. Because such delay has been tolerated by the Trustee due to his unwillingness or incapacity to obtain those documents or to know what to do with those received and because there is now evidence that dismissal is contrary to both a trustee‟s duty to report reasonable suspicion of wrongdoing and the interests of the creditors, Dr. Cordero opposes such dismissal.

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## I. Trustee Reiber has demonstrated unwillingness and incapacity to obtain financial documents from the DeLanos

2. Although in his Objection to Confirmation of March 4, 2004, Dr. Cordero requested of Trustee Reiber financial documents supporting the DeLanos‟ petition of January 26, 2004, Dr. Cordero had to insist with the Trustee and with his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt, for him to do so. Only in his letter of April 20, addressed to the Delano‟s attorney, Christopher Werner, Esq., did the Trustee request documents.

3. Even so his request was insufficient because, among other things:

   a) it covered only three years out of the 15 years that the DeLanos brought into play by claiming in Schedule F that their financial difficulties began with their "1990 and prior credit card purchases";

   b) it concerned only 8 credit cards out of the 18 listed in Schedule F; and

   c) it failed to request credit bureau reports from each of the three major bureaus, whose reports are complementary and must be read together.

4. Despite the insufficiency of Trustee Reiber‟s request, no documents were produced. Dr. Cordero had to insist again that the Trustee take further action to obtain them. By letter of May 18, the Trustee lamely asked of Att. Werner: "Please advise me as to the progress that you and your clients have made on obtaining the documents which I requested in my prior letter to you dated April 20, 2004".

## II. Trustee Reiber failed to detect even the blatant incompleteness of the documents that he received on June 14, 2004

5. On June 14, the DeLanos submitted meager documents through Att. Werner. Even the most cursory peek at them shows their unjustifiable incompleteness:

   a) both Equifax reports are missing numbered pages!,

   b) there is only one single statement for each of the 8 credit cards covered by the request and they are from between July and October *2003!*, and

   c) each of those statements is missing the key section of names of sellers of purchased goods and services, and dates and amounts of purchase.

6. To browse through only 19 pages that you have requested and have been kept waiting to receive for months, would it have taken you more than two to three minutes to realize those defects? Only if your mind went into a spin wondering what conceivable reason could the DeLanos and their attorney have had to submit between 8 and 11 month old credit card statements but not those in between, let alone all the previous ones.

7. A closer check of those documents against the figures in the petition and the court-developed register of claims and creditors matrix points to debt underreporting, account unreporting, and unaccountability of assets in the petition. These grave defects call into question the good faith

of the DeLanos‟ petition. They also support the reasonable inference that the DeLanos have been and are reluctant to submit more documents, let alone the complete set of requested documents, due to their awareness that more documents would only further deny such good faith and warrant an investigation into whether their petition was motivated by a fraudulent intent as part of a bankruptcy fraud scheme.

8. Actually, it was Trustee Reiber‟s attorney, James Weidman, Esq., the first who ever used the term fraud in connection with the DeLanos‟ petition. This he did when he repeatedly asked of Dr. Cordero at the meeting of creditors on March 8, 2004, whether he knew that the DeLanos‟ had committed fraud and, if so, what evidence of their fraud he had. Dr. Cordero specifically stated that by objecting to the confirmation of the DeLanos‟ plan of debt repayment he was not accusing them of any fraud, and simply wanted to examine them in the meeting of creditors called precisely to do so. Nevertheless, Att. Weidman reacted in a clearly unlawful and undeniably suspicious way: He put an end to the meeting after Dr. Cordero, the only creditor present, had asked merely two questions!

9. If Att. Weidman was so interested in finding out whether the DeLanos‟ had committed fraud, why would he not allow Dr. Cordero to ask questions of them? Or was he interested just in finding out how much Dr. Cordero knew? Aside from the fact that it was unlawful for Trustee Reiber not to preside over the meeting of creditors, but given that his attorney was so keen to find out any evidence of fraud in connection with the DeLanos‟ petition, should Trustee Reiber not have been equally keen? Of course he should have been!

## III. Trustee Reiber failed and refused to take appropriate action relating to his request for documents and his receipt of them

10. The Trustee has not been keen enough on the documents submitted to him on June 14, to have looked at them for even two or three minutes. Indeed, in a phone conversation between him and Dr. Cordero on July 6, he as much as admitted to not having as yet reviewed them. Hence, he was not, or pretended not to be, aware of their incompleteness and evidence of wrongdoing.

11. Naturally, if Trustee Reiber were aware of the documents‟ grave defects, he would be expected to fulfill his obligation to report reasonable suspicion of wrongdoing to law enforcement agencies. Far from it, the Trustee stated that he would not do any such reporting at this time, would maintain his motion to dismiss, and would not subpoena the DeLanos for any documents. What is more, he stated that he does not know whether he has subpoena power and that he has never before used subpoenas!

12. However, Rule 9016 F.R.Bkr.P. makes Rule 45 F.R.Civ.P. applicable in cases under the Code, which provides thus:

> Rule 45 Subpoena
>
> (a)(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as office of the court may also issue and sign a subpoena on behalf of
>
> ...
>
> (B) a court for a district in which a deposition or

production is compelled by the subpoena,…

13. Since Trustee Reiber is a party as well as an attorney, and in any event he has Att. Weidman at his side, the Trustee can issue subpoenas to compel the DeLanos to produce the requested documents. In addition, "any party in interest" can invoke Rule 9016 to compel production of documents under Rule 2004(a) and (c).

14. Therefore, what prevents Trustee Reiber from using subpoenas to compel the DeLanos to produce the requested documents? Nothing except a lack of willingness or incapacity to fulfill his obligation under B.C. §704(4) to "investigate the financial affairs of the debtor" and under B.C. §704(4) to "furnish such information concerning the estate and the estate‟s administration as is requested by a party in interest".

15. Trustee Reiber‟s argument that he does not want to use subpoenas because a petition under Chapter 13 is voluntary and the debtor has a right to withdraw his petition at any time is totally without merit: The Trustee himself is the one intent on accomplishing the same result through his motion to dismiss. There would have been no appreciable extra work in issuing by subpoena his request to the DeLanos for documents contained in his letter of April 20. On the contrary, he would have spared himself the need to send his letter of May 18.

16. The fact is that no progress has been made, for even when some documents were submitted to him on June 14, Trustee Reiber was not willing or able to realize the inescapable minimum of missing pages and sections and mind-boggling dates. Therefore, how would he ever know what he still needs to request if he is not aware of what he already received? What would he do with hundreds of pages of documents covering the last three years, let alone the past 15 years, if he does not know what to do with 19 pages? He who cannot do the least cannot do the most.

## IV. If Trustee Reiber had analyzed the petition on its own as well as against the documents received on June 14, he would have realized its questionable good faith, the evidence of wrongdoing, and the need to report it

17. Judge for yourself from the following salient figures and circumstances whether Trustee Reiber, just as Att. Weidman, has had reason to suspect the petition‟s good faith:

    a) Mr. DeLano has been *a bank officer for 15 years!*, or rather more precisely, a **loan** bank officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines.

    b) The DeLanos incurred scores of thousands of dollars in credit card debt;

    c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;

    d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

f) owe also a mortgage of $77,084;

g) have near the end of their work life equity in their house of only $21,415;

h) declared these earnings in just the last three years:

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

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) their cash in hand or on account declared in their petition was only $535.50;

k) the rest of their tangible personal property is just two cars worth $6,500;

l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

m) make a $10,000 loan to their son and declare it uncollectible;

n) but offer to repay only 22 cents on the dollar without interest for just 3 years;

o) refused for months to submit any credit card statement covering any length of time „because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies‟;

p) however, the DeLanos:

(1) must still receive the monthly statement from each of the 18 credit card issuers in Schedule F, given that on April 16, Att. Werner, their lawyer, stated to the court: “Debtors have maintained the minimum payments on those obligations”;

(2) must have consulted in January 2004, such statements to provide in Schedule F the numbers of their accounts with those issuers and their addresses; and

(3) must know –Loan Officer DeLano must no doubt be presumed to know- that they have an obligation to keep financial documents for a certain number of years;

q) despite Dr. Cordero‟s requests for financial documents of March 4 and 30, April 23, and May 23, and the Trustee‟s of April 20 and May 18, the DeLanos provided only some financial documents on June 14, so late that the Trustee moved on June 15 for dismissal for “unreasonable delay”, and what they did provide is incomplete and incriminatory:

(1) only one statement of each of only 8 credit card accounts out of 18 in Schedule F,

(2) those statements are missing the section showing from which seller of goods and services a purchase was made, for what amount and on what date, which is indispensable information to establish the timeline of debt accumulation and its nature;

(3) the statements are not even the latest ones of May and June 2004, but rather are of between July and October 2003! Why would the DeLanos ever do such thing?!;

(4) the credit bureau report submitted for Mr. DeLano and the one for Mrs. DeLano are from only one bureau, namely, Equifax, even though the DeLanos must know that none of the reports of even the other two major bureaus, that is, Trans Union and Experian, is exhaustive by including all accounts or up to date as to each account, but

rather the reports of the three bureaus are complementary;

(5) worse yet, the Equifax reports submitted are missing pages, even pages that must contain information on accounts, such as outstanding balance and payment history;

(6) the figures in the three IRS 1040 forms for 2001, 2002, and 2003 do not coincide with the information on earnings in the DeLanos‟ bankruptcy petition of January 26, 2004.

18. A comparison between those credit card statements, the Equifax reports, the bankruptcy petition, and the court-developed claims register and creditors matrix calls into question the petition‟s good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.

19. Indeed, in Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let‟s assume that in 1989 the combined income of him and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let‟s assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what they owned before 1989, let alone their credit card borrowing and two loans totaling $118,000. Where did the money go? Where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement have they been planning for and where?

20. Did Mr. DeLano put his knowledge and experience as a bank loan officer to good use in living it up with his family and closing down all collection activity of 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants‟ financial documents, have thought that it would be deemed in good faith to submit such objectively incomplete documents? Did he have any reason to expect Trustee Reiber not to analyze them?

21. Have Trustee Reiber and Att. Weidman asked themselves that question? Did they ever scan the figures in the January 26 petition to get a hint on whether they made sense? How did they ascertain the timeline of debt accumulation and its nature when they readied the petition for confirmation by the court on March 8, if they had not yet even requested the documents that eventually were submitted to the Trustee on June 14? Or was it that to ask any questions and request any supporting documents they were simply too busy with their other *3,909 open* cases, according to Pacer, as well as with the rolling in of new ones? Were they also too busy to defend the interests of the creditors left holding bags of worthless IOUs, including federal tax authorities, when they approved the DeLanos‟ plan to repay them only 22¢ on the dollar?

## V. The U.S. Trustees and the court must take notice of Trustee Reiber's ineffective and halfhearted effort to "investigate" the DeLanos and replace him

22. There is now circumstantial and documentary evidence supporting reasonable suspicion of wrongdoing in the DeLano‟s petition. Is Trustee Reiber‟s unwillingness and incapacity to perform his role part of the problem?

23. One can only hope that Assistant U.S. Trustee Kathleen Schmitt and U.S. Trustee for Region 2

Deirdre Martini recognize that a trustee intent on properly performing his role as representative of the estate for the benefit of the creditors would use all the means at his disposal, such as subpoenas, so clearly available to him. Similarly, a trustee determined to safeguard the integrity of the bankruptcy system would fulfill his obligation to report reasonable suspicion of wrongdoing, including bankruptcy fraud, to law enforcement agencies. Such trustee would not open the easy way out of dismissal for petitioners who may have refused to comply with a request for documents because of their incriminating content. To do so would send the wrong message to the public, namely, that they can always try to escape their debts by filing totally meritless and even fraudulent petitions because if they are about to be caught, the trustee will let them "off the hook" by applying on their behalf for the dismissal of their cases.

24. Yet, Trustees Schmitt and Martini have allowed Trustee Reiber to hold on to this case despite Dr. Cordero‟s reasoned request of March 30 for his replacement. Now, the U.S. Trustees must take notice of the Trustee‟s ineffective and substandard effort to "investigate" the DeLanos.

25. They must not disregard any longer his obvious conflict of interest between, on the one hand, the fact that he and his attorney approved and readied the DeLanos‟ petition for confirmation on March 8, 2004, and vouched in open court on that date for its good faith despite never having requested or obtained any supporting financial documents, and on the other hand, the fact that the Trustee is being required to comply with his legal obligation to investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied is in fact a vehicle of fraud to avoid payment of claims.

26. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney‟s working methods, good judgment, and motives. That could have devastating consequences. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos‟ passed muster with both Trustee Reiber and his attorney, what about the Trustee‟s myriad other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney‟s suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

27. But more is riding on this. The fact is that an independent investigation that discovered more DeLano-like cases would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from U.S. Trustees Schmitt and Martini. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

28. What were they all thinking!? Whatever it was, from their perspective now their best self-protection is not to set in motion an investigative process that can spin out of control and end up crushing them. However, their failure to treat the DeLano petition as a test case to be investigated openly and independently will further undermine the integrity of the judicial system and the public trust in it. It will also confirm the worst fears about them and would only buy them time to dig themselves further into a hole. The time is now for them to cut their losses.

## VI. Relief Requested

29. Therefore, Dr. Cordero respectfully requests that:

30. The motion to dismiss the DeLanos‟ bankruptcy petition be denied;

31. The DeLanos be ordered to submit to the court the following financial documents:

a) financial documents relating to transactions with institutions

(1) types of documents:

(a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements‟ parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

(b) monthly bank statements, with all their parts and without redaction;

(c) credit bureau reports, with all their pages; from Equifax, Trans Union, and Experian;

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(2) period of coverage: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) status of account: whether open or closed;

(4) holder of account or interest: whether in both or either of their names, or entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them;

(5) deadline for submission:

(a) for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

i) 4:30 p.m. on Tuesday, July 20, 2004, which is the day following the return day of the dismissal motion;

(b) for documents **not in their possession**:

i) by 5:00 p.m. on Friday, July 23, 2004, for the DeLanos:

(A) to have issued, through their attorney, subpoenas, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶31.a)(1) above and that could not be produced pursuant to ¶31.a)(5)(a) above, and

(B) to have mailed each with a signature confirmation slip;

ii) by 4:30 p.m. on Monday, July 26, 2004, to have submitted to the court an affidavit attesting to their compliance with the order in ¶31.a)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued; a description of the documents requested; the account or transaction numbers to which they relate; and the entities‟ phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number, and the postmark.

b) All financial documents relating to the **loan to their son** referred to in Schedule B:

(1) The DeLanos‟ withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier‟s check, or the instrument‟s back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or the terms of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶31.b)(5)(b)-(h) above;

(7) dateline for submission

(a) 4:30 p.m. on Tuesday, July 20, 2004, for all such documents in the DeLanos‟ possession;

(b) 4:30 p.m. on Monday, July 26, 2004, for their affidavit; and

(c) as provided for in ¶31.a)(5)(b) above, for documents not in their possession;

32. the court acknowledge and take action with respect to Trustee Reiber as follows:

    a) Trustee Reiber"s inherent conflict of interest between having vouched for the petition"s good faith and having to investigate whether it was submitted with a fraudulent intent;

    b) Trustee Reiber"s failure up to now, and his inability due to his conflict of interests, to represent the creditors and defend their interests;

    c) Trustee Reiber"s substandard efforts and inefficiency in requesting and obtaining financial documents from the DeLanos, including his failure to realize the insufficiency of those requested and his reluctance to request them through subpoenas;

    d) Trustee Reiber"s unwillingness or incapacity to analyze financial documents generally or those of the DeLanos specifically, including his failure to detect the obvious incompleteness and defects of those received on June 14, 2004;and

    e) the court, in light of such unwillingness and incapacity,

        (1) recommend to the U.S. Trustees that Trustee Reiber be replaced in the DeLano case by an independent trustee, unrelated to Trustee Reiber and the DeLanos, and capable of conducting a competent, objective, and zealous investigation of this case;

        (2) require that Trustee Reiber and/or the DeLanos at their expense:

            (a) make the documents submitted to the court pursuant to its order also publicly available through Pacer and, if that is not possible,

            (b) make a photocopy of those documents and send it to Dr. Cordero;

33. the court make a simultaneous referral of this case to the FBI for a concurrent investigation aimed at determining whether there has been fraud in connection with the DeLanos" bankruptcy petition and, if so, who is involved and to what extent;

34. the court allow Dr. Cordero to present his arguments by phone and that the court not cut off the phone connection to him until after the court declares the hearing concluded and that thereafter no other oral communication between the court and a party be allowed on this case until the next scheduled event;

35. the court reply to Dr. Cordero"s motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

July 9, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

David G. DeLano
Mary Ann DeLano

Debtor(s)

Chapter 13
Case No. 04-20280

**OBJECTION TO CLAIM**
**NOTICE OF HEARING AND ORDER**

## NOTICE

**NOTICE** is hereby given of the objection by Debtors, by their attorney, Christopher K. Werner, Esq.
[Trustee, Debtor or other party]
to your claim in the Western District of New York. A hearing on the objection will be held at the United States Bankruptcy Court,
US Courthouse, 100 State Street, Rochester, NY 14614, _____,
New York, on August 25, 20 04 at 11:30 A.M. only if a written request for a hearing is filed by the claimant as outlined below.

**"PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM, YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTOR AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED."**

**IF YOU OPPOSE THE OBJECTION TO YOUR CLAIM, YOU MAY WANT TO ATTEMPT TO RESOLVE AND SETTLE THE CLAIM OBJECTION PRIOR TO FILING WRITTEN OPPOSITION AND AVOID THE NEED FOR AN ATTORNEY AND/OR A COURT APPEARANCE.**

## OBJECTION TO CLAIM

The objecting party objects to the following claim in this case:

Claimant's Name: Richard Cordero

Claim #: 19 Amount $ 14,000 + "increments"

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f) Claimant sets forth no legal basis or facts substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liabilty exists as against M & T Bank. No basis for claim against Debtor, Mary Ann Delano, is set forth, whatsoever.

**Dated:** July 19, 2004

Christopher K. Werner, Esq. Attorney for Debtors
**Objecting Party**
**Address** 2400 Chase Square
**City/State/Zip** Rochester, NY 14604

**(PLEASE SEE REVERSE)**

This Notice and Objection are being sent to the Debtor, Debtor's Attorney, Chapter 7, 11, 12 or 13 Trustee, United States Trustee, Claimant, Claimant's Attorney (if known) or person designated as Power of Attorney, and any Creditors' Committee or Attorney for the Creditors' Committee.

**(SAMPLE ORDER)**

**CASE NO.** 04-20280

There having been no opposition to the herein objection to the claim of Richard Cordero in the amount of $ 14,000 and the Court having considered the objection and determined the sufficiency of the claim, it is hereby

**ORDERED** the claim is:

XXX DISALLOWED

_____ ALLOWED AS A TIMELY FILED CLAIM IN THE AMOUNT Of $_____

_____ ALLOWED AS A TARDILY FILED CLAIM IN THE AMOUNT OF $_____

_____ OTHER (Complete if applicable)

**DATED:** _____

_____
**John C. Ninfo, II**
**Chief United States Bankruptcy Judge**

(THIS SAMPLE ORDER WAS INTENTIONALLY DRAFTED TO PROVIDE THE MOST BASIC STRUCTURE FOR *ORDERS RESULTING FROM NOTICES OF OBJECTION TO CLAIMS(S). THE COURT RECOGNIZES THAT THERE* WILL BE A BROAD SPECTRUM OF ORDERS ADDRESSING CLAIMS WHICH WILL REFLECT VARYING COMPLEXITY.)

(Rev.01/10/02)

**Dr. Richard Cordero**

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

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

July 19, 2004

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

faxed to (585)613-3299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Please find herewith a proposal for an order to issue upon your decisions at the hearing today of Trustee George Reiber's motion to dismiss the DeLano case. The order is in substance and even its wording practically the same as the relief that I requested in my statement of July 9 in opposition to the motion, except that in compliance with your decisions, I have:

1. eliminated the requests that Trustee Reiber be replaced and that a concurrent referral be made of this case to the FBI,
2. changed the dates for document production to those that you chose; and
3. taken account of Att. Werner's statement that he has already issued some subpoenas.

The removal from the order of the requests in 1. above, is done to abide by your decision and does not mean that I have renounced to those requests. On the contrary, as I stated at the hearing, Trustee Reiber has an insurmountable conflict of interests, does not and cannot represent the creditors' interests, and has shown to be unwilling and unable to conduct an investigation of the DeLanos, let alone an effective one. If he cannot exercise the minimum degree of proper care and due diligence to make copies of documents without missing pages, how can he be reasonably expected to be able to analyze them internally, much less by comparing them with all other documents available, and detect inconsistencies, draw logical inferences, and reach sound conclusions therefrom? Hence, not to replace him will doom whatever currently passes for his investigation to an exercise in futility. Only an independent party, such as the FBI, can conduct an investigation with a reasonable expectation of getting to the bottom of what is going on in this case and its broader context.

Nor is there any need to wait for the production of the requested documents to find out the whereabouts of the DeLanos' earnings of over $291,000 in the last three years, not to mention in the past 15. Wherever that money went, it did not make it into a disclosure in the petition. The absence of that money there, except for the ridiculous trace of two cars worth $6,500, household goods worth $2,910, and cash in accounts or in hand of $535.50, has given rise to the reasonable suspicion of concealment of assets. Not even the appearance of those earnings by a sleight of hand will dispel the suspicion. It is too late for that: The wrong was committed.

Therefore, I will reiterate those requests at an appropriate procedural event in the future. At present, I respectfully submit that the order should issue as is, for the parties had ten days since I faxed my Statement to them on July 10, to study it there and then to raise any objections at the hearing today to its presentation in the form of an order. Consequently, having had but missed that opportunity to object to it, they must be deemed to have consented to all its terms just as they are deemed to be able to prove their statements in court.

Sincerely,

Dr. Richard Cordero

E-75

JC:108

# UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13
Case no: 04-20280

# ORDER
## FOR PRODUCTION OF DOCUMENTS

Having heard on Monday, July 19, 2004, the motion raised by Chapter 13 Trustee George Reiber on June 15, 2004, to dismiss the above-captioned case, the Court orders the production of documents by the Debtors –the DeLanos–, their Attorney –Christopher Werner, Esq. – and the Trustee, and their submission to the Court, the Trustee, and Creditor Dr. Richard Cordero, by 4:30 p.m. on Wednesday, August 11, 2004, unless otherwise stated hereinafter, as follows:

a) All the pages of the **Equifax' credit reports** of April 26, 2004, for Mr. DeLano and of May 8, 2004, for Ms. DeLano, submitted incomplete on June 14, 2004, by Att. Werner to Trustee Reiber and by the latter to Dr. Cordero;

    (1) deadline for submission: by 4:30 p.m. on Wednesday, July 21, 2004.

b) **Financial documents** relating to transactions between the DeLanos and institutions:

    (1) **types of documents**:

        (a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements' parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

        (b) monthly bank statements of all their bank accounts, with all their parts and without redaction;

        (c) [see ¶a) above]

        (d) copies of their tax filings with the IRS, including 1040 forms;

        (e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

        (f) all materials, including the cover letter(s), sent by MBNA together with the two sets that it produced of copies of statements for the last three years of accounts 5329-0315-0992-1928 and 4313-0228-5801-9530, which sets of copies Att. Werner referred to in his letter to Trustee Reiber of July 12, and in paragraph 5 of his Statement to the Court of July 13, 2004, and which materials Dr. Cordero requested at the hearing without objection from Att. Werner;

    (2) **period of coverage**: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

    (3) **status of account**: whether open or closed;

    (4) **holder of account or interest**: whether in both or either of the DeLanos' names, or entities whom they control, such as their children, relatives, friends, tenants, their

attorney or representative, or holders of trusts for them;

(5) **deadline for submission**:

(a) the deadline applies to the documents themselves for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

(b) for documents **not in their possession**:

i) the deadline applies to **copies of**:

(A) subpoenas already issued, as stated by Att. Werner at the hearing, as well as those to be issued, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶b)(1) above and that could not be produced pursuant to ¶b)(5)(a) above, and

(B) each signature confirmation slip[1] affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;

ii) the deadline applies to an affidavit by the DeLanos and Att. Werner attesting to their compliance with the order in ¶b)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued, whether they were mailed or hand delivered; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number; the signature of the recipient, and the postmark.

c) All financial documents relating to the **loan to their son** referred to in Schedule B of the DeLanos' bankruptcy petition of January 26, 2004, including but not limited to:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment to the DeLanos after the entity processed their withdrawal request;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶c)(5)(b)-(h) above;

(7) dateline for submission:

(a) the documents themselves for all such documents in the DeLanos' possession;

(b) the DeLanos' affidavit; and

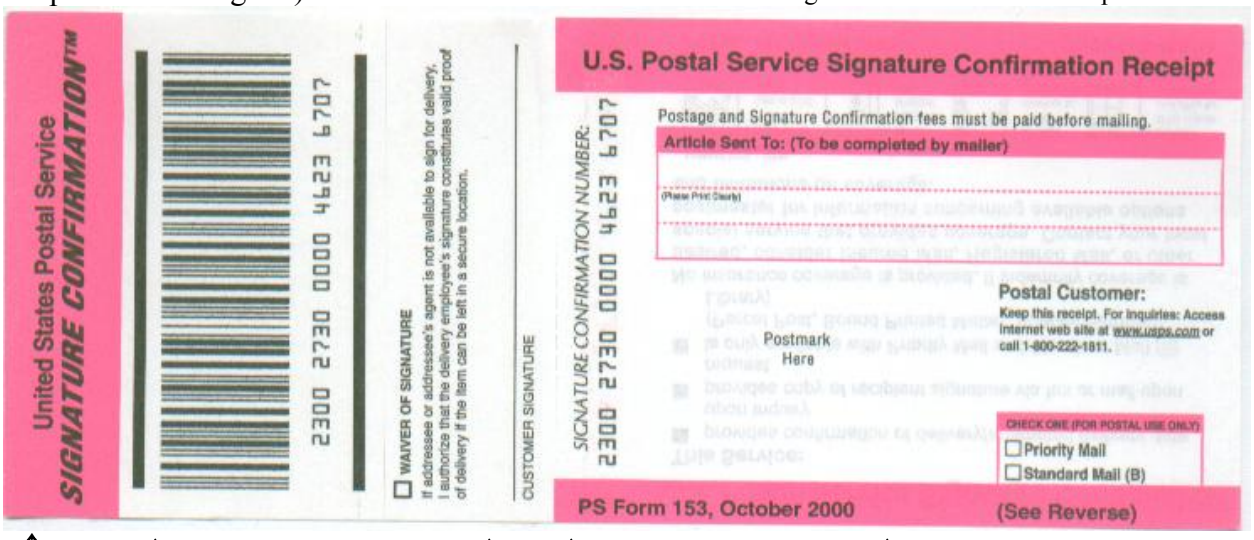
(c) as provided for in ¶b)(5)(b) above, for documents not in their possession;

d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED
THIS DAY OF_____

_____
HONORABLE JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

[1] Sample U.S.P.S. signature confirmation slip, with receipt on the right (the dark areas on the fax are pink in the original) ↓U.S. Postal Service Signature Confirmation Receipt↓




↑ ↑bar code and tracking number↑ ↑PS Form 153, October 2000↑
↑United States Postal Service *Signature Confirmation™*

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP
ATTORNEYS AT LAW

July 20, 2004

VIA MESSENGER

Hon. John C. Ninfo, II
United States Bankruptcy Court
100 State Street
Rochester, New York 14614

**Re: David G. and Mary Ann DeLano, Case No. 04-20280**

Dear Judge Ninfo:

We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court. Enclosed please find a copy of the proposed Order with our notations. Based both upon our recollection of your direction in Court and the summary trial, the following is to be performed:

1. By July 21, 2004 close of business, we are to supply copies of all pages of the credit reports in our possession to Mr. Cordero;

2. By August 11, 2004 close of business:

a. Mr. and Mrs. DeLano are to submit copies of any and all account statements and/or records relating to their credit card accounts currently in their possession; and

b. Mr. and Mrs. DeLano are to request credit reports from Equifax, Experion and TransUnion and, upon receipt, provide copies of the complete reports with all cover letters, recitations of federal rights and all other contents supplied to Mr. Cordero and the Trustee.

We have already forwarded copies of all of the Equifax report pages in our possession. We have also forwarded copies of the subpoenas we have issued to Bank One (three accounts), Discover, HSBC and Chase, though this was not required by the Court.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
7 South Broadway, Suite 300 • White Plains, New York 10601 • 914-682-4006 • FAX: 914-682-8273
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
http://www.boylanbrown.com

**Dr. Richard Cordero**

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

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

July 21, 2004

Hon. Judge John C. Ninfo, II
1220 US Court House
100 State Street
Rochester, NY 14614

faxed to (585)613-4299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Yesterday I faxed to you the proposed order for document production. It was discussed at the hearing the day before and implements your decision on that occasion. Indeed, after I requested that you grant my request for such order as described in my July 9 Statement Opposing the Motion to Dismiss, you stated that the Court does not prepare orders, but rather issues them on proposal from a party, whereupon I proposed to reformat the text of my requested order into a proposed order. Having already had the opportunity to read that text, you decided that I could do so and gave me your fax number to enable you to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents today.

While neither the order has issued nor my proposal has been docketed, a letter by Att. Werner, delivered via messenger to the Court and protesting the breath of my proposal, has already been docketed. As I indicated in the letter accompanying the proposed order, Att. Werner had ten days since I faxed my Statement to him on July 10 to learn the breath of my requested order, yet he failed to object to your decision that I convert it into a proposed order and fax it to you. If, as he stated on Monday, he has been in this business for 28 years, the must know his obligation to raise timely objections. Now it is too late for him to do so.

Nor can he pretend that your recapitulation of what we had to do constituted the total expression of his and the DeLanos' obligation. Your recapitulation was that I would submit the proposed order, that he and Trustee Reiber would submit the missing pages of the credit reports by today, and that the DeLanos would produce other documents by August 11. Its only reasonable purpose was precisely to act as such: as a summary of your decisions and our obligations. Att. Werner cannot distort your intention by casting out the part concerning the order, whose details he already knew, and retaining the part relating to his obligation expressed in the general terms of a recapitulation. If the latter two parts of the decision stated all that Att. Werner and the DeLanos had to do, I trust that you would not have allowed that I waste my time and effort once more in preparing and submitting a document that you were not going to act upon at all.

Nor can Att. Werner presume that you would content yourself with simply asking him to do what is expected of any lawyer, that is, submit complete documents, and of one acting in good faith, which here meant to comply with the Trustee's April and May requests by submitting all the credit card statements for the last three years, rather than pretend that by submitting a single and incomplete statement between 8 and 11 months old for each card he could truthfully "believe that we have complied in all respects to [sic] the Trustee's requests", as he stated to the Court in his July 13 Statement. The issue of the petition's good faith has been properly raised. Thus the proposed order aims to establish the nature of the expenditures and the whereabouts of the assets through pertinent documents, not just those that suit them. Hence, if the Court wants to be taken seriously by them and to justify my reliance on its word, it should issue the order as proposed.

Sincerely,

Dr. Richard Cordero

E-80

JC:113

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

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**IN RE:**

**DAVID G. DeLANO and**
**MARY ANN DeLANO,**

**CASE NO. 04-20280**
**Chapter 13**

**Debtors.**

---

# ORDER

On July 19, 2004 the Court conducted a hearing on the Chapter 13 Trustee's Motion to Dismiss the Debtors' case, as well as on the Statement in Opposition filed by Richard Cordero on July 12, 2004; and

**WHEREAS**, at the July 19, 2004 hearing, the Court required the Debtors and their attorney, Christopher K. Werner, Esq. ("Attorney Werner"), to do certain things, as more fully set forth in the Case Docket Report highlighted as follows:

> Hearing Continued (RE: related document(s) 42 Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 8/23/2004 at 03:30 PM Rochester Courtroom for 42, The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04. The debtors are to give Mr. Werner any pages of the Equifax report that they have and that he does not have. By the close of business on 7/21/04, Mr. Werner is to send complete copies of the Equifax report to the Trustee and Dr. Cordero. By 8/11/04, the Debtors are to have ordered their credit reports from Equifax, Trans Union and Experian. Within two days of their receipt, copies are to be provided to the Trustee and Dr. Cordero. The Court will adj. Dr. Cordero's request to remove Mr. Reiber as Trustee to 8/23/04. Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee. Appearing in opposition: Christopher Werner, Atty. for Debtors; Dr. Richard Cordero (By phone). (Parkhurst, L.) (Entered: 07/20/2004); and

**WHEREAS,** Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached; and

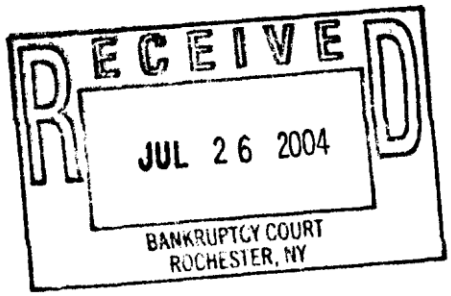
**WHEREAS**, the Court has reviewed this matter and believes that the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004.

It is therefore, **ORDERED,** that the Debtors and Attorney Werner comply with the highlighted Case Docket Report provisions, and Richard Cordero's request to remove the Chapter 13 Trustee, and other matters in the Chapter 13 case are adjourned to August 23, 2004.

**SO ORDERED.**

**DATED: July 26, 2004**

**HON. JOHN C. NINFO, II**
**CHIEF U.S. BANKRUPTCY JUDGE**



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

# NOTICE OF MOTION AND SUPPORTING BRIEF FOR DOCKETING AND ISSUE, REMOVAL, REFERRAL, EXAMINATION, AND OTHER RELIEF

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Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, NY, 14614, at the next two hearings scheduled in this case for August 23 and 25, 2004, or as soon thereafter as he can be heard, to request the docketing and issue of his proposed order of July 19, 2004, for document production by the Debtors; the docketing of his July 21, 2004; the removal of Trustee George Reiber and Att. James Weidman from this case; the referral of the case to the U.S. Attorney and the FBI; the examination of the Debtors, Trustee Reiber, and Att. Weidman under FRBkrP Rule 2004; and for other relief on the factual and legal grounds stated below.

I, Dr. Richard Cordero, Creditor in this case, state under penalty of perjury the following:

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## I. At a hearing on July 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received

1. Trustee George Reiber filed a motion of June 15, 2004, to dismiss this case and I filed a statement of July 9, 2004, to oppose it. My statement contained a detailed request for the issue of an order for production of documents by the Debtors and their attorney, Christopher Werner, Esq. The request specified which documents were to be produced as well as when, how, and by whom.

2. At the hearing of Trustee Reiber‟s motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.

3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format “page # of 5”. I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.

4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER[1] already contained the description of the hearing on July 19, which included the statement in capital letters:

   > Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.

6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

| | | |
|---|---|---|
| 07/20/2004 | 53 | Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004) |

When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

7. By contrast, the entry for Att. Werner‟s objection of July 19, 2004, to my claim as creditor of his clients reads thus.

| | | |
|---|---|---|
| 07/22/2004 | 51 | Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, |

[1] PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

| | | |
|---|---|---|
| | | Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004) |

8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

## II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket‟s important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.
14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:
    a. The most egregious instance of failure to docket concerns case 02-2230, Pfuntner v. Gordon et al, where Debtor David DeLano is a defendant and the bank *loan* officer who

made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829 Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

b. Even a paper concerning me but filed by another person has been withheld without docketing: The transcript that I first requested from Court Reporter Mary Dianetti on January 8, 2003, and that in violation of 28 U.S.C. §753(b) she did not deliver directly to me, was filed by her only on March 12, 2003, in violation of FRBkrP Rule 8007(a), and was not entered in docket 02-2230 until March 28, 2003, in violation of FRBkrP Rule 8007(b). Much worse yet, it was not mailed to me until March 26! Who withheld it from me, with whose authorization, and for what purpose?

c. Moreover, the dates of docketing have been altered: I timely mailed a notice of appeal from your dismissal of my claims against Trustee Kenneth Gordon in case 02-2230, Pfuntner v. Gordon et al, on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and I timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that my motion had been timely filed on January 29, you surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! So you denied my motion. You did not want to consider the fact that Trustee Gordon had checked the docket and the filing date of my notice of appeal and had claimed with your approval in disregard of FRBkrP Rules 8001, 8002, and 9006(e) and (f) that my notice, though timely mailed, had been untimely filed. Likewise, Trustee Gordon checked the filing date of my motion to extend for the same purpose of escaping through a technicality accountability for his recklessness and negligence as a trustee. He would hardly have made a mistake in such a critical matter. For your part, you would not investigate the discrepancy. Shedding light on why you would protect him so, PACER replied on page https://ecf.nywb.uscourts.gov/cgi-bin/login.pl to a query on June 26, 2004, of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". More revealing yet, in all but one of those 3,383 cases you, Judge Ninfo, have been the judge. You and Trustee Gordon go back a long way. When it came time for you to choose between protecting him and ascertaining the facts, I did not stand a chance. No wonder now the docket appears as if I had untimely filed my motion to extend on January 30, 2003.

d. What is more, docketed papers have been withheld: To perfect my appeal to the Court of Appeals in case 02-2230, I had to comply with F.R.A.P Rule 6(b)(2)(B)(i) by submitting my Redesignation of Items on the Record and Statement of Issues on Appeal. Suspicious of another docket manipulation, I sent originals of that critical paper to both your Court and the District Court on May 5, 2003…only to be utterly shocked upon finding out on May 24 that although the District Court had transferred the record on May 19, to the Court of Appeals, the latter‟s docket for my appeal, no. 03-5023, showed no entry for my Redesignation and Statement. Worse still, I checked the dockets of both the Bankruptcy and the District Court and neither had entered it! The absence of this paper

from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle‟s response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle‟s letter ignored that fact and required that I provide entry numbers before he could process my request for information.

f. Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:

   1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY

   2) Objection of March 29, 2004, to a Claim of Exemptions

   3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

   However, as of April 13, docket 04-20280 read like this in pertinent part:

| | | |
|---|---|---|
| 04/08/2004 | 19 | Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # 1 Appendix)(Tacy, K.) (Entered: 04/08/2004) |
| 04/09/2004 | 20 | Deficiency Notice (RE: related document(s)19 Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timeless of an objection to a claim of exempltions and for a written statements on and of Local Practice, filed by Interested Party Richard Cordero) |

| | | |
|---|---|---|
| | | (Finucane, P.) (Entered: 04/09/2004) |

These entries have many mistakes and reflected poorly on me as a filer…or as an "Interested Party" although I am a creditor listed as such in Schedule F of the DeLanos‟ petition and in the Court‟s Register of Creditors. Was somebody in the Court already prejudging my status after having informally gotten wind of Att. Werner‟s intention to challenge it in future? I had to write to Clerk of Court Warren on April 13 to point out to him that:

4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:…; otherwise, the title used in 1) above, could be used.

5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.

6) For its part, entry 20 contains jarring mistakes:

   a) it is not "timeless", but rather "timeliness";

   b) it is not "exempltions", but rather "exemptions";

   c) it is not "a written statements", but rather "a written statement".

I wrote to Mr. Warren: "I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed." Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano‟s petition even cursorily;

8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;

9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;

10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,

11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under "local practice" and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance…*mindboggling statements indeed!*

12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:

a) how "local practice" can invalidate federal law,

b) how a non-local finds out reliably what "local practice" is, and

c) why I should waste any more time, effort, and money doing legal research that will be trumped by whatever "local practice" is said to be.

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.

16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

> The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk.

17. Also inscribed in that pattern is the failure to docket my letter faxed on July 22, which is compounded by the pretense that it was never received, though acknowledged by a clerk to be in chambers and its transmission is recorded on my telephone bill.

## III. Judge Ninfo's requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the DeLanos that he requested of Dr. Cordero on July 19, 2004

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber"s motion to dismiss the DeLanos" petition; whether your knowledge was actual or constructive is

indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: "Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED." But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not issue it, actually you would not even transmit it to the clerks for docketing!

19. This is not the first time either that you ask me to prepare and submit a document that you never intended to act upon. Here are the most blatant instances:

    a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano‟s attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep you word it all redounded to my detriment.

    b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano‟s attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.

    c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose

even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.

20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore "local practice" (see para. 14.f.11) and 12)) and challenge your rulings on appeal.

21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, "the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004", why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!

22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

## IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of Attorney for the DeLanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between „objections to" and „concerns about". It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.

24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).

25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:

a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;

b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;

c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos‟ Plan of Repayment;

d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and

e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.

26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner‟s objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim…but is there any point in doing so?

27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).

28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake![2]

## V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud

[2] For other instances of your bias against me and toward the local parties and the description of other acts of disregard of the law, the rules, and the facts that form part of a pattern of non-coincidental, intentional, and coordinated wrongdoing to my detriment, see in docket 02-2230, entry 111, my motion of August 8, 2003, for you to remove that case to a presumably impartial court, such as the U.S. Bankruptcy Court in Albany, and recuse yourself from that case.

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:

    a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.

    b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.

    c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.

    d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded $5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases", reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.

    e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their" "unreasonable delay" in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.

    f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them…yet he has $3,909 *open* cases, according to PACER. Was there never a case in such a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?

    g. Whether such tremendous workload caused him to operate by dismissing cases that required investigation, or his failure to give petitions even a cursory review allowed him to rubberstamp such a huge number of cases, the fact is that he failed to detect the glaring indicia that something was wrong with the DeLanos" petition, such as these:

        1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of

the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.

2) While a bank officer would be expected to carry the bank‟s credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention „sticking‟ their employer with a bankruptcy debt.

3) Mr. DeLano and his working wife declared earnings of $291,470 in only the three years from 2001-2003.

4) Nevertheless, they declared having only $535.50 in cash or in bank accounts… with M&T and in credit, of course;

5) two cars worth together merely $6,500;

6) equity in their house of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;

7) household goods worth only $2,910…that‟s all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years…unbelievable!

8) Yet, they have accumulated $98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,…

9) Wait a moment! Where did their $291,470 go?

30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos‟ earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.

31. But if Trustee Reiber did review the DeLanos‟ documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.

32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?

33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

## VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:

a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket‟s electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;

b. issue that order, modified by the remark that insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;

c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;

d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;

e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:

1) Mr. Lawrence A. Friedman, Director

2) Donald F. Walton, Acting General Counsel

3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;

g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:

1) the Debtors under 11 U.S.C. §341; and

2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);

h. enter my opposition to Att. Werner‟s motion to disallow my claim, against which I will argue on August 25;

i. allow me to present my arguments by phone at the two upcoming hearings; not cut off

the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the next scheduled public event;

j. reply to my motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

August 14, 2004

Dr. Richard Cordero

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

## CERTIFICATE OF SERVICE

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eCast Settlement Corporation
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# UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13
Case no: 04-20280

# ORDER
## FOR DOCKETING AND ISSUE, REMOVAL, REFERRAL, AND EXAMINATION

Having reviewed the history of the above-captioned case and the papers submitted by the several parties, and in light of the provisions of the United States Code and Rules applicable to it, the Court orders as follows:

a. the proposed order of July 19, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 20, 2004, in entry 53 of docket 04-20280 and uploaded into the docket‟s electronic version to make it publicly available through it, forthwith by the clerk;

b. said order is incorporated herein and effective immediately; and insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date of this order;

c. the letter of July 21, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 22, 2004, in docket 04-20280 and uploaded into its electronic version to make it publicly available through it, forthwith by the clerk

d. Trustee George Reiber is removed under 11 U.S.C. §324 forthwith from this case; James Weidman, Esq., is to terminate forthwith any and all relation to this case, whether as a professional person employed under §327 or otherwise; and any payment to them or disbursement by them of funds in connection with this case is forthwith prohibited until otherwise ordered by a competent authority;

e. the clerk will forthwith send a copy of both this order and the above-described order of July 19, 2004, with a pertinent report by this Court to follow shortly, to the following officers:

1) for review, investigation, and reconstruction of this case as appropriate, and the subsequent appointment of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the Debtors:

a) Mr. Lawrence A. Friedman, Director

b) Donald F. Walton, Acting General Counsel

c) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

2) under 18 U.S.C. §3057(a) for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.:

a) Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Av., NW
Washington, DC 20530-0001

b) Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

c) Rochester Resident Agent
Federal Bureau of Investigations
300 Federal Building
100 State Street
Rochester NY 14614

f. the following persons are to produce and make themselves available for examination under FRBkrP Rule 2004 by Dr. Richard Cordero, whether as creditor or party in interest, and for the official record, in room _____at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September _____, 2004, and, if necessary for further examination, the following day:

1) the Debtors, Mr. David DeLano and Mrs. Mary Ann DeLano; and

2) Trustee George Reiber and James Weidman, Esq.

SO ORDERED
THIS DAY OF_____ _____
HONORABLE JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

https://www22.verizon.com/foryourhome/mysmarttouch/statementview/GenerateStatement.aspx

Today is Sun, 1 Aug 2004

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# Online Activity Statement for all your SmartTouch℠ calls and purchases

Account: **718-827-9521**
Statement Period: **Jul1, 2004 - Aug1, 2004**

### Important Numbers

If you have any questions about the long distance service provided by Verizon Long Distance, please call 1-888-599-0107.
Thank you for using SmartTouch from Verizon.

New for SmartTouch customers! Make your account even smarter with our new Rapid Recharge feature. We'll automatically "recharge" your account for you from your check card or credit card account .
International calls that terminate to wireless phones may incur additional charges

## Summary of SmartTouch Account Activity

| | |
|---|---|
| Starting Balance | 14.80cr |
| Purchases Activity | 20.00cr |
| Direct Dialed Calls | 20.48 |
| **Ending Balance** | **$14.32cr** |

## Purchases Activity

| *no.* | *date* | *Description* | *amount* |
|---|---|---|---|
| 1. | 07/19/2004 | SmartTouch Purchases | 20.00cr |
| **Total Purchase Activity** | | | **$20.00cr** |

## Direct Dialed Calls

**In-State Calls: 718-827-9521**

| *no* | *date* | *time* | *place* | *number* | *min.* | *amount* |
|---|---|---|---|---|---|---|
| 2. | 07/06/2004 | 15:14 PM | ROCHESTER NY | 585-263-5706 | 23.0 | 1.84 |
| 3. | 07/10/2004 | 12:53 PM | ROCHESTER NY | 585-427-7804 | 9.0 | 0.72 |
| 4. | 07/10/2004 | 13:02 PM | ROCHESTER NY | 585-232-3528 | 9.0 | 0.72 |
| 5. | 07/10/2004 | 13:12 PM | ROCHESTER NY | 585-263-5862 | 9.0 | 0.72 |
| 6. | 07/15/2004 | 11:54 AM | ROCHESTER NY | 585-613-4200 | 6.0 | 0.48 |
| 7. | 07/19/2004 | 14:25 PM | BUFFALO NY | 716-841-4506 | 1.0 | 0.08 |
| 8. | 07/19/2004 | 15:39 PM | ROCHESTER NY | 585-613-4281 | 1.0 | 0.08 |
| 9. | 07/20/2004 | 09:41 AM | ROCHESTER NY | 585-613-4200 | 2.0 | 0.16 |
| 10. | 07/20/2004 | 09:46 AM | ROCHESTER NY | 585-613-4299 | 5.0 | 0.40 |
| 11. | 07/20/2004 | 10:06 AM | ROCHESTER NY | 585-427-7804 | 5.0 | 0.40 |
| 12. | 07/20/2004 | 10:10 AM | ROCHESTER NY | 585-263-5862 | 5.0 | 0.40 |
| 13. | 07/20/2004 | 10:15 AM | ROCHESTER NY | 585-232-3528 | 5.0 | 0.40 |
| 14. | 07/20/2004 | 13:15 PM | ROCHESTER NY | 585-613-4200 | 3.0 | 0.24 |
| 15. | 07/21/2004 | 07:46 AM | BUFFALO NY | 716-841-1207 | 13.0 | 1.04 |
| 16. | 07/21/2004 | 09:47 AM | BUFFALO NY | 716-841-6813 | 3.0 | 0.24 |
| 17. | 07/21/2004 | 11:55 AM | ROCHESTER NY | 585-546-1980 | 56.0 | 4.48 |
| 18. | 07/21/2004 | 16:14 PM | ROCHESTER NY | 585-613-4200 | 5.0 | 0.40 |
| 19. | 07/22/2004 | 08:41 AM | ROCHESTER NY | 585-613-4299 | 2.0 | 0.16 |
| 20. | 07/22/2004 | 11:25 AM | BUFFALO NY | 716- | 4.0 | 0.32 |
| 21. | 07/26/2004 | 12:02 PM | ROCHESTER NY | 585-613-4200 | 8.0 | 0.64 |

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

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**IN RE:**

**DAVID G. DeLANO and**
**MARY ANN DeLANO,**

**CASE NO. 04-20280**
**Chapter 13**

**Debtors.**

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# INTERLOCUTORY ORDER

**WHEREAS**, on January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case"); and

**WHEREAS**, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692(the "Premier Case"); and

**WHEREAS,** prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

**WHEREAS**, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

**WHEREAS**, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

**WHEREAS**, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

**WHEREAS,** on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

**WHEREAS**, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

**WHEREAS**, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

**WHEREAS**, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

**WHEREAS**, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

**WHEREAS**, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

**WHEREAS**, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

**WHEREAS**, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

**WHEREAS,** at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) the Claim Objection on its face is compelling, because the Cordero Claim and its attachments

set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

**WHEREAS**, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

**WHEREAS**, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED,** that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

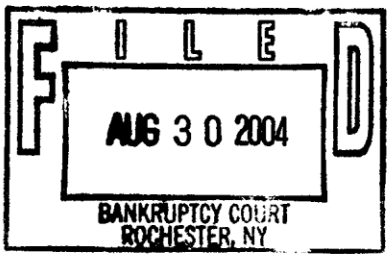
3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

**SO ORDERED.**

**DATED: August 30, 2004**

**HON. JOHN C. NINFO, II**
**CHIEF U.S. BANKRUPTCY JUDGE**



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

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

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

**Statement of relief sought:**

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

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

**OPPOSSING PARTY:** See next

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

**Has consent of opposing counsel been sought?** Not applicable

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

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:**
Dr. Richard Cordero

**Has service been effected?** Yes; proof is attached

**Date:** September 9, 2004

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**ORDER**

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

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

**Date:** _____ **By:** _____

# UNITED STATES COURT OF APPEALS
# FOR THE SECOND CIRCUIT

**MOTION TO QUASH**
**a bankruptcy court's order**
**to sever a claim from**
**the case on appeal in this Court**
**to try it in another bankruptcy case**

In re PREMIER VAN LINES, INC.,
Debtor

**Case no. 03-5023**

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JAMES PFUNTER,
Plaintiff

Adversary Proceeding
Case no. 02-2230

-v-

KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK,
Defendants

---

RICHARD CORDERO
Third party plaintiff

-v-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

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

**1.** This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.

**2.** Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfuntner v. Gordon et al, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens

the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole Pfuntner case, moot; and makes a mockery of the appellate process.

**3.** Indeed, Judge Ninfo is reopening now Pfuntner v. Gordon et al. to sever from it Dr. Cordero‟s claim against Mr. DeLano and have Dr. Cordero try it in another case, that is, Mr. and Mrs. DeLano‟s bankruptcy case, dkt. no. 04-20280. The foregone conclusion is that the Judge will grant the DeLanos‟ motion to disallow that claim, which arose from the Pfuntner case, and thus eliminate Dr. Cordero from the bankruptcy case. Judge Ninfo and the DeLanos want to do this now, after treating Dr. Cordero as a creditor for six months, because he is the only creditor that analyzed the DeLanos‟ January 26 petition and other documents and showed in his July 9 statement evidence of fraud. Consider these few elements, cf. longer list at Exhibit E-page 88 §IV:

a) Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…but declared in their petition only $535 in hand and on account; and household goods worth merely $2,910 at the end of two lifetimes of work!, while they owe $98,092 on 18 credit cards, but made a $10,000 loan to their son, undated and described as “uncollectible”. Does one need to be a lending industry insider, like Mr. DeLano, to recognize that these numbers do not make sense or rather to know how and with whom to pull it off?

**4.** Evidence that the Order‟s purpose is to eliminate Dr. Cordero and protect the DeLanos is that Judge Ninfo suspended all proceedings in the DeLano case until the motion to disallow Dr. Cordero‟s claim has been finally determined at an evidentiary hearing in 2005, or beyond in case of appeals! (E-155¶2) If the Judge did not suspend the DeLano case, **1)** Dr. Cordero would move for Judge Ninfo to force the DeLanos to comply with his pro-forma July 26 order of document production, which he issued at Dr. Cordero‟s instigation but they disobeyed with impunity (E-95, 105, 107,109); **2)** move to force the DeLanos to comply with his discovery requests, such as production of bank and debit card account statements that can lead to the whereabouts of the concealed assets and thus prove bankruptcy fraud by the DeLanos and others, requests that the DeLanos are likely to respect even less than they did the Judge‟s order; and **3)** move again for examination of the DeLanos and others under FRBkrP Rule 2004. To ensure that no such action

by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!

**5.** By not allowing the DeLano case from moving forward concurrently with the motion to disallow, Judge Ninfo excuses the Trustee from resubmitting for confirmation the DeLanos‟ debt repayment plan so that Dr. Cordero cannot oppose it by introducing any additional evidence of the DeLanos‟ bankruptcy fraud that he may discover. By so preventing concurrent progress of the case, Judge Ninfo harms all the 21 creditors, who have an interest in repayment beginning immediately, as well as the public at large, who necessarily bears the cost of fraud and wants it uncovered. Hence, Judge Ninfo has issued his Order with disregard for the law and appellate process, in bad faith, and contrary to the interest of the creditors and the public.

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## I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process

**6.** The case on appeal in this Court originates in the Adversary Proceeding Pfuntner v. Gordon et al., all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousers, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

**7.** In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero"s claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos" attorney, Christopher Werner, Esq., for objecting to Dr. Cordero"s claim (E-101):

> Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank.

**8.** It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by

this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?

**9.** The situation would not be better at all if Dr. Cordero were found in the severed proceedings to have a claim against Mr. DeLano in the Pfuntner case on appeal here. When the Court remanded the case for trial, the other parties would try to escape liability by pointing to that finding. Either way, whatever justice could have been achieved through the appellate process would have been intentionally thwarted in anticipation by distorting through piecemeal litigation the dynamics among multiple parties and claims within the same series of transactions.

## II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. DeLano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim

**10.** This is how the Bankruptcy Code, at 11 U.S.C., defines a "creditor":

> §101. Definitions
>
> (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…
>
> (15) "entity" includes person…

**11.** In turn, it defines "claim" thus:

> (5) "claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;[1]

**12.** These definitions easily encompass Dr. Cordero"s claim against Mr. DeLano. Moreover, FRBkrP Rule 3001(a) provides thus:

> (a) Proof of Claim
> A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

**13.** Dr. Cordero"s proof of claim of May 15 was so formally correct that it was filed by the clerk

[1] This definition of a claim was adopted in *United States v. Connery, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).*

of court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the benefit provided under FRBkrP Rule 3001(f):

> (f) Evidentiary effect
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

**14.** Dr. Cordero‟s claim is now legally entitled to the presumption of validity. Hence, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their January 26 petition (E-3 Schedule F). It follows that to overcome that presumption they had to invoke legal grounds on which to mount a challenge to its validity. However, just as Judge Ninfo disregards law and rules so much that he did not cite any to support his Order, so Att. Werner.

### A. Mr. DeLano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection on July 19, 2004

**15.** This is all Att. Werner could come up with in his July 19 Objection to a Claim (E-101):

> Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

**16.** To avoid confusion, it should be noted that neither M&T Bank, nor Mr. DeLano, nor Dr. Cordero is a party to "Premier Van Lines (01-20692)". They are parties to the Adversary Proceeding. Thus, its docket no. 02-2230, is the one relevant because that is the case pending before this Court under docket no. 03-5023. But Att. Werner‟s citation works as an unintended reminder to this Court that it has jurisdiction to decide this motion because the Proceeding on appeal is being disrupted by arbitrary severance of a claim in it to be dragged into the DeLano case.

**17.** Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero‟s claim against him, namely, the third party claim of Mr. DeLano‟s negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano‟s M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer‟s clients held in such containers, such as Dr. Cordero‟s, which ended up lost or damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano

through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCivP Rule 8(a) to give "a short and plain statement of the claim". So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

**18.** When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero‟s claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

**19.** It was only after Dr. Cordero‟s July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). How-ever, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

**20.** Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims „to have been in this business for 28 years‟, must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

**21.** If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

### B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim

**22.** The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the $291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero"s insistence the Judge issued on July 26 (E-107, 103).

**23.** In their desperation, Att. Werner denied Mr. DeLano"s liability to Dr. Cordero and even that of his employer, M&T Bank, which is not even a creditor in the DeLano case and is not represented by Att. Werner or his law firm (E-130§III). However, an attorney"s opinion on his client"s lack of liability does not constitute evidence of anything and rebuts no legal presumption, and all the more so a lay man-like opinion unsupported by any legal authority (E-138§I).

**24.** Then Att. Werner spuriously alleged that Dr. Cordero did not set forth any claim against Mrs. DeLano. Yet he filled out Schedule F (E-3), which requires the debtor to mark each claim thus:

> If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

**25.** A bankruptcy claim is perfectly sufficient if only against one of the joint debtors! Att. Werner must have known that. Hence, this allegation was spurious and made in bad faith (E-131§IV).

**26.** With a denial of knowledge belied by the facts, an irrelevant opinion on non-liability, and a spurious allegation Att. Werner cannot do what the claim objection form in capital letters required him to do (E-101):

> DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f)

**27.** Case law has interpreted this requirement thus:

> The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity. *In re Babcock & Wilcox Co., 2002 U.S. Dist. LEXIS 15742, at 6 (E.D.La. 2002)*.

**28.** The objector‟s evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim. *In re Wells, 51 B.R. 563 (D.Colo. 1985)*; *Matter of Unimet Corp., 74 B.R. 156 (Bankr. N.D. Ohio 1987)*. See also Collier on Bankruptcy, 15 ed. rvd., vol. 9, ¶3001.09[2]. Denial of liability as an employee is not evidence or proof of anything.

### C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount

**29.** Dr. Cordero stated a legally sufficient claim against Mr. DeLano in a complaint that satisfied the notice pleading requirements of the FRCivP. The claim also satisfied the Bankruptcy Code, for it requires only that notice essentially of the claim‟s existence and amount be given. In fact, the Proof of Claim Form B10 provides in 9. Supporting Documents "…If the documents are voluminous, attach a summary." That is precisely what Dr. Cordero did when he mailed his claim against Mr. DeLano on May 15 with three pages out of the 31 pages of the complaint, including the caption page, which was labeled (E-77):

> Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court

**30.** That only notice of the claim must be given follows from the fact that even the debtor, the trustee, a codebtor, or a surety can file the claim if the creditor fails to do so timely. None of them have to give notice of how the claim arose and what its legal basis is. Even a contingent and disputed claim is a valid claim under 11 U.S.C.§101(5); (¶11, supra). Judge Ninfo had no justification to pierce, as it were, the presumption of validity of Dr. Cordero‟s claim against Mr. DeLano in the case on appeal here and drag the claim out and into the DeLano case so that, as Att. Werner put it (¶15), Dr. Cordero „substantiate an obligation of Debtors‟ to him. By doing so the Judge showed again his bias against Dr. Cordero and toward the local parties (E-118§IV).

### D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing

**31.** Section 502(b) of Title 11 provides that if a claim is objected to, the judge:

> …shall determine the amount of such claim…and shall allow such claim in such amount…

**32.** The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim,

whose proof "shall constitute prima facie evidence of the validity and amount of the claim". This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other words, drowning in debt. It is his challenge that is suspect.

**33.** Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim "because such claim is contingent or unmatured". It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim"s contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

**34.** If the judge cannot determine the claim"s amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

> (c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case…shall be estimated.

**35.** Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim"s value when liquidating the claim "would unduly delay the closing of the estate".

**36.** But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero"s claim because Judge

Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

**37.** There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) "to ensure that the case is handled expeditiously and economically" and under §1325(a)(3), to ascertain whether the DeLanos" „plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law". These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public"s interest in bankruptcies free of fraud, which trumps a debtor"s private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

**38.** Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition"s good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos" petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero"s request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909[2] *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)

**39.** Intent can be inferred from a person"s conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo"s severance of Dr. Cordero"s claim from the case before this Court to try it in his is a sham!

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

## III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thereby denying him access to judicial process and requiring this Court to step in

**40.** At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero‟s claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

**41.** Yet, Judge Ninfo knows that the DeLanos are all but certain to fail to produce documents to Dr. Cordero because they already failed to do so pursuant to the Judge‟s own order of July 26, a failure complained about by Dr. Cordero at the August 25 hearing without being contradicted by Att. Werner. Likewise, the DeLanos so much failed to produce documents at the requests (E-73,82) of Trustee Reiber that on June 15 he moved to dismiss. Moreover, the DeLanos already ignored Dr. Cordero‟s direct requests for documents of March 30 and May 23 (E-64¶80b, 83). Through denial of judicial assistance, the mission to conduct discovery on the claim against Mr. DeLano is made an impossible one: Judge Ninfo has set up Dr. Cordero to fail!

## IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero

**42.** Contrary to Judge Ninfo‟s statements, the issues that Dr. Cordero pursues in the DeLano case are not "collateral and tangential" (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the $291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero‟s property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bank-

ruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).

**43.** If Judge Ninfo „is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property" (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September *2002*, is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

> …[to] address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward….

**44.** Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

**45.** By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

> 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…

**46.** Since Mr. Pfuntner"s warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero" property could also have been stolen or damaged.

**47.** What is more, pursuant to Judge Ninfo"s order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner"s attorney at the hearing, David MacKnight, Esq.

**48.** While Judge Ninfo blames Dr. Cordero for „not taking possession and securing his property" (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero"s property in the warehouse upon Dr. Cordero"s remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and

protracting the resolution of the case enormously.

**49.** Judge Ninfo‟s bias against Dr. Cordero and towards the DeLanos is palpable in his order:

> Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano…(E-151)

**50.** Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

**51.** By contrast, Judge Ninfo put stock on the fact that "DeLano, through his attorney, has adamantly denied: (1) any knowledge…and (2) any…liability if there has been any loss or damage" to Dr. Cordero‟s property (E-150¶2). Did Dr. Cordero have to assert "adamantly" the evidence of such loss or damage for the Judge not to cast doubt on it with his formulation "if there in fact has been any loss or damage"?; id.

**52.** While Dr. Cordero‟s are "collateral and tangential issues" (E-153), the Judge considers that:

> whether the Debtors are honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to the Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00…(E-153-154)

**53.** Is this the way an impartial arbiter talks before having the benefit of the discovery that he is ordering Dr. Cordero to begin to undertake and who has allowed the DeLanos to conceal information by disobeying his July 26 document production order? Why does Judge Ninfo deem it "much more important" to make 21 creditors bear the loss of 4/5 of the $185,462 in liabilities of Mr. DeLano (E-3 Summary of Schedules) than to hold him, a bank loan officer for 15 years, to a higher standard of financial responsibility because of his superior knowledge? Why does Judge Ninfo deny Dr. Cordero the protection to which he is entitled under the Code? Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor‟s repayment plan; and §1330(a) entitles any party in interest, even one who is not a

creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

**54.** Moreover, Judge Ninfo has already prejudged a key issue in controversy:

> …the Court determined that:…(2) the purpose of filing the Claim Objection was not to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (E-154-155)

**55.** How does Judge Ninfo know that the Debtors believe anything "honestly" since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case "for unreasonable delay" in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero"s claim now?

**56.** Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.

**57.** Do Judge Ninfo"s statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero"s position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

## V. A mechanism for many bankruptcy cases to generate money, lots of it

**58.** The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid „a percentage fee of the payments made under the plan of each debtor". Thus, the confirmation of a plan generates a stream of payments from which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of

the statements made in the petition would only be compensated -if at all, for there is no specific provision therefor- to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)

**59.** Any investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let‟s say, $300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he were bankrupt and had no money.

**60.** Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos‟ petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos‟.

**61.** There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy petitioners from having to account for $291,470; **2)** allows them to disobey his document production order with impunity; **3)** prejudges in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

## VI. Relief requested

**62.** Therefore, Dr. Cordero respectfully requests that this Court:

a) Quash Judge Ninfo‟s Order of August 30 (E-149); meantime stay it; if upheld, extend it;

b) Refer the Premier, the Pfuntner v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:

(1) Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and

(2) Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;

(3) David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;

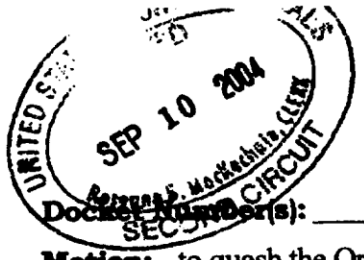
c) Disqualify Judge Ninfo from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

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

Respectfully submitted on,
September 9, 2004 .

Dr. Richard Cordero

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




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

ORIGINAL

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

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

**Statement of relief sought:**

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

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

**OPPOSSING PARTY:** See next

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

**Has consent of opposing counsel been sought?** Not applicable

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

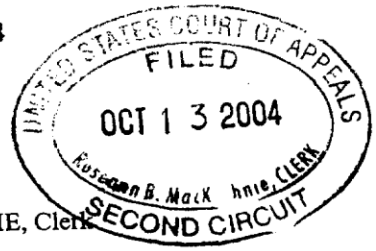
**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:** Dr. Richard Cordero

**Has service been effected?** Yes; proof is attached

**Date:** September 9, 2004




**ORDER**

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

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

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

OCT 1 3 2004

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

# UNITED STATES COURT OF APPEALS
## FOR THE SECOND CIRCUIT

**In re: Premier Van Lines** **Case no.: 03-5023**

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

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

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

## I. Substantial questions that the certiorari petition would present

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

   a) Does it violate the Appellant‟s right to due process of law under the Fifth Amendment of the Constitution[4] and the right to equal protection of the laws[5] included in the due process

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

[2] See pages 9 et seq. infra.

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

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

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

b) Has the Court by not even taking cognizance of the mounting evidence of wrongdoing that would have led a reasonable and prudent person[10] to question the impartiality of the complained-about judges[11]; by not conducting an investigation of the judges and others participating in such wrongdoing; and even failing to fulfill its duty under 18 U.S.C.

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

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

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

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

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

[10] State v. Garner (M0 App) 760 SW2d 893, appeal after remand (Mo App) 799 SW2d 950 (Where a judge‟s freedom from bias or his prejudgment of an issue is called into question, the inquiry is no longer whether he actually is prejudiced; the inquiry is whether an onlooker might on the basis of objective facts reasonably question whether he is so.) Cf. H.R. REP. NO. 1453, 93d Cong., 2d Sess. 1, 5, reprinted in 1975 U.S.C.C.A.N. 6351, 6351, 6355, reporting on the general judicial disqualification provision at 28 U.S.C. § 455 (1988) that the fundamental purpose behind the section's amendment in 1974 (Act of Dec. 5, 1974, Pub. L. No. 93-512, § 1, 88 Stat. 1609) was to "broaden and clarify the grounds for judicial disqualification" in order "to promote public confidence in the impartiality of the judicial process."

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

§3057(a) to report the case to the United States attorney, so that it has taken no action[12] to insure the integrity of the judicial and bankruptcy systems and officers in question, engaged in denial of justice to Appellant and thereby failed in its fundamental function under Article III within the framework of the Constitution of dispensing justice according to law?

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

3. Given recent statements of concern about judicial misconduct going unchecked and the concrete action taken to find its extent and effect, it is reasonable to contemplate that the Supreme Court may issue the writ of certiorari to take this case as a test case. Indeed, none other than Supreme Court Chief Justice William Rehnquist has appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act [28 U.S.C. §351 et seq.] Study Committee. Congress too has taken notice. The Chairman of the House of Representatives Committee on the Judiciary, F. James Sensenbrenner, Jr., welcomed the appointment of Justice Breyer and recognized the need for the study saying that "Since [the 1980s], however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."

4. Such perfunctory dismissals have compromised, as Justice Breyer‟s Committee put it in its news release after its first meeting last June 10, "The public's confidence in the integrity of the judicial branch [which] depends not only upon the Constitution's assurance of judicial independence [but] also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability". If the Justice and his colleagues put an effective complaint procedure at a par with the judiciary‟s constitutionally ensured independence, why then have chief judges and judicial councils treated complaints with so much contempt? Are they dispensing protection to each other in their peer system at the expense of those for whose benefit they took an oath to dispense justice?

## III. Good cause for a stay of the mandate

5. If the mandate were to issue, it would expose Dr. Cordero to the resumption by Bankruptcy Judge John C. Ninfo, II, of the case and to suffering the concomitant wrongdoing and bias. No

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

subsequent appeal would compensate Dr. Cordero for the further injustice, material loss, and tremendous aggravation that would thereby be inflicted upon him, who as a pro se litigant has already had his life disrupted by having to struggle for more than two years in this baffling Kafkian process conducted through disregard for legality and arbitrariness prompted by bias.

6. If after final judgment in the bankruptcy court and an appeal to the district court on the floor above in the same federal building in Rochester where the same group of officers participating in the same wrongdoing will determine a final judgment, Dr. Cordero still has the strength and the means to appeal to this Court and it reverses the lower court and removes the case to an impartial court to begin proceedings all over again, who will compensate Dr. Cordero for having to endure such travesty of justice? Nobody! The harm inflicted upon him by those with a vested interest in not allowing him to pierce the cover of the bankruptcy fraud scheme that provides the motive for wrongdoing and bias would be irreparable.

7. And how could he possibly find the emotional and material resources and the time to begin all over again in the removal court? By wearing him down justice will have been denied to him.

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

8. FRAP Rule 36(b) provides thus:

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

9. Although the Court‟s order denying Dr. Cordero‟s motion for panel rehearing was entered on October 26, it was not mailed for days and consequently, it was not received until even later. As a result, Dr. Cordero had to scramble on Monday, November 1, and Tuesday, November 2, to prepare this motion to stay the mandate.

10. When Dr. Cordero called the Court on Monday, November 1, to bring this fact to its attention, Motion Attorney Arthur Heller and Supervisor Lucile Carr told him that the Court receives many cases, that it is very busy, and that while it strives to proceed as required, it not always has the personnel to do so. If the Court fails to abide by its own rules, can it in all fairness hold litigants to the deadlines imposed on them? Can Dr. Cordero or for that matter any other litigant simply claim that he had too many other cases and was too busy to meet the deadlines and

thereby get the Court to excuse his noncompliance and grant a time extension? Respect for rules can be demanded by a court of justice when it complies itself with those rules imposing obligations on it.

11. But this is by no means the first the time that this has happened. Indeed, in the same conversations with Mr. Heller and Ms. Carr on Monday, November 1, Dr. Cordero brought to their attention that the letter that upon authorization by Mr. Heller Dr. Cordero faxed to him on September 27, 2004, and of which he acknowledged receipt had not yet been docketed; just as the paper dated October 12, 2004, that Dr. Cordero personally filed in the In-Take Room 1803 on October 19, had not been filed yet. What is more, on Wednesday, October 27, Dr. Cordero brought to Mr. Heller"s attention the matter of the non-docketing of the October 12 paper. Mr. Heller transferred Dr. Cordero to Mr. Andino, to whom he further explained this matter. Mr. Andino put Dr. Cordero on hold and after a few minutes Mr. Andino told him that his October 12 paper had been located and would be filed. But it was not. As of today, November 2, despite the conversation yesterday with Ms. Carr, neither of those two papers has been filed.

12. What is more, these instances of late notice and non-filing are by no means the first ones. On August 10, 2004, Dr. Cordero called Mr. Heller and recorded on his voice mail a message stating that he had signed on Monday, August 2, the Court"s decisions on two motions, namely, for Chief Judge Walker to explain his denial of the motion to recuse himself or to recuse himself, and for declaratory judgment that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16. However, those decisions were mailed to Dr. Cordero only, on August 9, a whole week after being issued. Dr. Cordero stated that this was not the first time that such late notification had happened.

13. Indeed, it had happened with the notification of the dismissal of the notice of appeal of January 26, 2004, which caused Dr. Cordero to request and extension to file the motion for panel rehearing. The motion was granted but it too was notified late! so that Dr. Cordero derived very little benefit from it.

14. In fact, since the beginning of the proceedings in this Court, Dr. Cordero has had to endure these procedural failures on the part of the Court. For proof, read:

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

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

## V. Relief sought

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

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

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

Respectfully submitted on

November 2, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

## VI. Exhibits

1. Dr. Cordero"s motion of August 14, 2004, for docketing and issue, removal, referral, examination, and other relief, noticed for August 23 and 25, 2004 ..... [E-83]
2. Judge Ninfo"s Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor DeLano arising from the Pfuntner v. Gordon et al. case on appeal in the Court of Appeals for the Second Circuit ..... [E-101]
3. Dr. Richard Cordero"s Motion of September 9, 2004, to Quash the Order of Judge John C. Ninfo, II, of August 30, 2004 ..... [E-109]

## Proof of Service

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

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

Kathleen Dunivin Schmitt, Esq.
New Federal Office Building
Assistant U.S. Trustee
100 State Street, Room 6090
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tel. (585) 263-5812
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Michael J. Beyma, Esq.
Underberg & Kessler, LLP
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David D. MacKnight, Esq.
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Fix Spindelman Brovitz & Goldman, P.C.
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Mr. David Palmer
1829 Middle Road
Rush, New York 14543

**U.S. Department of Justice**

*United States Attorney*
*Western District of New York*

*620 Federal Building*
*100 State Street*
*Rochester, New York 14614*

*(585) 263-6760*
*FAX(585) 263-6226*

August 24, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 12208-1515

Dear Dr. Cordero:

We have reviewed the materials sent to us from the Southern District of New York regarding your allegations of bankruptcy fraud and judicial misconduct. Please be advised that we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so. Accordingly, we are returning your original documents to you with this letter.

Sincerely,

MICHAEL A. BATTLE
United States Attorney

By: RICHARD A. RESNICK
Assistant U.S. Attorney

RAR/kmp
Enclosure

**Dr. Richard Cordero**

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

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

September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney‟s Office
138 Delaware Center
Buffalo, NY 14202

tel. (716)843-5700; fax to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler‟s decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and he motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

Sincerely,

Dr. Richard Cordero

E-136

JC:169

**Dr. Richard Cordero**

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

**59 Crescent Street**
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September 18, 2004

# Appeal

## to Michael Battle, Esq., U.S. Attorney for WDNY from the decision taken by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made submitted by Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney‟s Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.

2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero‟s "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.

3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero‟s complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt‟s opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter‟s cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:

5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos‟ earnings before 2001.

6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is accommodating or has a workload of 3,909**[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor‟s debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee‟s interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos‟…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler‟s eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero‟s "allegations" without being able to state concretely what it is that he supposedly „alleged‟. That inability stems from his failure to review the files, as shown by these facts:

    a) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;

    b) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero‟s call and he could not have reviewed their 250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by

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

the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and

c) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.

9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?

10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made your decision and that he would remain, that it was up to me to consult a lawyer

> and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, al-though such examination is the Meeting"s sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.

12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini"s strong determination to close this matter and of her shooting down Trustee Schmitt"s agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss" decision and refer the matter to the FBI any-way. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins".)

13. In this vein, if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt"s reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt Dr. Cordero"s complaint about Trustee Gordon"s reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in Pfuntner v. Gordon, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler"s suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.

15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy is predicated on the debtor"s inability to pay his debts because his assets are not enough to meet

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earnings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.

16. Moreover, if Att. Tyler had reviewed Dr. Cordero‟s Objections, contained in the June 29 file, page 59, to the DeLanos‟ Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate‟s administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?

17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files** before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero‟s files and instead rely only on Trustee Schmitt‟s assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero‟s complaint.

19. Therefore, Dr. Cordero respectfully requests that:

    a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;

    b) the investigation be conducted by officers who belong to neither the U.S. Attorney‟s nor the FBI‟s Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and

    c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on

Dr. Richard Cordero

September 18, 2004

59 Crescent Street
Brooklyn, NY 11208

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

**Dr. Richard Cordero**

**Ph.D., University of Cambridge, England**
**M.B.A., University of Michigan Business School**
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**59 Crescent Street**
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October 7, 2004

Ms. Jennie Bowman
Executive Assistant to the US Attorney
U.S. Attorney"s Office for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3051; tel. (716)843-5700

Re: Resubmission to U.S. Att. Battle of appeal from Att. B. Tyler"s decision

Dear Ms. Bowman,

Thank you for taking my call a few minutes ago. As agreed, I am faxing a copy of the letter that I sent to Michael Battle, Esq., U.S. Attorney for WDNY, last September 18. You indicated that you would pass it along to Duty Attorney Lynn Eilermann for review. I appreciate that and kindly request that you also bring to Att. Battle"s attention the following:

1. My letter to Att. Battle was an appeal from a decision by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. It serves no purpose to send it back to Mr. Tyler for him to pass judgment on himself. See ¶18 of the Appeal.
2. My Appeal was accompanied by supporting and updating documents. They should be recovered from Att. Tyler and reviewed. If that cannot be done, let me know and I will send a copy.
3. In addition, there are four files in Att. Tyler"s possession that contain supporting evidence of the complained-about judicial misconduct and bankruptcy fraud scheme. When I last spoke with Att. Tyler on September 15, I specifically requested that he forward those files to Att. Battle so that the latter may consider them in the context of my appeal. Indeed, I told Att. Tyler that I wanted to appeal his decision and asked who his supervisor was and he gave me Att. Battle"s name and phone number. I also specifically asked Att. Tyler to write to me a letter stating why he had decided not to investigate the case. He said that he would send it to me with copy to Att. Battle. I have received no letter. Now I find out from you that he did not forward the files either. Att. Tyler"s questionable conduct in not providing those files to Att. Battle and not sending me the promised letter only adds to his questionable conduct already pointed out in the appeal.
4. This case is not being investigated by Assistant U.S. Trustee Kathleen Dunivin Schmitt in Rochester. Nor can she do so because of her conflict of interests: She cannot want to find her supervisee, Trustee George Reiber, to have rubberstamped the meritless bankruptcy petition of David and Mary Ann DeLano, docket no. 04-20280. If so, she would be confronted with the question how many of Trustee Reiber"s 3,909 *open* cases he also rubberstamped. If it were to be uncovered that Trustee Reiber approved other meritless cases, the next question would be not only why and on what incentive, but also why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes. Nor can Att. Tyler investigate this case either because he has a vested interest in a certain outcome.

I trust that you realize the seriousness of this matter and will have Att. Battle decide it. Meantime, I look forward to hearing from him.

Sincerely, Dr. Richard Cordero

**Dr. Richard Cordero**

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

**59 Crescent Street**
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**tel. (718) 827-9521; CorderoRic@yahoo.com**

October 19, 2004

Mary Pat Floming, Esq. faxed to (716)551-3052
U.S. Attorney‟s Office for WDNY
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for returning my call today in which I inquired about the status of my appeal to U.S. Attorney Michael Battle from the decision of the U.S. Attorney in Charge of the Office in Rochester, Bradley Tyler, Esq. not to investigate my above-referenced complaint. Based on the facts stated in the appeal, it can be concluded that Mr. Tyler did not even read the cover letters of the two files forwarded to him from the office of Mr. David N. Kelley, U.S. Attorney for SDNY, on or around August 5. Instead, he relied on his conversations with one of the parties who could not have an interest in this matter being investigated because she could end up being investigated herself, namely, Assistant U.S. Trustee Kathleen Schmitt. Mr. Tyler and Ms. Schmitt work in the same small federal building in Rochester, where people can easily become acquaintances or friends, their word can be substituted for evidence, and an investigation can constitute betrayal.

It was only because of my repeated calls to Mr. Tyler and submissions of two written updates to him that I found out in a phone conversation with him on September 15 that he would not investigate my complaint. On that occasion, I told him that I would appeal to Mr. Battle and asked that he send me his decision in writing and forward the four files to Mr. Battle. Mr. Tyler agreed to do so. Yet, he has failed to send me any letter. Nor has he forwarded any files to Mr Battle, as stated to me by Mr. Battle‟s Executive Assistant, Mrs. J. Bowman, and you.

I appealed in writing to Mr. Battle on September 18. Nothing happened. So I called Mr. Battle‟s office and eventually found out from Mrs. Bowman that my appeal file had been sent back to Mr. Tyler! One need not work at the U.S. Attorney‟s Office or know 28 U.S.C. §47 – Disqualification of trial judge to hear appeal: No judge shall hear or determine an appeal from the decision of a case or issue tried by him- to realize that an appeal cannot be determined by the person appealed from. I faxed a letter to that effect to Mrs. Bowman on October 7, together with a copy of my appeal so that, as agreed, Mrs. Bowman would bring it to Mr. Battle‟s attention. On October 12 I found out from her that she had forwarded that material to you. You have stated that is not the case. I have recorded messages for Mrs. Bowman, which have not been replied to.

Something is not right here. You can find out what it is by, as agreed, informing Mr. Battle directly of the complaint and the appeal. While at it, you can do better than that FBI Agent who learned from a flight school instructor that some foreigners wanted to learn just how to fly large airplanes but not how to take them off or land them. The agent just told his superior rather than pursue the matter all the way to the top on the good-sense intuition that something was not right and the stakes were too high to leave it to protocol. He missed his once-in-a-lifetime chance to prevent the 9/11 tragedy and become a hero of moral courage and civic responsibility. This is your chance, Ms. Floming, to become a heroine by finding out why the four complaint files have been kept from Mr. Battle and how widespread bankruptcy fraud has become…as the appeal and the files show, there is so much money to spread around! Rest assured I will pursue this matter.

Sincerely,

Dr. Richard Cordero

E-143

JC:176

**Dr. Richard Cordero**

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

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

October 25, 2004

Mary Pat Floming, Esq.
U.S. Attorney"s Office for WDNY
138 Delaware Center — faxed to (716)551-3052; tel. (716)843-5700
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for letting me know that you brought to U.S. Att. Michael Battle"s attention my appeal from Att. Bradley Tyler"s decision not to investigate the misconduct and bankruptcy fraud scheme evidenced in my four files and his failure to forward the latter to Mr. Battle.

This is an update showing Trustee George Reiber"s factually and legally untenable allegations for refusing to examine under 11 U.S.C.§341 the DeLanos, who are the debtors in the case (dkt. no. 04-20280) that opens a window into the scheme. His motive for refusing is to prevent the DeLanos" fraud from being established. If it were, it would provide grounds for him to be investigated for having approved without any review a clearly questionable petition, for Mr. DeLano is a bank industry insider who has been for 15 years and still is a bank *loan* officer, and his numbers in the schedules are so incongruous as to red-flag his petition as highly suspicious. This would logically call for determining how many of his 3,909 *open* cases (as of April 2, 2004, according to PACER) Trustee Reiber approved that were also meritless or even fraudulent.

Such an investigation would entail a risk for Trustee Reiber"s supervisor, Assistant U.S. Trustee Kathleen Schmitt. Indeed, she could also be investigated for having failed to provide adequate supervision and allowed one trustee to concentrate in his hands such an overwhelming and unmanageable workload. Could you read the petitions, check them against supporting documents, and monitor *monthly* plan repayments of thousands of cases? Bottlenecking thousands of cases through one person is outright questionable. It confers enormous power to control and generates a strong incentive to obey in a symbiotic relationship where supervisor and supervisee derive their respective benefits from prioritizing the approval of petitions and the concomitant unobstructed flow of percentage fees over compliance with Bankruptcy Code requirements.

Consequently, an investigation of the fraud scheme cannot limit itself to asking Trustee Schmitt to give her opinion about the evidence in the files, for she is unlikely to make any self-incriminating admission. The same applies to her supervisor, U.S. Trustee for Region 2 Deirdre A. Martini. In the first and only call that she has ever taken from me or returned, she was adamant that she would keep Trustee Reiber on the case and that she wanted me to stop calling her office because she wanted "closure". How odd, for the case had just started!: It was March 17 and only on March 8 had Trustee Reiber approved the suspicious termination by his attorney, James Weidman, Esq., of the §341 examination of the DeLanos after I, the only creditor present, had asked two questions but would not answer his insistent questions of how much I knew about their having committed fraud. Did Trustee Martini too not want me to examine the DeLanos?

I respectfully request that you share this update with Mr. Battle so that you both may **1)** realize that just as Mr. Tyler cannot investigate my appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme; instead, they should be investigated; and **2)** use the influence of your Office with the Executive Office of the U.S. Trustees to replace Trustee Reiber with an independent trustee to hold a §341 examination of the DeLanos. I look forward to hearing from you and receiving Mr. Battle"s call.

Sincerely, Dr. Richard Cordero

E-144

JC:177

**U. S. Department of Justice**

*United States Attorney*
*Western District of New York*

*Federal Centre*
*138 Delaware Avenue*
*Buffalo, New York 14202*

*716-843-5700*
*FAX 716-551-3052*

PHONE: (716) 843-5814
Fax: (716) 551-3051
Michael.Battle@usdoj.gov

November 4, 2004

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

Dear Dr. Cordero:

Upon a careful review of the documentation which you have submitted to my office and in relation to our recent conversation, I find no basis for your claim of bankruptcy fraud. Thank you for bringing this matter to my attention. Best of luck to you.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney
Western District of New York

MAB/jlb

**Dr. Richard Cordero**

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

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

November 15, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney‟s Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052; tel. (716)843-5700

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I am in receipt of your letter of November 4 in which you state that you find no basis for my claim of bankruptcy fraud and have closed this case. However, this is not in keeping with what you told me in our conversation on Monday, November 1, that you would do.

In that conversation you indicated that you had not yet received the files that I sent to the U.S. Attorney in Charge of the Rochester Office, Bradley Tyler, Esq., but that you would ask for them; that that you have very skilled people that would look into whether there was bankruptcy fraud; that it would take them several weeks to complete their review; and that after you reached your conclusion you would let me know and we would discuss them. I believed what you told me, not because I am naïve, but rather because I believe that the word of an attorney of the United States is not given lightly and should be taken seriously. Yet, what you told me that you would do could not have been done between November 1 and 4.

Indeed, you asked me what evidence I had of bankruptcy fraud and I told you that it was documentary evidence contained in the files that I sent to Mr. Tyler. I appealed to you on September 18 precisely because of the evidence that neither he nor his assistant, Richard Resnik, Esq., reviewed them, but instead relied on a building co-worker‟s assertion that no investigation was needed, that is, Assistant U.S. Trustee Schmitt, who has a vested interest in not having this matter investigated. But even that appeal to you, bound with supporting documents, was sent to Mr. Tyler for him to review an appeal against himself!, a decision that defies common sense and legal practice. So the only material that you could have reviewed was that 5-page appeal without supporting documents that I resubmitted by fax to you and which dealt with the questionable circumstances of Mr. Tyler‟s decision rather than with the evidence of the judicial misconduct and bankruptcy fraud scheme. So, you did not have the documentation to support your statement that "[You] find no basis for [my] claim of bankruptcy fraud"? No wonder you asked me at the beginning of our conversation to tell you what this was all about and what I wanted you to do.

That you had no other documentation, let alone reviewed it, can be inferred from the facts. Thus, after I sent you my appeal of September 18, I did not hear from your office in Buffalo or Rochester. I had to call you several times but could only speak with your Executive Assistant, Ms. J. Bowman, who eventually found out that the appeal file had been sent to Mr. Tyler. After I faxed her only the appeal and made more calls, her statement that it had been assigned to Mary Pat Floming, Esq., proved inaccurate. I made more calls requesting to speak with you.

Then on Wednesday, October 27, Ms. Bowman called me and said that you wanted to talk to me the next day at 3:00 p.m. I agreed. But on Thursday, that time came and went and you did not call. I called to find out what happened and Ms. Bowman said that you had been called to court urgently. She asked whether the conference could be rescheduled for Friday, at 9:00 a.m. I agreed. But you did not call either. Instead, at 9:42 Ms. Bowman called to say that you were on a

video conference with Washington, and whether you could call me at anytime later that day. I agreed. But you did not call either.

On Monday, November 1, I called and Ms. Bowman said that you had a 9:30 a.m. meeting and asked whether you could call me between 10:30 and 10:45. I agreed. But at about 11:02 she called back to reschedule your call for 11:45 a.m. When you finally called and although our conversation lasted some 12 minutes, you grew impatient toward the end of it, particularly when you asked me what type of evidence I had and I told you that it was the documents in the files and asked whether you had retrieved them from Mr. Tyler. Then you stated what you were going to do and put and end to the conversation.

If somebody told a jury or a fair-minded public servant how you ignored for well over a month an appeal made to you and then how you made appointments to discuss it only to successively ignore or reschedule them, could they reasonably believe that such hands-off treatment and informality revealed, or was intended to send the message of, how unimportant you considered the matter? If the answer is yes, would it be naïve or wishful thinking to expect them to believe that after our conversation on that Monday you dropped everything that you were doing, asked for the files from a person in another city, precisely the one who for over three months failed to deal with the four original files and the appeal, but who nevertheless dropped everything he was doing to send you five files with over 315 pages, which you reviewed and by Thursday you had with due diligence reached the decision that there was no basis for the claim of bankruptcy fraud? You even totally missed the other part of the scheme: judicial misconduct!

You could allow yourself to become hostile toward me because of this statement of facts, but that would be the wrong reaction. For one thing, I am not the suspect of criminal wrong-doing, but rather a responsible citizen appealing for your help. I need it and deserved it because for over two years I have suffered tremendous loss and aggravation at the hands of a group of powerful officers and have meticulously collected and analyzed evidence pointing to their motive therefor, money! Moreover, you are the top law enforcement officer in that area and your decision affects the public at large, for at stake here is the integrity of top judicial and bankruptcy officers and of systems set up for the common good, not for their private gain. In addition, it is not fair for you to ask me for evidence -particularly since you have not looked at what I already presented- since the law, at 18 U.S.C. §3057(a), does not even ask judges for evidence before they can make a report to a U.S. attorney about bankruptcy fraud, but just asks that they have "reasonable grounds for believing…that an investigation should be had in connection therewith".

Therefore, I respectfully request that you:

1. retrieve the five files from Mr. Tyler;
2. entrust them and the investigation of a judicial misconduct and bankruptcy fraud scheme, not to him or his office, for the reasons in my appeal, but as you said, to the very skilled people that you have and were going to assign to it; or request that the Acting Attorney General appoint outside investigators, such as from Washington, D.C., or Chicago; and
3. let me talk to them because both I know a file that now has over 1,500 pages so that I can facilitate their work and this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme.

Sincerely,

Dr. Richard Cordero

Western District of New York

# United States Bankruptcy Court

04-20280

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

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

| Debtor(s) (name(s) and address): | Date Case Filed(or Converted): | Soc Sec/Tax Id Nos: |
|---|---|---|
| DAVID G DELANO<br>1262 SHOECRAFT ROAD<br><br>WEBSTER, NY 14580<br><br>AKA:<br><br>Joint: MARY ANN DELANO<br>1262 SHOECRAFT ROAD<br><br>WEBSTER, NY 14580 | January 27, 2004 | XXX-XX-3894<br>XXX-XX-0517 |

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

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

See Reverse Side For Important Explanations.

**Meeting of Creditors:**

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

RECEIVED
FEB - 6 2004
BANKRUPTCY COURT
ROCHESTER, NY

**Deadlines:**

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

**Deadline to File a Proof of Claim:**

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

**Deadline to Object to Exemptions:**

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

**Filing of Plan, Hearing on Confirmation of Plan**

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

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

**Creditors May Not Take Certain Actions:**

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

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

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

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

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

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

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

# EXPLANATIONS



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

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

# CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146 
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

| | | | |
|---|---|---|---|
| Court | | U.S. Bankruptcy Court | 100 State St.<br>Rochester, NY 14614 |
| Trustee | | George M. Reiber<br>Suite 206 | 3136 South Winton Road<br>Rochester, NY 14623 |
| Debtor | | DAVID C DELANO | 1262 SHOECRAFT ROAD<br>WEBSTER, NY 14580 |
| Joint | | MARY ANN DELANO | 1262 SHOECRAFT ROAD<br>WEBSTER, NY 14580 |
| 799 | 000001 | CHRISTOPHER K WERNER, ESQ<br>2400 CHASE SQUARE | BOYLAN, BROWN, ET AL<br>ROCHESTER, NY 14604-0000 |
| 001 | 000005 | AT & T UNIVERSAL CARD | P O BOX 8217<br>S HACKENSACK, NJ 07606 |
| 014 | 000016 | CITICARDS | P O BOX 8116<br>S HACKENSACK, NJ 07606 |
| 015 | 000018 | CITICARDS | P O BOX 8116<br>S HACKENSACK, NJ 07606 |
| 018 | 000021 | DR RICHARD CORDERO | 59 CRESCENT STREET<br>BROOKLYN, NY 11208-1515 |
| 011 | 000014 | CHASE | P O BOX 1010<br>HICKSVILLE, NY 11802-0000 |
| 021 | 000023 | HSBC BANK USA | SUITE 0627<br>BUFFALO, NY 14270-0627 |
| 020 | 000004 | GENESEE REGIONAL BANK | 3670 MT READ BLVD<br>ROCHESTER, NY 14616 |
| 003 | 000007 | BANK ONE | P O BOX 15153<br>WILMINGTON, DE 19886 |
| 004 | 000009 | BANK ONE | P O BOX 15153<br>WILMINGTON, DE 19886 |
| 005 | 000010 | BANK ONE | P O BOX 15153<br>WILMINGTON, DE 19886 |
| 022 | 000024 | MBNA AMERICA | P O BOX 15137<br>WILMINGTON, DE 19886 |
| 023 | 000025 | MBNA AMERICA | P O BOX 15137<br>WILMINGTON, DE 19886 |
| 024 | 000026 | MBNA AMERICA | P O BOX 15102<br>WILMINGTON, DE 19886-0000 |
| 016 | 000019 | DISCOVER CARD | P O BOX 15251<br>WILMINGTON, DE 19886-5251 |
| 019 | 000022 | FLEET CREDIT CARD SERVICES | P O BOX 15368<br>WILMINGTON, DE 19886-5368 |
| 006 | 000008 | BANK ONE/FIRST USA BANK<br>RECOVERY DEPT | PO BOX 517<br>FREDERICK, MD 21705-0517 |
| 007 | 000011 | CAPITAL ONE | P O BOX 85147<br>RICHMOND, VA 23285 |
| 008 | 000013 | CAPITAL ONE | P O BOX 85147<br>RICHMOND, VA 23285 |
| 010 | 000012 | CAPITAL ONE BANK | P O BOX 85167<br>RICHMOND, VA 23285-0000 |
| 017 | 000020 | DISCOVER FINANCIAL SERVICES | P.O. BOX 8003<br>HILLIARD, OH 43026 |

# CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146 
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

| | | | |
|---|---|---|---|
| 025 | 000027 | SEARS<br>P O BOX 182149 | PAYMENT CENTER<br>COLUMBUS, OH 43218 |
| 026 | 000028 | SEARS<br>ATTN: BK DEPT | PO BOX 3671<br>DES MOINES, IA 50322- 000 |
| 002 | 000006 | BANK OF AMERICA | P O BOX 531323<br>PHOENIX, AZ 85072-3132 |
| 012 | 000015 | CHASE MANHATTAN BANK USA<br>ATTN: PAYMENT PROCESSING | 150 WEST UNIVERSITY DRIVE<br>TEMPE, AZ 85281 |
| 013 | 000017 | CITIBANK/CHOICE<br>EXCEPTION PYMT PROCESSING | P O BOX 6305<br>THE LAKES, NV 88901-6305 |
| 027 | 000029 | WELLS FARGO FINANCIAL | P O BOX 98784<br>LAS VEGAS, NV 89193 |
| 009 | 000003 | CAPITAL ONE AUTO FINANCE | P O BOX 93016<br>LONG BEACH, CA 90809-3016 |

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY T. Marlow

*CM - Indicates notice served via Certified Mail

(Official Form 1) (12/03)

**FORM B1** | **United States Bankruptcy Court**
**Western District of New York** | **Voluntary Petition**

| | |
|---|---|
| Name of Debtor (if individual, enter Last, First, Middle):<br>DeLano, David G. | Name of Joint Debtor (Spouse) (Last, First, Middle):<br>DeLano, Mary Ann |
| All Other Names used by the Debtor in the last 6 years<br>(include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 6 years<br>(include married, maiden, and trade names): |
| Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No.<br>(if more than one, state all):<br>xxx-xx-3894 | Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No.<br>(if more than one, state all):<br>xxx-xx-0517 |
| Street Address of Debtor (No. & Street, City, State & Zip Code):<br>1262 Shoecraft Road<br>Webster, NY 14580 | Street Address of Joint Debtor (No. & Street, City, State & Zip Code):<br>1262 Shoecraft Road<br>Webster, NY 14580 |
| County of Residence or of the<br>Principal Place of Business: Monroe | County of Residence or of the<br>Principal Place of Business: Monroe |
| Mailing Address of Debtor (if different from street address): | Mailing Address of Joint Debtor (if different from street address): |
| Location of Principal Assets of Business Debtor<br>(if different from street address above): | |

**Information Regarding the Debtor (Check the Applicable Boxes)**

**Venue** (Check any applicable box)

■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

**Type of Debtor** (Check all boxes that apply)

■ Individual(s) ☐ Railroad
☐ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other_____ ☐ Clearing Bank

**Chapter or Section of Bankruptcy Code Under Which the Petition is Filed** (Check one box)

☐ Chapter 7 ☐ Chapter 11 ■ Chapter 13
☐ Chapter 9 ☐ Chapter 12
☐ Sec. 304 - Case ancillary to foreign proceeding

**Nature of Debts** (Check one box)

■ Consumer/Non-Business ☐ Business

**Chapter 11 Small Business** (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

**Filing Fee** (Check one box)

■ Full Filing Fee attached
☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

**Statistical/Administrative Information** (Estimates only)

■ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

| 1-15 | 16-49 | 50-99 | 100-199 | 200-999 | 1000-over |
|---|---|---|---|---|---|
| ☐ | ■ | ☐ | ☐ | ☐ | ☐ |

Estimated Assets

| $0 to $50,000 | $50,001 to $100,000 | $100,001 to $500,000 | $500,001 to $1 million | $1,000,001 to $10 million | $10,000,001 to $50 million | $50,000,001 to $100 million | More than $100 million |
|---|---|---|---|---|---|---|---|
| ☐ | ☐ | ■ | ☐ | ☐ | ☐ | ☐ | ☐ |

Estimated Debts

| $0 to $50,000 | $50,001 to $100,000 | $100,001 to $500,000 | $500,001 to $1 million | $1,000,001 to $10 million | $10,000,001 to $50 million | $50,000,001 to $100 million | More than $100 million |
|---|---|---|---|---|---|---|---|
| ☐ | ☐ | ■ | ☐ | ☐ | ☐ | ☐ | ☐ |

**Voluntary Petition**
*(This page must be completed and filed in every case)*

Name of Debtor(s): DeLano, David G.
DeLano, Mary Ann



**Prior Bankruptcy Case Filed Within Last 6 Years** (If more than one, attach additional sheet)

| Location Where Filed: | Case Number: | Date Filed: |
|---|---|---|
| - None - | | |

**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor** (If more than one, attach additional sheet)

| Name of Debtor: | Case Number: | Date Filed: |
|---|---|---|
| - None - | | |
| District: | Relationship: | Judge: |
| | | |

## Signatures

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David G. DeLano
Signature of Debtor David G. DeLano

X /s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

**Signature of Attorney**

X /s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)

Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)

Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name

2400 Chase Square
Rochester, NY 14604
Address

585-232-5300
Telephone Number

January 26, 2004
Date

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X /s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

**Exhibit C**

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.
■ No

**Signature of Non-Attorney Petition Preparer**

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C.§ 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

# United States Bankruptcy Court
## Western District of New York

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

Chapter 13

## SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

| NAME OF SCHEDULE | ATTACHED (YES/NO) | NO. OF SHEETS | AMOUNTS SCHEDULED ASSETS | LIABILITIES | OTHER |
|---|---|---|---|---|---|
| A - Real Property | Yes | 1 | 98,500.00 | | |
| B - Personal Property | Yes | 4 | 164,956.57 | | |
| C - Property Claimed as Exempt | Yes | 1 | | | |
| D - Creditors Holding Secured Claims | Yes | 1 | | 87,369.49 | |
| E - Creditors Holding Unsecured Priority Claims | Yes | 1 | | 0.00 | |
| F - Creditors Holding Unsecured Nonpriority Claims | Yes | 4 | | 98,092.91 | |
| G - Executory Contracts and Unexpired Leases | Yes | 1 | | | |
| H - Codebtors | Yes | 1 | | | |
| I - Current Income of Individual Debtor(s) | Yes | 1 | | | 4,886.50 |
| J - Current Expenditures of Individual Debtor(s) | Yes | 1 | | | 2,946.50 |
| Total Number of Sheets of ALL Schedules | | 16 | | | |
| | | Total Assets | 263,456.57 | | |
| | | | Total Liabilities | 185,462.40 | |

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

| Description and Location of Property | Nature of Debtor's Interest in Property | Husband, Wife, Joint, or Community | Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption | Amount of Secured Claim |
|---|---|---|---|---|
| 1262 Shoecraft Road, Webster (value per appraisal 11/23/03) | Fee Simple | J | 98,500.00 | 77,084.49 |

| | | |
|---|---|---|
| Sub-Total > | 98,500.00 | (Total of this page) |
| Total > | 98,500.00 | |

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

JC:188

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

| | Type of Property | NONE | Description and Location of Property | Husband, Wife, Joint, or Community | Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|---|---|---|---|---|---|
| 1. | Cash on hand | | misc cash on hand | J | 35.00 |
| 2. | Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives. | | M & T Checking account | J | 300.00 |
| | | | M & T Savings | W | 200.00 |
| | | | M & T Bank Checking | W | 0.50 |
| 3. | Security deposits with public utilities, telephone companies, landlords, and others. | X | | | |
| 4. | Household goods and furnishings, including audio, video, and computer equipment. | | Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools. | J | 2,000.00 |
| | | | computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill, | J | 350.00 |
| 5. | Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles. | | misc books, misc wall decorations, family photos, family bible | J | 100.00 |
| 6. | Wearing apparel. | | misc wearing apparel | J | 50.00 |
| 7. | Furs and jewelry. | | wedding rings, wrist watches | J | 100.00 |
| | | | misc costume jewelry, string of pearls | W | 200.00 |
| | | | | Sub-Total > (Total of this page) | 3,335.50 |

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

| | Type of Property | NONE | Description and Location of Property | Husband, Wife, Joint, or Community | Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|---|---|---|---|---|---|
| 8. | Firearms and sports, photographic, and other hobby equipment. | | camera - 35mm snapshot cameras ((2) purchased for $19.95 each new | J | 10.00 |
| 9. | Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. | X | | | |
| 10. | Annuities. Itemize and name each issuer. | X | | | |
| 11. | Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize. | | Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account | W | 59,000.00 |
| | | | 401-k (net of outstanding loan $9,642.56) | H | 96,111.07 |
| 12. | Stock and interests in incorporated and unincorporated businesses. Itemize. | X | | | |
| 13. | Interests in partnerships or joint ventures. Itemize. | X | | | |
| 14. | Government and corporate bonds and other negotiable and nonnegotiable instruments. | X | | | |
| 15. | Accounts receivable. | | Debt due from son ($10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress | J | Unknown |
| 16. | Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars. | X | | | |
| 17. | Other liquidated debts owing debtor including tax refunds. Give particulars. | | 2003 tax liability expected | J | 0.00 |
| 18. | Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property. | X | | | |

Sub-Total > (Total of this page) 155,121.07

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

| Type of Property | NONE | Description and Location of Property | Husband, Wife, Joint, or Community | Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|---|---|---|---|---|
| 19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. | X | | | |
| 20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. | X | | | |
| 21. Patents, copyrights, and other intellectual property. Give particulars. | X | | | |
| 22. Licenses, franchises, and other general intangibles. Give particulars. | X | | | |
| 23. Automobiles, trucks, trailers, and other vehicles and accessories. | | 1993 Chevrolet Cavalier 70,000 miles | W | 1,000.00 |
| | | 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition) | H | 5,500.00 |
| 24. Boats, motors, and accessories. | X | | | |
| 25. Aircraft and accessories. | X | | | |
| 26. Office equipment, furnishings, and supplies. | X | | | |
| 27. Machinery, fixtures, equipment, and supplies used in business. | X | | | |
| 28. Inventory. | X | | | |
| 29. Animals. | X | | | |
| 30. Crops - growing or harvested. Give particulars. | X | | | |
| 31. Farming equipment and implements. | X | | | |

Sub-Total > (Total of this page) 6,500.00

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

| Type of Property | NONE | Description and Location of Property | Husband, Wife, Joint, or Community | Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|---|---|---|---|---|
| 32. Farm supplies, chemicals, and feed. | X | | | |
| 33. Other personal property of any kind not already listed. | X | | | |

Sub-Total > 0.00
(Total of this page)
Total > 164,956.57

Sheet 3 of 3 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

JC:192

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
*[Check one box]*

☐ 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.

■ 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

| Description of Property | Specify Law Providing Each Exemption | Value of Claimed Exemption | Current Market Value of Property Without Deducting Exemption |
|---|---|---|---|
| Real Property | | | |
| 1262 Shoecraft Road, Webster (value per appraisal 11/23/03) | NYCPLR § 5206(a) | 20,000.00 | 98,500.00 |
| Household Goods and Furnishings | | | |
| Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools. | NYCPLR § 5205(a)(5) | 2,000.00 | 2,000.00 |
| Books, Pictures and Other Art Objects; Collectibles | | | |
| misc books, misc wall decorations, family photos, family bible | NYCPLR § 5205(a)(2) | 100.00 | 100.00 |
| Wearing Apparel | | | |
| misc wearing apparel | NYCPLR § 5205(a)(5) | 50.00 | 50.00 |
| Furs and Jewelry | | | |
| wedding rings, wrist watches | NYCPLR § 5205(a)(6) | 100.00 | 100.00 |
| Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans | | | |
| Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account | Debtor & Creditor Law § 282(2)(e) | 59,000.00 | 59,000.00 |
| 401-k (net of outstanding loan $9,642.56) | Debtor & Creditor Law § 282(2)(e) | 96,111.07 | 96,111.07 |
| Automobiles, Trucks, Trailers, and Other Vehicles | | | |
| 1993 Chevrolet Cavalier 70,000 miles | Debtor & Creditor Law § 282(1) | 1,000.00 | 1,000.00 |

0 continuation sheets attached to Schedule of Property Claimed as Exempt

Form B6D
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

# SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

| CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | CODEBTOR | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL | UNSECURED PORTION IF ANY |
|---|---|---|---|---|---|---|---|---|
| Account No. 5687652<br>Capitol One Auto Finance<br>PO Box 93016<br>Long Beach, CA 90809-3016 | | J | 2001<br>auto lien<br>1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)<br>Value $ 5,500.00 | | | | 10,285.00 | 4,785.00 |
| Account No.<br>Genesee Regional Bank<br>3670 Mt Read Blvd<br>Rochester, NY 14616 | | J | fist mortgage<br>1262 Shoecraft Road, Webster (value per appraisal 11/23/03)<br>Value $ 98,500.00 | | | | 77,084.49 | 0.00 |
| Account No.<br>Value $ | | | | | | | | |
| Account No.<br>Value $ | | | | | | | | |

0 continuation sheets attached

Subtotal (Total of this page) 87,369.49

Total (Report on Summary of Schedules) 87,369.49

JC:194

Form B6E
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

■ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, which ever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to $2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

Form B6F
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

| CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | CODEBTOR | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No. 5398-8090-0311-9990<br>AT&T Universal<br>P.O. Box 8217<br>South Hackensack, NJ 07606-8217 | | H | 1990 and prior<br>Credit card purchases | | | | 1,912.63 |
| Account No. 4024-0807-6136-1712<br>Bank Of America<br>P.O. Box 53132<br>Phoenix, AZ 85072-3132 | | H | 1990 and prior<br>Credit card purchases | | | | 3,296.83 |
| Account No. 4266-8699-5018-4134<br>Bank One<br>Cardmember Services<br>P.O. Box 15153<br>Wilmington, DE 19886-5153 | | H | 1990 prior<br>Credit card purchases | | | | 9,846.80 |
| Account No. 4712-0207-0151-3292<br>Bank One<br>Cardmember Services<br>P.O. Box 15153<br>Wilmington, DE 19886-5153 | | H | 1990 and prior<br>Credit card purchases | | | | 5,130.80 |
| | | | | | | Subtotal (Total of this page) | 20,187.06 |

3 continuation sheets attached

JC:196

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No. 4262 519 982 211<br>Bank One<br>Cardmember Services<br>P.O. Box 15153<br>Wilmington, DE 19886-5153 | | H | 1990 and prior<br>Credit card purchases | | | | 9,876.49 |
| Account No. 4388-6413-4765-8994<br>Capital One<br>P.O. Box 85147<br>Richmond, VA 23276 | | H | 2001- 8/03<br>Credit card purchases | | | | 449.35 |
| Account No. 4862-3621-5719-3502<br>Capital One<br>P.O. Box 85147<br>Richmond, VA 23276 | | H | 2001 - 8/03<br>Credit card purchases | | | | 460.26 |
| Account No. 4102-0082-4002-1537<br>Chase<br>P.O. Box 1010<br>Hicksville, NY 11802 | | W | 1990 and prior<br>Credit card purchases | | | | 10,909.01 |
| Account No. 5457-1500-2197-7384<br>Citi Cards<br>P.O. Box 8116<br>South Hackensack, NJ 07606-8116 | | W | 1990 and prior<br>Credit card purchases | | | | 2,127.08 |
| Sheet no. 1 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims | | | | | | Subtotal (Total of this page) | 23,822.19 |

JC:197

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No. 5466-5360-6017-7176<br>Citi Cards<br>P.O. Box 8115<br>South Hackensack, NJ 07606-8115 | | H | 1990 and prior<br>Credit card purchases | | | | 4,043.94 |
| Account No. 6011-0020-4000-6645<br>Discover Card<br>P.O. Box 15251<br>Wilmington, DE 19886-5251 | | J | 1990 and prior<br>Credit card purchases | | | | 5,219.03 |
| Account No.<br>Dr. Richard Cordero<br>59 Crescent Street<br>Brooklyn, NY 11208-1515 | | H | 2002<br>Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct. | | X | X | Unknown |
| Account No. 5487-8900-2018-8012<br>Fleet Credit Card Service<br>P.O. Box 15368<br>Wilmington, DE 19886-5368 | | W | 1990 and prior<br>Credit card purchases | | | | 2,126.92 |
| Account No. 5215-3125-0126-4385<br>HSBC MasterCard/Visa<br>HSBC Bank USA<br>Suite 0627<br>Buffalo, NY 14270-0627 | | H | 1990 and prior<br>Credit card purchases | | | | 9,065.01 |
| Sheet no. 2 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims | | | | | | Subtotal (Total of this page) | 20,454.90 |

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | CODEBTOR | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF CLAIM |
|---|---|---|---|---|---|---|---|
| Account No. 4313-0228-5801-9530<br>MBNA America<br>P.O. Box 15137<br>Wilmington, DE 19886-5137 | | W | 1990 and prior<br>Credit card purchases | | | | 6,422.47 |
| Account No. 5329-0315-0992-1928<br>MBNA America<br>P.O. Box 15137<br>Wilmington, DE 19886-5137 | | H | 1990 and prior<br>Credit card purchases | | | | 18,498.21 |
| Account No. 749 90063 031 903<br>MBNA America<br>P.O. Box 15102<br>Wilmington, DE 19886-5102 | | H | 1990 and prior<br>Credit card purchases | | | | 3,823.74 |
| Account No. 34 80074 30593 0<br>Sears Card<br>Payment Center<br>P.O. Box 182149<br>Columbus, OH 43218-2149 | | H | 1990 - 10/99<br>Credit card purchases | | | | 3,554.34 |
| Account No. 17720544<br>Wells Fargo Financial<br>P.O. Box 98784<br>Las Vegas, NV 89193-8784 | | H | 8/03<br>Credit card purchases | | | | 1,330.00 |

Sheet no. 3 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 33,628.76

Total (Report on Summary of Schedules) 98,092.91

JC:199

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

■ Check this box if debtor has no executory contracts or unexpired leases.

| Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract | Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract. |
|---|---|

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

# SCHEDULE H. CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

■ Check this box if debtor has no codebtors.

| NAME AND ADDRESS OF CODEBTOR | NAME AND ADDRESS OF CREDITOR |
|---|---|

0 continuation sheets attached to Schedule of Codebtors

Form B6I
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

# SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

| Debtor's Marital Status: | DEPENDENTS OF DEBTOR AND SPOUSE | |
|---|---|---|
| | RELATIONSHIP | AGE |
| Married | None. | |

| **EMPLOYMENT:** | DEBTOR | SPOUSE |
|---|---|---|
| Occupation | Loan officer | |
| Name of Employer | M & T Bank | unemployed - Xerox |
| How long employed | | |
| Address of Employer | PO Box 427<br>Buffalo, NY 14240 | |

| INCOME: (Estimate of average monthly income) | DEBTOR | SPOUSE |
|---|---|---|
| Current monthly gross wages, salary, and commissions (pro rate if not paid monthly) | $ 5,760.00 | $ 1,741.00 |
| Estimated monthly overtime | $ 0.00 | $ 0.00 |
| SUBTOTAL | $ 5,760.00 | $ 1,741.00 |
| LESS PAYROLL DEDUCTIONS | | |
| a. Payroll taxes and social security | $ 1,440.00 | $ 435.25 |
| b. Insurance | $ 414.95 | $ 0.00 |
| c. Union dues | $ 0.00 | $ 0.00 |
| d. Other (Specify) Retirement Loan (to 10/05) | $ 324.30 | $ 0.00 |
| | $ 0.00 | $ 0.00 |
| SUBTOTAL OF PAYROLL DEDUCTIONS | $ 2,179.25 | $ 435.25 |
| TOTAL NET MONTHLY TAKE HOME PAY | $ 3,580.75 | $ 1,305.75 |
| Regular income from operation of business or profession or farm (attach detailed statement) | $ 0.00 | $ 0.00 |
| Income from real property | $ 0.00 | $ 0.00 |
| Interest and dividends | $ 0.00 | $ 0.00 |
| Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above | $ 0.00 | $ 0.00 |
| Social security or other government assistance (Specify) | $ 0.00 | $ 0.00 |
| | $ 0.00 | $ 0.00 |
| Pension or retirement income | $ 0.00 | $ 0.00 |
| Other monthly income (Specify) | $ 0.00 | $ 0.00 |
| | $ 0.00 | $ 0.00 |
| TOTAL MONTHLY INCOME | $ 3,580.75 | $ 1,305.75 |
| TOTAL COMBINED MONTHLY INCOME $ 4,886.50 | (Report also on Summary of Schedules) | |

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by $1,129/month.

Retirement Loan was made to son, who was to re-pay @$200/mon. but has been unable to do so as employed at $10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

# SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

| | |
|---|---|
| Rent or home mortgage payment (include lot rented for mobile home) | $ 1,167.00 |
| Are real estate taxes included? Yes X No | |
| Is property insurance included? Yes No X | |
| Utilities: Electricity and heating fuel | $ 168.00 |
| Water and sewer | $ 30.00 |
| Telephone | $ 40.00 |
| Other Cell Phone $62 (req. for work); cable $55; Internet $23.95 | $ 140.95 |
| Home maintenance (repairs and upkeep) | $ 50.00 |
| Food | $ 430.00 |
| Clothing | $ 60.00 |
| Laundry and dry cleaning | $ 5.00 |
| Medical and dental expenses | $ 120.00 |
| Transportation (not including car payments) | $ 295.00 |
| Recreation, clubs and entertainment, newspapers, magazines, etc. | $ 107.50 |
| Charitable contributions | $ 50.00 |
| Insurance (not deducted from wages or included in home mortgage payments) | |
| Homeowner's or renter's | $ 0.00 |
| Life | $ 0.00 |
| Health | $ 0.00 |
| Auto | $ 110.00 |
| Other | $ 0.00 |
| Taxes (not deducted from wages or included in home mortgage payments) | |
| (Specify) | $ 0.00 |
| Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.) | |
| Auto | $ 0.00 |
| Other reserve for auto | $ 50.00 |
| Other Parking | $ 58.05 |
| Other | $ 0.00 |
| Alimony, maintenance, and support paid to others | $ 0.00 |
| Payments for support of additional dependents not living at your home | $ 0.00 |
| Regular expenses from operation of business, profession, or farm (attach detailed statement) | $ 0.00 |
| Other family gifts - Christmas/Birthdays | $ 20.00 |
| Other Haircuts and personal hygine | $ 45.00 |
| TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules) | $ 2,946.50 |

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

| | |
|---|---|
| A. Total projected monthly income | $ 4,886.50 |
| B. Total projected monthly expenses | $ 2,946.50 |
| C. Excess income (A minus B) | $ 1,940.00 |
| D. Total amount to be paid into plan each Monthly (interval) | $ 1,940.00 |

# United States Bankruptcy Court
## Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

## DECLARATION CONCERNING DEBTOR'S SCHEDULES

### DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets *[total shown on summary page plus 1]*, and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

*Penalty for making a false statement or concealing property:* Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

Form 7
(12/03)

# United States Bankruptcy Court
## Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

## STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

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**1. Income from employment or operation of business**

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| AMOUNT | SOURCE (if more than one) |
|---|---|
| $91,655.00 | 2002 joint income |
| $108,586.00 | 2003 Income (H) $67,118; (W) $41,468 |

**2. Income other than from employment or operation of business**

None ■ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| AMOUNT | SOURCE |
|---|---|

**3. Payments to creditors**

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF CREDITOR | DATES OF PAYMENTS | AMOUNT PAID | AMOUNT STILL OWING |
|---|---|---|---|
| Genesee Regional Bank<br>3670 Mt Read Blvd<br>Rochester, NY 14616 | monthly mortgage<br>$1,167/mon with taxes and insurance | $5,000.00 | $77,082.49 |
| Capitol One Auto Finance<br>PO Box 93016<br>Long Beach, CA 90809-3016 | monthly auto payment<br>$348/mon | $1,044.00 | $10,000.00 |

None ■ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR | DATE OF PAYMENT | AMOUNT PAID | AMOUNT STILL OWING |
|---|---|---|---|

**4. Suits and administrative proceedings, executions, garnishments and attachments**

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| CAPTION OF SUIT AND CASE NUMBER | NATURE OF PROCEEDING | COURT OR AGENCY AND LOCATION | STATUS OR DISPOSITION |
|---|---|---|---|
| In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano | (As against debtor) damages for inability of Cordero to recover property held in storage | US Bankruptcy Court, Western District of NY | pending |

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED | DATE OF SEIZURE | DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|

**5. Repossessions, foreclosures and returns**

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF CREDITOR OR SELLER | DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN | DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|

**6. Assignments and receiverships**

None ■ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF ASSIGNEE | DATE OF ASSIGNMENT | TERMS OF ASSIGNMENT OR SETTLEMENT |
|---|---|---|

None ■ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF CUSTODIAN | NAME AND LOCATION OF COURT CASE TITLE & NUMBER | DATE OF ORDER | DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|---|

**7. Gifts**

None ■ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF PERSON OR ORGANIZATION | RELATIONSHIP TO DEBTOR, IF ANY | DATE OF GIFT | DESCRIPTION AND VALUE OF GIFT |
|---|---|---|---|

**8. Losses**

None ■ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| DESCRIPTION AND VALUE OF PROPERTY | DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS | DATE OF LOSS |
|---|---|---|

**9. Payments related to debt counseling or bankruptcy**

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

| NAME AND ADDRESS OF PAYEE | DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|
| Christopher K. Werner<br>2400 Chase Square<br>Rochester, NY 14604 | Nov - Dec 2003 | $1,350 plus filing fee |

**10. Other transfers**

None ■ List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR | DATE | DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED |
|---|---|---|

**11. Closed financial accounts**

None ■ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF INSTITUTION | TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE | AMOUNT AND DATE OF SALE OR CLOSING |
|---|---|---|

**12. Safe deposit boxes**

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY | NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY | DESCRIPTION OF CONTENTS | DATE OF TRANSFER OR SURRENDER, IF ANY |
|---|---|---|---|
| M & T Bank<br>Webster Branch | debtors | Personal papers | |

**13. Setoffs**

None ■ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

| NAME AND ADDRESS OF CREDITOR | DATE OF SETOFF | AMOUNT OF SETOFF |
|---|---|---|

**14. Property held for another person**

None ■ List all property owned by another person that the debtor holds or controls.

| NAME AND ADDRESS OF OWNER | DESCRIPTION AND VALUE OF PROPERTY | LOCATION OF PROPERTY |
|---|---|---|

**15. Prior address of debtor**

None ■ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

| ADDRESS | NAME USED | DATES OF OCCUPANCY |
|---|---|---|

**16. Spouses and Former Spouses**

None ■ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ■ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

| SITE NAME AND ADDRESS | NAME AND ADDRESS OF GOVERNMENTAL UNIT | DATE OF NOTICE | ENVIRONMENTAL LAW |
|---|---|---|---|

None ■ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

| SITE NAME AND ADDRESS | NAME AND ADDRESS OF GOVERNMENTAL UNIT | DATE OF NOTICE | ENVIRONMENTAL LAW |
|---|---|---|---|

None ■ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

| NAME AND ADDRESS OF GOVERNMENTAL UNIT | DOCKET NUMBER | STATUS OR DISPOSITION |
|---|---|---|

**18 . Nature, location and name of business**

None ■ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

| NAME | TAXPAYER I.D. NO. (EIN) | ADDRESS | NATURE OF BUSINESS | BEGINNING AND ENDING DATES |
|---|---|---|---|---|

None ■ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

| NAME | ADDRESS |
|---|---|

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

**19. Books, records and financial statements**

None ■ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

| NAME AND ADDRESS | DATES SERVICES RENDERED |
|---|---|

None ■ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

| NAME | ADDRESS | DATES SERVICES RENDERED |
|---|---|---|

None ■ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

| NAME | ADDRESS |
|---|---|

None ■ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

| NAME AND ADDRESS | DATE ISSUED |
|---|---|

**20. Inventories**

None ■ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

| DATE OF INVENTORY | INVENTORY SUPERVISOR | DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis) |
|---|---|---|

None ■ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

| DATE OF INVENTORY | NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS |
|---|---|

**21 . Current Partners, Officers, Directors and Shareholders**

None ■ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

| NAME AND ADDRESS | NATURE OF INTEREST | PERCENTAGE OF INTEREST |
|---|---|---|

None ■ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

| NAME AND ADDRESS | TITLE | NATURE AND PERCENTAGE OF STOCK OWNERSHIP |
|---|---|---|

**22 . Former partners, officers, directors and shareholders**

None ■ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

| NAME | ADDRESS | DATE OF WITHDRAWAL |
|---|---|---|

None ■ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

| NAME AND ADDRESS | TITLE | DATE OF TERMINATION |
|---|---|---|

**23 . Withdrawals from a partnership or distributions by a corporation**

None ■ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

| NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR | DATE AND PURPOSE OF WITHDRAWAL | AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY |
|---|---|---|

**24. Tax Consolidation Group.**

None ■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

| NAME OF PARENT CORPORATION | TAXPAYER IDENTIFICATION NUMBER |
|---|---|

**25. Pension Funds.**

None ■ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

| NAME OF PENSION FUND | TAXPAYER IDENTIFICATION NUMBER |
|---|---|

## DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

*Penalty for making a false statement:* Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

# United States Bankruptcy Court
## Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

## DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

| | | |
|---|---|---|
| For legal services, I have agreed to accept | $ | 1,350.00 |
| Prior to the filing of this statement I have received | $ | 1,350.00 |
| Balance Due | $ | 0.00 |

2. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

4. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
   a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
   c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d. [Other provisions as needed]
      Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
   Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

**CERTIFICATION**

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.
Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

# United States Bankruptcy Court
## Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

# VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

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

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

# United States Bankruptcy Court
## Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

## CHAPTER 13 PLAN

1. Payments to the Trustee: The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of $1,940.00 per month for 5 months, then $635.00 per month for 25 months, then $960.00 per month for 6 months.
   Total of plan payments: $31,335.00
2. Plan Length: This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
   a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
   b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
   c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

   a. Administrative Expenses
      (1) Trustee's Fee: 10.00%
      (2) Attorney's Fee (unpaid portion): NONE
      (3) Filing Fee (unpaid portion): NONE

   b. Priority Claims under 11 U.S.C. § 507

| Name | Amount of Claim | Interest Rate (If specified) |
|---|---|---|
| -NONE- | | |

   c. Secured Claims
      (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

| Name | Proposed Amount of Allowed Secured Claim | Monthly Payment (If fixed) | Interest Rate (If specified) |
|---|---|---|---|
| Capitol One Auto Finance | 5,500.00 | Prorata | 6.00% |

      (2) Secured Debts Which Will Extend Beyond the Length of the Plan

| Name | Amount of Claim | Monthly Payment | Interest Rate (If specified) |
|---|---|---|---|
| -NONE- | | | |

   d. Unsecured Claims
      (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

| Name | Amount of Claim | Interest Rate (If specified) |
|---|---|---|
| -NONE- | | |

      (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than $10.00 it may be paid in full.

5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

| Creditor | Amount of Default to be Cured | Interest Rate (If specified) |
|---|---|---|
| -NONE- | | |

6. The Debtor shall make regular payments directly to the following creditors:

| Name | Amount of Claim | Monthly Payment | Interest Rate (If specified) |
|---|---|---|---|
| Genesee Regional Bank | 77,084.49 | 0.00 | 0.00% |

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

| Other Party | Description of Contract or Lease |
|---|---|
| -NONE- | |

9. Property to Be Surrendered to Secured Creditor

| Name | Amount of Claim | Description of Property |
|---|---|---|
| -NONE- | | |

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

| Name | Amount of Claim | Description of Property |
|---|---|---|
| -NONE- | | |

11. Title to the Debtor's property shall revest in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

OFFICE OF THE CLERK

MARCIA M. WALDRON
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

TELEPHONE
215-597-2995

December 3, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 113208-1515

Re: Complaint of Judicial Misconduct

Dear Dr. Cordero:

The document which you submitted to the Chief Judge of this Circuit has been referred to this office for response. No action may taken in regard to your submission.

If a special committee was appointed by the Second Circuit and you are aggrieved by the action taken by the Circuit's Judicial Council after the committee has acted, you may file the appropriate request for review with the Office of General Counsel of the Administrative Office of the United States Courts as provided by 28 U.S.C. § 357. Only submissions accepted for filing by that office may be considered. Otherwise, the members of the Judicial Conference have no authority to informally intervene in regard to the matters addressed in your submission.

Very truly yours,

Marcia M. Waldron, Clerk

By:
/s/ Bradford A. Baldus
Bradford A. Baldus
Senior Legal Advisor to the Clerk

Enclosure

JC:218

**SUPREME COURT OF THE UNITED STATES**
**OFFICE OF THE CLERK**
**WASHINGTON, DC 20543-0001**

December 6, 2004

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

RE: Letter

Dear Mr. Cordero:

In reply to your letter or submission referred to this office by Justice Ginsburg on December 6, 2004, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. The Court does not give advice or assistance or answer legal questions on the basis of correspondence.

Your papers are herewith returned.

Sincerely,
William K. Suter, Clerk
By:

M. Blalock
(202) 479-3023

Enclosures

JC:219

United States Court
of International Trade
OFFICE OF THE CLERK
One Federal Plaza
New York,NY 10278-0001

December 9, 2004

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

Dear Dr. Cordero:

This is to acknowledge receipt of your letter of November 27, 2004 to Chief Judge Jane A. Restani.

The Judicial Conference of the United States may take action with respect to complaints of judicial misconduct or disability under two sets of circumstances. The first is pursuant to 28 U.S.C. § 355, which requires the referral or certification of a matter based on the action taken by a judicial council under 28 U.S.C. § 354(b). The second is pursuant to 28 U.S.C. § 357, which permits a complainant or judge aggrieved by the action taken by a judicial council under 28 U.S.C. § 354 to petition the Judicial Conference for review of that action.

Under either scenario, Chief Judge Restani, while a member of the Judicial Conference, is not authorized to take any action on her own on such matter unless it is referred to her directly by the Conference. That has not occurred, and accordingly, I am returning your letter and the accompanying materials to you.

Sincerely,

Leo M. Gordon
Clerk of the Court

cc: Chief Judge Jane A. Restani

JC:220

Jan 28, 05

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
THEODORE LEVIN UNITED STATES COURTHOUSE
231 WEST LAFAYETTE BLVD.
DETROIT, MICHIGAN 48226

CHAMBERS OF
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

(313) 234-5110

January 12, 2005

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

Dear Dr. Cordero:

I am in receipt of your letter and accompanying documents dated November 20, 2004. You have requested that I present to the Judicial Conference of the United States allegations of judicial misconduct that you have levied against a bankruptcy judge in the Western District of New York. My term on the Judicial Conference expired last year; therefore, I am unable to assist you in this matter.

Sincerely,

Lawrence P. Zatkoff,
United States District Judge for the Eastern District of Michigan

JC:221

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

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

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel

**Dr. Richard Cordero**

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

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

December 18, 2004

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel. Contemporaneously, I sent you a copy, dated November 20.

## I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Yesterday I received a letter (2nd set of Exhibits, page 1, infra=2E-1) from the Assistant General Counsel, Mr. Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States."

Who ever heard that a clerk is allowed to pass judgment on a precise jurisdictional argument made to the court, particularly in the absence of any authority to do so?! Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 – equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing

on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of a judicial body to dispose singlehandedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his actions.

## II. Statement of facts showing the Administrative Office's Rule-noncomplying handling of, and negative attitude toward, the petition for review

It is quite strange that Mr. Deyling was in such rush to 'dispose' of my petition although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office

will help you and the Conference put in context Mr. Deyling's boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office's normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks; cf. 2E-3. The acts of disregard have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition and the exhibits (E-page number) accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to do so. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself. Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if even those in its General Counsel's Office

do not even know the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed.

I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel's Office. Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

I was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that it was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on

hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been at 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.

Thus, I respectfully request that you, as a Conference member, and the Conference itself:

1. declare Mr. Deyling's letter to be devoid of any effect as ultra vires and/or have him withdraw it;
2. require the Administrative Office to forward to the Conference the copies of my petition;
3. review my petition based on those copies or the ones that I sent to Conference members;
4. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office's handling of this matter and treating of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
5. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

| | Last name | Members of the Judicial Conference of the United States to whom the **letter of December 18, 2004**, was sent |
|---|---|---|
| 1. | Restani | Chief Judge Jane A. Restani, U.S. Court of International Trade |
| 2. | Mayer | Chief Judge Haldane Robert Mayer, U.S. Court of Appeals for the Federal Circuit |
| 3. | Hogan | Chief Judge Thomas F. Hogan, U.S. District Court for the District of Columbia |
| 4. | Ginsburg | Chief Judge Douglas H. Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit |
| 5. | Forrester | Senior Judge J. Owen Forrester, U.S. District Court for the Northern District of Georgia |
| 6. | Edmondson | Chief Judge J. L. Edmondson, U.S. Court of Appeals for the Eleventh Circuit |
| 7. | Russell | Judge David L. Russell, U.S. District Court for the Western District of Oklahoma |
| 8. | Tacha | Chief Judge Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit |
| 9. | Ezra | Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii |
| 10. | Schroeder | Chief Judge Mary M. Schroeder, U.S. Court of Appeals for the Ninth Circuit |
| 11. | Rosenbaum | Chief Judge James M. Rosenbaum, U.S. District Court for the District of Minnesota |
| 12. | Loken | Chief Judge James B. Loken, U.S. Court of Appeals for the Eighth Circuit |
| 13. | Stadtmueller | Judge J. P. Stadtmueller, U.S. District Court for the Eastern District of Wisconsin |
| 14. | Flaum | Chief Judge Joel M. Flaum, U.S. Court of Appeals for the Seventh Circuit |
| 15. | Zatkoff | Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan |
| 16. | Boggs | Chief Judge Danny J. Boggs, U.S. Court of Appeals for the Sixth Circuit |
| 17. | Feldman | Judge Martin L. C. Feldman, U.S. District Court for the Eastern District of Louisiana |
| 18. | King | Chief Judge Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit |
| 19. | Norton | Judge David C. Norton, U.S. District Court for the District of South Carolina |
| 20. | Wilkins | Chief Judge William W. Wilkins, U.S. Court of Appeals for the Fourth Circuit |
| 21. | Vanaskie | Chief Judge Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania |
| 22. | Scirica | Chief Judge Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit |
| 23. | Scullin | Chief Judge Frederick J. Scullin, Jr., U.S. District Court for the Northern District of New York |
| 24. | Laffitte | Chief Judge Hector M. Laffitte, U.S. District Court for the District of Puerto Rico |
| 25. | Boudin | Chief Judge Michael Boudin, U.S. Court of Appeals for the First Circuit |
| 26. | Rehnquist | Mr. Chief Justice William Rehnquist |
| 27. | Ginsburg | Madam Justice Ginsburg |
| | | [**no** copy **sent** to Chief Judge **Walker**, U.S. Court of Appeals for the Second Circuit or to Chief Judge Richard **Arcara**, WDNY] |

# UNITED STATES COURT OF APPEALS
# FOR THE SECOND CIRCUIT

**In re Richard Cordero** **Case no.: 04-8510**

**MOTION FOR DECLARATORY JUDGMENT**
**THAT OFFICERS OF THIS COURT INTENTIONALLY**
**VIOLATED LAW AND RULES AS PART OF A PATTERN OF WRONGDOING**
**TO COMPLAINANT'S DETRIMENT**
**AND FOR THIS COURT TO LAUNCH AN INVESTIGATION**

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1. On Monday, March 22, Dr. Richard Cordero submitted a judicial misconduct complaint "addressed…to the Circuit Judge eligible to become the next chief judge of the circuit", who is the one to whom it should be transmitted when the judicial officer complained-about is the Chief Judge, as provided for by this Cir-cuit"s Rules Governing Complaints under 28 U.S.C. §351 (these Rules are referred to hereinafter as Rule #). This triggered **another** series of acts of disregard of law and rules by clerks of this Court that delayed the "acceptance" of the complaint for more than a week and caused Dr. Cordero **more** waste of effort, time, and money and inflicted upon him **more** of the aggravation concomitant of the trampling of one"s rights and of evidence of **more** injustice to come. Establishing that such disregard of legality occurred in, of all places, this Court, identifying those liable for it, and finding its cause and objective are the subject matter of this motion.

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

2. Last March 22, Dr. Cordero showed the deputy clerk behind the counter at In-Take Room 1803 an original and three copies of a judicial misconduct complaint about the Hon. John M. Walker, Chief Judge of this Court (i-25, below; see the Table of Contents, M-22, below) as well as a separate volume bearing on its cover the title "Evidentiary Documents" (26, below). Dr. Cordero asked to speak with Deputy Clerk Patricia Chin Allen. After the clerk behind the counter phoned her, she told Dr. Cordero that Clerk Allen was unavailable. He filed the complaint.

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

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

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit"s Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts" integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence, intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness requirement. It reveals the Court"s attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks" handling of Dr. Cordero"s complaint, in particular.

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

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

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

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

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

8. For her part, Clerk Allen herself found that heading most confusing and said that „it would of course be interpreted as a statement of facts in support of the motion", never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Docu-ments"…forget"a „bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four copies for him to reformat and resubmit them. Her objections were the following:

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

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

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

d) A major issue was Dr. Cordero"s inclusion of documents with the Statement of Facts and with the separate bound volume, „What for?! You can"t do that!" He explained that those are documents created since his August com-plaint and are clearly distinguished by a plain page number, while docu-ments accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accom-panying the opening brief) or E-# (E as in Exhibit, which was the title of a separate volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume accompanying the March complaint the different title "Evidentiary Documents" was used). Subtleties of no significance to Clerk Allen.

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

9. These are the „unacceptable" features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to comply with her unwritten arbitrary demands to implement „the way things are done with complaints", which he had to discover the hard way after complying with the written Rules, whether on point or applied by analogy.

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

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained

not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

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

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

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

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

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court‟s judges never deemed appropriate to impose? Why should a clerk be allowed to in the Court‟s name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges, as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be „œonfused‟ because they too are incapable, as the clerks allegedly were, to read past the first line and see:

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

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

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

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

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

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

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

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

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

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

20. If so, what for!? If she keeps the original Form for the Court‟s record, what does she do with the copies if it is not to send them to the judges to whom she sends the Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

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

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

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

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

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

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.
>
> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

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

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

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

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the

counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

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

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

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

31. So Clerk Allen, with Clerk MacKechnie‟s approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by the Rules adopted by this Court‟s judges?! Moreover, why does Clerk Allen have to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

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

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

with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

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

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

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

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no authority to disregard the law or the rules, but rather the obligation to show the utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

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

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

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

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

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the clerk **must** serve on all parties a copy of the opinion…", (emphasis added). Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

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

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

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

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

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

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

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

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

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

## III. Relief sought

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

a) declare that Clerks MacKechnie and Allen violate FRAP Rule 25(4) to Dr. Cordero‟s detriment;

b) declare whether said clerks and other officers of this Court did so in concert and following the instructions of their hierarchical superiors;

c) declare whether it can be inferred from their handling of Dr. Cordero‟s complaints of March 2004 and of August 11, 2003, and the foreseeability of the consequences that the clerks and their superiors:

1. intended to delay the submission of Dr. Cordero‟s judicial misconduct complaint and dissuade him from resubmitting it, thereby hindering the exercise of his right 11 U.S.C. §351 to complain about a judicial officer;
2. intended to cause Dr. Cordero to waste his time, effort, and money, and to inflict on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

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

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

Respectfully submitted on
April 11, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

# Table of Exhibits
## of the Motion of April 11, 2004


1. Information Sheet

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3. This Table of Contents ..... M-22

4. Complaint Form accompanying the judicial misconduct complaint of March 19, 2004, indicating its basis as §372(c), and removed as required by Clerk Allen (cf. entry 8.b, below) ..... M-23

5. Letter of Clerk Patricia Chin Allen of March 24, 2004, to Dr. Cordero ..... M-26

6. Letter of Clerk of Court Roseann B. MacKechnie of March 29, 2004, to Dr. Cordero ..... M-27

7. Letter of Clerk Patricia Chin Allen of March 30, 2004, to Dr. Cordero ..... M-28

8. Judicial misconduct complaint about the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, of March 19, 2004

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    b. Complaint Form indicating its basis as §351 (cf. entry 4, above) ..... v-a

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    d. 1-25 pages of documents created since the original complaint about the Hon. John C. Ninfo, II, of August 11, 2003 ..... 1

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United States Court
of International Trade
OFFICE OF THE CLERK
One Federal Plaza
New York, NY 10278-0001

December 23, 2004

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

Dear Dr. Cordero:

This is to acknowledge receipt of your letter of December 18, 2004 to Chief Judge Jane A. Restani.

As was noted in my letter to you of December 9, 2004, the Judicial Conference of the United States may take action with respect to complaints of judicial misconduct or disability under two sets of circumstances. The first is pursuant to 28 U.S.C. § 355, which requires the referral or certification of a matter based on the action taken by a judicial council under 28 U.S.C. § 354(b). The second is pursuant to 28 U.S.C. § 357, which permits a complainant or judge aggrieved by the action taken by a judicial council under 28 U.S.C. § 354 to petition the Judicial Conference for review of that action.

Again, as indicated in my prior letter, under either scenario, Chief Judge Restani, while a member of the Judicial Conference, is not authorized to take any action on her own on such matter unless it is referred to her directly by the Conference. That has not occurred. Moreover, as Mr. Deyling of the Office of the General Counsel at the Administrative Office explained to you in his letter of December 9, 2004, you have not met the conditions set forth in the governing statute to permit review of your matter by the Judicial Conference. Accordingly, I am returning your letter and the accompanying materials to you.

Sincerely,

Leo M. Gordon

Leo M. Gordon
Clerk of the Court

cc: Chief Judge Jane A. Restani

JC:242

# United States Court of Appeals

District of Columbia Circuit
Washington, D.C. 20001-2866

Mark J. Langer
Clerk

General Information
(202) 216-7000


December 27, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Dear Dr. Cordero:

Chief Judge Ginsburg referred your letter of December 18, 2004 to me for a response. Chief Judge Ginsburg does not have the authority to grant you the relief you seek in this matter.

Sincerely,

Mark J. Langer
Clerk



JC:243

**Dr. Richard Cordero**

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

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

January 8, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit"s Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

## I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of

jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized „argument" for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdic-

tion, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his actions.

Therefore, I respectfully request that you, as Chair of the Judicial Conference Misconduct Committee:

1. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
2. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
   a. forwarded to the Conference for review;
   b. otherwise, provide me with the names and addresses of the other members of the Committee to Review Circuit Council Conduct and Disability Orders;
3. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
4. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

## II. Accompanying Document and Exhibits


1. Dr. Richard Cordero's Statement of facts of December 18, 2004, and Request for an Investigation into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero .....5
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4. Table of Exhibits of the Petition..... E-xxv
5. Letter of December 9, 2004, of Assistant General Counsel Robert P. Deyling at the Office of the General Counsel of the Administrative Office of the U.S. Courts .....E-31
6. Dr. Cordero's letter of July 29, 2004, to Assistant General Counsel Jeffrey N. Barr at Office of the General Counsel Administrative Office of the U.S. Courts .....E-33
7. Dr. Cordero's Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero .....E-35
8. Table of Exhibits of the Complaint..... E-xlv
9. Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of the Court of Appeals for the Second Circuit intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this court to launch an investigation .....E-49

**Dr. Richard Cordero**

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**M.B.A., University of Michigan Business School**
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# STATEMENT OF FACTS
# of December 18, 2004

## Accompanying the letter of January 8, 2005, to

## The Hon. Judge Ralph K. Winter, Jr.

### Chair of the Committee to Review Circuit Council Conduct and Disability Orders
### of the Judicial Conference of the United States

## and

# REQUEST FOR AN INVESTIGATION

## into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero

It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to „dispose" of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling"s boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office"s normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks" misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let"s call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel"s Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel"s Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel"s Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".

I called Ms. Bryson in Mr. Mecham"s Office and told her what had happened, but it was to no avail, for she said that the GC"s Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that

asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC"s Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC"s Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel"s Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he „processing" it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office"s website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What"s wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single

me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel‟s Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel‟s Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director‟s and the GC‟s Office.

Therefore, I respectfully request that you, as the Chair of the Misconduct Committee, and the Conference itself:

1. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office‟s handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
2. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),
   a. consider it hereby resubmitted;
   b. and cause its original, which is both bound with a file of supporting documents (cf. E-xlv), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on
January 8, 2005

**Dr. Richard Cordero**

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

**59 Crescent Street**
**Brooklyn, NY 11208-1515**
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January 8, 2005

William R. Burchill, Jr.
Associate Director and General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

Dear Mr. Burchill,

Last November 23, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States."

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief

Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the

Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his actions.

Thus, I respectfully request that you, as General Counsel to the Administrative Office:

1. declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
2. forward to the Conference the copies of my petition for review together with its bound file of supporting documents;
3. provide me with the names and addresses of the members of both:

    a. the Committee to Review Circuit Council Conduct and Disability Orders; and

    b. the Executive Committee of the Judicial Conference.

I look forward to hearing from you.

Yours sincerely,

Dr. Richard Cordero

**Dr. Richard Cordero**

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**M.B.A., University of Michigan Business School**
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January 8, 2005

Hon. Judge Carolyn King
Chair of the Executive Committee of the Judicial Conference
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

tel. (202)502-4400

Dear Judge King,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit"s Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

## I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be

corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized „argument" for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument

on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his actions.

Therefore, I respectfully request that you, as Chair of the Conference"s Executive Committee:

1. declare or cause the Conference to declare Mr. Deyling"s letter to be devoid of any effect as ultra vires and withdraw it;
2. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
   a. forwarded to the Conference for review;
   b. otherwise, provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders;
3. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
4. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

## II. Accompanying Document and Exhibits


1. Dr. Richard Cordero's Statement of facts of December 18, 2004, and Request for an Investigation into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero ..... 5
2. Dr. Cordero's Petition of November 18, 2004, to the Judicial Conference of the United States for review of the actions of the Judicial Council of the Second Circuit In re: Judicial Misconduct Complaints CA2 docket no. 03-8547 and no. 04-8510, ..... E-1
3. Key Documents and Dates in the procedural history of the judicial misconduct complaints filed with the Chief Judge and the Judicial Council of the Second Circuit docket nos. 03-8547 and 04-8510, submitted in support of the petition ..... E-xxiii
4. Table of Exhibits of the Petition ..... E-xxv
5. Letter of December 9, 2004, of Assistant General Counsel Robert P. Deyling at the Office of the General Counsel of the Administrative Office of the U.S. Courts ..... E-31
6. Dr. Cordero's letter of July 29, 2004, to Assistant General Counsel Jeffrey N. Barr at Office of the General Counsel Administrative Office of the U.S. Courts ..... E-33
7. Dr. Cordero's Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero ..... E-35
8. Table of Exhibits of the Complaint ..... E-xlv
9. Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of the Court of Appeals for the Second Circuit intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this court to launch an investigation ..... E-49

**Dr. Richard Cordero**

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# STATEMENT OF FACTS
# of December 18, 2004
## Accompanying the letter of January 8, 2005, to
# The Hon. Judge Carolyn King
### Chair of the Executive Committee
### of the Judicial Conference of the United States
## and
# REQUEST FOR AN INVESTIGATION
## into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero

It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to „dispose" of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling"s boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office"s normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks" misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let"s call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel"s Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel"s Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel"s Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".

I called Ms. Bryson in Mr. Mecham"s Office and told her what had happened, but it was to no avail, for she said that the GC"s Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that

asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC"s Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC"s Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel"s Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he „processing" it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office"s website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What"s wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single

me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel‟s Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel‟s Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director‟s and the GC‟s Office.

Therefore, I respectfully request that you, as the Chair of the Conference‟s Executive Committee, and the Conference itself:

1. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office‟s handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
2. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),
   a. consider it hereby resubmitted;
   b. and cause its original, which is both bound with a file of supporting documents (cf. E-xlv), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on
January 8, 2005

Dr. Richard Cordero

# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

**CA2 docket no. 03-8547**

and **no. 04-8510**

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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## I. QUESTIONS PRESENTED FOR REVIEW

1. On August 11, 200*3*, Dr. Richard Cordero submitted a judicial misconduct complaint under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351-364. (hereinafter the Misconduct Act or the Act) about WBNY U.S. Bankruptcy Judge John C. Ninfo, II, concerning his participation together with other court officers and parties in a series of acts of disregard for the law, the rules, and the facts so numerous and consistently detrimental to Dr. Cordero, the only non-local party as well as the only pro se one, and favorable to the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias against Dr. Cordero. During the following year, Dr. Cordero addressed to the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., and then the Judicial Council of that Circuit, updating evidence showing how that pattern of illegality and bias continued to develop and was linked to a bankruptcy fraud scheme that generated the most powerful drive for wrongdoing: money, lots of money! (see infra Exhibit, page 31=E-31)

2. Nevertheless, the Chief Judge did not conduct even a limited inquiry of the complaint under §352(a), let alone appoint a special committee under §353 to investigate it, and even refused updating evidence (E-7; E-9), exhibits (E-28), and even a table of exhibits! (E-29-30) As a result, no report by a special committee was filed under §353(c) with the Judicial Council of the Second Circuit. Yet, it took 10 months for the complaint to be dismissed by Acting Chief Judge Dennis Jacobs on June 8, 2004 (E-10, 11). Dr. Cordero submitted on July 8 his petition for review and resubmitted it reformatted on July 13 (E-23). The Council denied it on September 30. (E-36-37; Table of Key Documents and Dates in the Procedural History, page i after this brief)

3. Dr. Cordero filed a misconduct complaint about Chief Judge Walker on March 19, 2004, reformatted and resubmitted on March 29 (E-39). It was dismissed also belatedly six months later on September 24 (E-44-45) and without any investigation, as was the petition for review of

October 4 (47), dismissed by the Judicial Council on November 10, 2004 (E-54-55).

**a)** Since action by a judicial council under §354 is expressly predicated "upon receipt of a report filed under section 353(c)", did the Judicial Council lack jurisdiction to deny and dismiss the complaint under §354(a)(1)(B)?;

**b)** Did it fail to discharge its duty under §354(a)(1)(C) requiring that it "shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit" by failing to take either of the two actions otherwise open to it, namely, to conduct an investigation of its own or to refer the complaint together with the record and its recommendations to the Judicial Conference under §354(b)(1)?;

**c)** Did the Judicial Council show dereliction of its duty, generally, by failing to investigate as part of a pattern of systematic dismissals of complaints and denials of petitions without investigation (E-24), and in particular, by failing to remove a bankruptcy judge for misconduct under §354(a)(3)(B) and 28 U.S.C. §152(e), whereby it showed partiality toward one of its peers to the detriment of a complainant and the integrity of the business of the courts in its circuit? (E-128-I);

**d)** Did the Chief Judge and the Acting Chief Judge err by not handling the complaint „promptly and expeditiously" (E-39), as required by the Misconduct Act (cf. E-7) and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (E-16-18; hereinafter the Complaint Rules or the Rules)?

**e)** Did the Chief Judge show lack of good judgment and due diligence in informing himself of the „totality of circumstances" as they continued to develop in the complained-about court during the long period of inaction on his part when he refused updates although not required by law to do so (E-52, E-53), thus forcing complainants to file them as successive complaints and making it easier for himself and the Judicial Council to dismiss them piecemeal?

**f)** Did he thereby fail both to render justice to a complainant that was being denied due process of law and to safeguard the integrity of the business of the Court and the courts in his circuit?

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## II. THE JUDICIAL CONFERENCE HAS JURISDICTION OVER THIS APPEAL BECAUSE THE COMPLAINANT WAS "AGGRIEVED" BY THE JUDICIAL COUNCIL

4. The Misconduct Act"s jurisdictional provision for the Judicial Conference applicable to this petition provides as follows:

> **28 U.S.C. §357. Review of orders and actions**
>
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.
>
> **(b) Action of Judicial Conference.**- The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

5. In turn, section 354 provides as follows:

> **§354. Action by judicial council**
>
> **(a) Actions upon receipt of report.-**
>
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-
>
> **(A)** may conduct any additional investigation which it considers to be necessary;
>
> **(B)** may dismiss the complaint; and
>
> **(C)** if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

6. Dr. Cordero was aggrieved by the Judicial Council because it dismissed his petition for review:

**a)** without jurisdiction for the reason that it had not received any report of a special committee under §353(c) given that the chief judge of the Court of Appeals for the Second Circuit failed to appoint any such committee under §353(a) or even conduct a §352(a) "limited inquiry";

**b)** conducted no investigation of its own and since the chief judge had conducted none either, it was not in a position to determine the merits of his complaint and in light thereof, what action could be considered necessary;

**c)** by dismissing his complaint without any investigation having been conducted at all, it failed its legal obligation under §354(a)(1)(C) that it "**shall** take…action…to assure the effective and expeditious administration of the business of the courts" (emphasis added) intended for the benefit of the public at large, including Complainant Dr. Cordero; and

**d)** thereby, it has further aggrieved Dr. Cordero by knowingly and indifferently leaving him at the mercy of the complained-about Judge Ninfo and other court officers and parties that have engaged in a series of acts of disregard for legality so long, for more than two years!, and so consistently against Dr. Cordero, the only non-local and the only pro se party, and to the benefit of the local parties that no reasonable observer informed of the facts could deem them coincidental and unbiased, but instead a responsible Council would have discharged its duty to investigate whether, as claimed, they were intentional and coordinated and formed part of a bankruptcy fraud scheme involving judicial misconduct.

7. The CA2 Judicial Council considered that Dr. Cordero was "a complainant…aggrieved by a final order of the chief judge" under §352(c) so that it took jurisdiction of his petitions for review and affirmed the chief judge"s dismissals (E-37, E-55). The Judicial Conference can likewise consider Dr. Cordero "a complainant…aggrieved by an action of the judicial council" under §357(a) since the grounds for this petition contain, among others, the same grounds as the petition to the Council, namely, a dismissal of the complaint without any investigation in disregard of the Council"s duty under the Misconduct Act and the Complaint Rules and knowing that by so proceeding it was leaving Dr. Cordero exposed to the same abuse and bias at the hands of the same judge and other court officers and parties.

## A. The reasonable construction of "aggrieved" in light of the statutory purpose of the Misconduct Act

8. The appointment last May 25, by U.S. Supreme Court Chief Justice William Rehnquist of Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee because of the history of disfunctionality of its complaint mechanism supports the likelihood that the chief judge and the Judicial Council also failed to deal with the instant complaint properly. Indeed, when applauding this appointment, the Chairman of the Judiciary Committee of the

House of Representative, F. James Sensenbrenner, Jr., stated that:

> Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation.[1]

9. At the Committee‟s first organizational meeting on June 10, 2004, Justice Breyer stated when commenting on the importance of the Misconduct Act that:

> The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability.[2]

10. It follows that the integrity of the judiciary is a public good and in safeguarding it Justice Breyer puts the Act at a par with the Constitution. When its complaint procedures and remedies are rendered ineffective by the failure of those charged with investigating whether there is an instance of judicial misconduct, it is reasonable to hold that a complainant is aggrieved just as he is aggrieved when deprived of his constitutional right to judicial process independent from interference from officers of either of the other two branches of government.

11. In going about his task of fixing a broken complaint mechanism, it is likely that Justice Breyer will steer the Committee to examine the Misconduct Act by applying the same principles of statutory construction that he advocated in a 2001 speech and that are applicable here to determine the meaning that Congress intended for the term "aggrieved" as an element of the jurisdictional basis for the Judicial Conference:

> How are courts, which must find answers, to interpret these silences [in statutes]? Of course, courts will first look to a statute's language, structure, and history to help determine the statute's purpose, and then use that purpose, along with its determining factors, to help find the answer. [3]

12. Justice Breyer applied such principles even to the construction of the Constitution. In its First Amendment the Constitution enshrines the right of „the people to petition the government for a redress of grievances". Similarly, the Misconduct Act gives the right to petition one branch of government, the judiciary, to "any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". The purpose of the petition is to obtain relief through disciplinary action. This is reflected in the non-fortuitous fact, even if not legally compelling, that the Act appears in Title 28, enacted into law by Congress, of the U.S. Code under the Chapter 16 title, "Complaints Against Judges and Judicial Discipline".

13. The key means for achieving that purpose is the investigation of complaints. Such investigation

is conducted by each of the three levels of the judiciary charged with the duty to achieve such purpose, namely, the chief judges, the judicial councils, and the Judicial Conference. Whether they appoint special committees or investigate themselves, they have the manpower and subpoena power to go behind what the complainant at the receiving end of the misconduct can ever find out and state in his complaint. Hence, the investigation of complaints is the indispensable means to achieve the Congressional purpose of ascertaining judicial misconduct and taking disciplinary action.

14. Only through the investigation of complaints can the Misconduct Act ensure the accomplishment of "the business of the courts", which is to "administer justice without respect to persons …under the Constitution and laws of the United States", 28 U.S.C. §453. When the law is disregarded, justice is not administered, but is rather denied, especially where the law is systematically disregarded, whether by judges complained-about or by chief judges, judicial councils, or the Judicial Conference who systematically fail to investigate judicial misconduct complaints.

15. It is reasonable to assume that when Congress drafted and passed the Misconduct Act it did not want the Act to become dead letter: useless to curb misconduct on the part of judges and ineffective as a source of judicial discipline for the protection of complainants and the public. It is also reasonable to conclude that any complainant denied such protection would be aggrieved by the failure of a chief judge or a judicial council, not to mention by the failure of both, to investigate his complaint. His grievance would not only consist in the frustration of his legitimate expectation that judges, of all people, would "faithfully and impartially discharge and perform all [their] duties…under the Constitution and laws", §453. The complainant would also be aggrieved by the practical consequence that by so disregarding their duties, those judges would knowingly and indifferently leave him exposed to further abuse and bias at the hands of the judge complained-about. Such grievance renders the complainant an "aggrieved" one within the meaning of §357(a) and provides the basis for the Judicial Conference to take jurisdiction of his complaint.

16. Indeed, it is only reasonable to assume that Congress did not want to see its Act eviscerated by the failure to investigate of all those to whom it entrusted its application upon considering them capable of self-policing. Consequently, where the chief judge and the judicial council have failed to discharge their duty to investigate a complaint as a prerequisite to disposing of it, Congress would expect at least the Judicial Conference to rise to its self-policing duty by taking

the opportunity of a petition by a complainant aggrieved by such failure and investigate the judge and the acts complained about.

17. This expectation is particularly reasonable with respect to the instant complaint because its gravamen is not only that one judge misconducted himself in his dealings with one litigant – which in any event should constitute enough ground for the Judicial Conference to take jurisdiction and investigate the complaint-. It is also that the available evidence shows that the judge is participating with others in a bankruptcy fraud scheme motivated by the most powerful driver of wrongdoing: money! Hence, Congress would expect the purpose of the Act to be pursued in the final instance by the Judicial Conference especially where the aggrieved complainant stands for the general public that can reasonably be deemed aggrieved by widespread judicial and extra-judicial misconduct that undermines the integrity of the process of law and the bankruptcy system. (E-128I-II)

18. Such stakes are large enough to justify the Judicial Conference in taking jurisdiction and conducting an investigation where none has been conducted. To do so it is entitled to give §357 an expansive interpretation, for the alternative to doing so is for the Judicial Conference to join the chief judge and the judicial council in their failure to discharge their duty to give effect to the Misconduct Act. That cannot be what Congress intended. Whatever different interpretation was given to §357 in the past was wrong, as shown by the fact that "the practical tendency" of dismissing complaints without investigation has been to insulate peer judges from responsibility for their misconduct to the detriment of complainants. That constitutes a breach per se of the duty to "administer justice without respect to persons". The need to appoint the Breyer Commit-tee is confirmation that such dismissals are tendentious and contrary to the Act"s purpose.

19. The defeat so far of the Act"s purpose warrants that now §357 be interpreted differently, if need be. The reinterpretation can be justified by the principle illustrated by Justice Breyer when he stated in the context of the Fourteenth Amendment that it "uses the word "reasonable," -- a word that permits different results in different circumstances"[4]. Likewise, terms such as "aggrieved" and "action" in §357 can be given a different construction so that the Judicial Conference may breathe life into the dead letter of the Act in order to achieve its Congressional purpose: to ascertain misconduct and enforce discipline for the protection of the complainant and the public"s confidence in the judiciary.

20. Just as in *Brown v. Board of Education*, "the Court began to enforce a law that strives to treat every

citizen with equal respect", as Justice Breyer stated in a speech[5], the Judicial Conference can take jurisdiction of this petition to send a clear message that instead of systematically giving peer judges the benefit of the doubt, thus holding in practice that a judge can do no harm, it will „do equal right by judges and any other person", cf. §453, because in practice judges are just as susceptible to human frailties as anybody else. Hence, they will not be spared investigation when the evidence reasonably expected from and submitted by a complainant casts suspicion of their having engaged in wrongdoing.

21. The instant complaints contain enough evidence to cast reasonable suspicion over Judge Ninfo and other court officers and parties of having engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing as part of a bankruptcy fraud scheme. Therefore, they should have investigated. Chief Judge Walker should have done so „promptly and expeditiously". Despite his failure to do so, the Judicial Council too failed to investigate both and left Dr. Cordero to suffer more abuse and bias. How could the Complainant not be aggrieved by their actions and the Judicial Conference not have the duty to step in to investigate?

## III. STATEMENT OF FACTS

### A. The categories of evidence that raise reasonable suspicion of wrongdoing that should be investigated

22. The evidence of judicial misconduct linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been attached as exhibits, though all others referred to therein are available on request. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to pursue that evidence to collect more and evaluate it under the standard of the preponderance of the evidence applied by the Judicial Conference, as it stated in its misconduct Memorandum and Order No. 98-372-001, at 18. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, a trustee sued for negligence and recklessness who had before him some 3,000 cases! –how many do you have?-; an already defaulted bankrupt defendant against whom

an application for default judgment was brought; parties who have disobeyed his orders, even those that they sought or agreed to; and debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

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

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

### 1) Judge Ninfo and others have protected parties from incriminating discovery and trial

23. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (E-1) in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY dkt. no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

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

**a)** Indeed, the statistics on PACER as of November 3, 2003[6,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[7] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

25. Could you handle competently such an overwhelming number of cases, increasing at the rate of

1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee‟s motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon‟s negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3:B-E; E-86:II).

26. Judge Ninfo denied Dr. Cordero‟s timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY dkt. no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero‟s property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero‟s complaint. In his denial of Dr. Cordero‟s application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Mr. Pfuntner!

    **a)** Judge Ninfo would not compel Mr. Palmer to answer Dr. Cordero‟s claims even though his address is known and he submitted himself to the court‟s jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4:C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4:C-D).

27. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero‟s expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet,

for months Mr. Pfuntner had shown contempt for Judge Ninfo‟s first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5:E; E-90:III)

28. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

### 2) The DeLano Debtors have engaged in bankruptcy fraud

29. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; docket no. 04-20280, WBNY (E-153). The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

**a)** Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

**b)** The DeLanos incurred scores of thousands of dollars in credit card debt;

**c)** carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

**d)** during which they were late in their monthly payments at least 232 times documented by

even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

**e)** have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

**f)** owe also a mortgage of $77,084;

**g)** but have near the end of their work lives equity in their house of only $21,415;

**h)** however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

**i)** yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

**j)** the rest of their tangible personal property is just two cars worth a total of $6,500;

**k)** their cash in hand or on account declared in their petition was only $535;

**l)** but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

**m)** claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

**n)** but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-185);

**o)** refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65:III).

30. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64:II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underre-porting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64:III) opposing Trustee Reiber‟s motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero‟s claim. (E-73; E-117:B) How extraordinary! given that:

**a)** The DeLanos had treated Dr. Cordero as a creditor for six months;

**b)** They were the ones who listed Dr. Cordero‟s claim in Schedule F…for good reason because

**c)** Mr. DeLano has known of that claim against him since November 21, 200*2,* when Dr. Cordero brought him into the Pfuntner case as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115:A)

31. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano‟s other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33:II)

32. An impartial observer could reasonably realize that the DeLanos‟ motion to disallow Dr. Cordero‟s claim is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; E-185) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos‟ attorney, Christopher Werner, Esq., to issue Dr. Cordero‟s document production order requested on July 9 (E-69:¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92:IV), he refused to even docket it (E-80; E-84:I; 90:III) and only issued a watered down version of Dr. Cordero‟s proposed order on July 26 (E-76; E-81) that he then allowed the DeLanos to disobey! If not for leverage, what was it issued for?

33. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero‟s claim has been determined, *including all appeals*. (E-107; E-121:III) That could take years! during which the other 20 creditors are prejudiced because they cannot begin to receive payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interest of creditors and the public so as to protect the DeLanos needs to be investigated.

34. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor‟s repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos‟ case go forward concurrently with the determination of their motion to disallow Dr. Cordero‟s claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121:III-IV) The stakes must be very high indeed!…and all the trustees know it.

## 3) Trustee Reiber and Att. James Weidman have violated bankruptcy law

35. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-149). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[8] *open* cases! He cannot be all the time where he should be. This raises questions:

36. Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? (E-68:V) They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors‟ compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamp petitions? Something is not right here.

37. Actually, nothing is right. Thus, at the March 8 meeting of creditors, Trustee Reiber‟s attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman‟s decision, vouched for the DeLanos‟ honesty, and stated that their petition had been submitted in good faith. (E-40-41)

38. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65:III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64-II) and perfunctorily (E-65:III).

39. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out

of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66:IV)

40. Trustee Reiber has refused to hold an adjourned meeting of creditors. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos‟ motion to disallow Dr. Cordero‟s claim has been finally determined. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo.

41. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos‟ petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini (E-71:¶32; E-93:III), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate and all have countenanced his failure to investigate needs to be investigated.

## B. How a bankruptcy fraud scheme works

42. The above-described few elements of the evidence, when reviewed as a „totality of circumstances‟ instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

43. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is

particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender‟s resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

44. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

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

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

47. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of “the actual, necessary expenses incurred”, §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let‟s say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along

with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

48. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:
    **a)** Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;
    **b)** got the DeLanos‟ petition ready for confirmation by the court without ever requesting a single supporting document;
    **c)** chose to dismiss the case rather than subpoena the documents requested but not produced;
    **d)** has refused to trace the substantial earnings of the DeLanos‟; and
    **e)** after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.

49. Moreover, there is something fundamentally suspicious when:
    **a)** a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for $291,470;
    **b)** allows the local parties to disobey his orders with impunity;
    **c)** before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero‟s claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud (E-121:IV); and
    **d)** yet shields them from discovery by suspending all further process until their motion to disallow is finally determined.

50. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That warrants an investigation.

51. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building or live in the same small community in Rochester or Buffalo, NY. (E-135-147) They too may fear the consequences of admitting that right under

their noses such a scheme developed. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation…starting by subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

## IV. The actions by the Chief Judge and the Judicial Council

52. The Judicial Council limited itself to responding to Dr. Cordero"s petitions (E-23; E-47) with forms dated September 30 (E-37) and November 10 (E-55) that carry the boilerplate DENIED for the reasons stated in the order dated June 8 (E-11) and September 24, 2004 (E-45). By so doing, not only did it fail to give even the appearance that justice was being done, but it also did not provide any reasons for its action that could be discussed here.

53. As for the dismissals, both by Acting Chief Judge Jacobs, whereby the Chief Judge was insulated from §359 restrictions (E-24-25) although he recused himself (E-127), his reasons are discussed in the petitions of July 13 (E-23) and October 4 (E-47). However, to the discussion of his reason that Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling (E-13), it is pertinent to add the following passage from a Judicial Conference memorandum:

> Although a judge indeed may not be sanctioned out of disagreement with the merits of rulings, a judge certainly may be sanctioned for a consistent pattern of abuse of lawyers appearing before him. The fact that that abuse is largely evidenced by the judge's rulings, statements, and conduct on the bench does not shield the abuse from investigation under the Act. To the contrary, allegations that the judge has been habitually abusive to counsel and others may be proven by evidence of conduct on the bench, including particular orders or rulings, that appears to constitute such abuse.[at 15]…The sanctions are not based upon the legal merits of the judge's orders and rulings on the bench, but on the pattern of conduct that is evidenced by those orders and rulings.…If a judge's behavior on the bench, including directives to counsel and litigants, were wholly beyond the reach of the Act, the Act would be gutted. at 16, In re: Complaints of Judicial Misconduct or Disability, No. 98-372-00.

54. Judge Jacobs also wrote that Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…(E-13). Dr. Cordero rebutted that other court officers, trustees, attorneys, and judges that work for or with Judge Ninfo or appear before him in that small federal building in Rochester (E-86:II), and all the more so if they also participate in the bankruptcy fraud scheme, have followed his example of disregard for legality and bias against Dr. Cordero (E-25). The common sense likelihood that others joined in and compounded judicial misconduct is

implicit in the following passage from another memorandum of the Judicial Conference:

> While the identity of the complainant will necessarily become known to the judge complained against, a complainant may also fear retaliation from the judge's judicial colleagues, former law clerks, and other associates, as well as other adverse consequences, such as acquiring a reputation as a malcontent; at 8 in No. 94-372-001.

55. Copies of these memoranda had to be obtained from the Administrative Office of the U.S. Courts. The Judicial Conference should know this because, by contrast, the Chief Judge of the Court of Appeals for the Second Circuit impaired Dr. Cordero‟s preparation of his petition to the Circuit‟s Judicial Council by making it impossible to consult precedent constituted by orders and supporting memoranda of Second Circuit chief judges and the Judicial Council disposing of other complaints. (E-15, E-19) Although Rule 17(b) of the Circuit‟s Complaint Rules provides that such materials and dissenting opinions, statements, and the docket-sheet record thereof "will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals" (E-18), the Chief Judge kept them, except those for the last three years, not in the clerk‟s office, not stored elsewhere in the Court‟s building, not stored in any annex to the building, not stored in any building in the City of New York, not even stored in the State of New York, or in any other state of the Circuit, but rather shipped them away to the State of Missouri to be kept in the vaults of the National Archives! And there was no docket-sheet record at all. (E-20)

56. Moreover, if while reading the few materials available at the Court you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

57. One thing is sure: Chief Judge Walker creates an institutional climate of disrespect for the law when he shows contempt for the Misconduct Act and his own Circuit‟s Rules and 1) fails to make and keep complaint materials publicly available, 2) fails to deal with complaints „promptly and expeditiously‟, 3) arbitrarily refuses updates to complaints, 4) fails to investigate complaints, 5) fails to safeguard the "business of the courts" of dispensing justice, 6) fails to discipline biased judges who abuse parties, 7) fails to protect complainants and indifferently lets them continue suffering enormous waste of effort, time, and money (E-90:III) and tremendous emotional distress (E-43) due to his peers‟ misconduct. Can a complainant be "aggrieved" when

he makes the Circuit"s Judicial Council aware of this situation, but it takes no action other than to rubberstamp **DENIED** on his plea for relief? Will the Judicial Conference tolerate self-policing by the judiciary that degenerates into arrogant self-immunity and disregard for duty? (E-128-II)

## V. Relief requested

58. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

**a)** construe 28 U.S.C. §357(a) so as to grant this petition for review;

**b)** investigate the complained-about judicial misconduct and its link to a bankruptcy fraud scheme;

**c)** include in the investigation the following cases:

1) Mr. Palmer"s Premier Van Lines, Chp. 7 bankruptcy case, dkt. no. 01-20692, WBNY;

2) Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY; adversary proceeding appealed in:

i. Cordero v. Gordon, dkt. no. 03-CV-6021, W***D***NY and

ii. Cordero v. Palmer, dkt. no. 03-MBK-6001, District Judge David Larimer presiding;

3) Premier Van Lines, dkt. no. 03-5023, in the Court of Appeals for the Second Circuit; and

4) In re David and Mary Ann DeLano, Chp. 11 bankruptcy case, dkt. no. 04-20280, WBNY;

**d)** appoint investigators from outside the Rochester and Buffalo area, who are unacquainted with those that may be investigated and who can investigate zealously, efficiently, and exhaustively regardless of who is participating in wrongdoing or just looking the other way;

**e)** make a simultaneous report to the Acting U.S. Attorney General, such as under 18 U.S.C. §3057(a), and request that the Department of Justice join its investigation and also appoint investigators from outside the DoJ and FBI offices in Rochester and Buffalo (E-135-147);

**f)** take a position on whether:

1) the appearance of impartiality on the part of Judge Ninfo and District Judge Larimer (E-4:D) no longer obtains so that they should be disqualified from the cases in c) above; and

2) the three cases assigned to Judge Ninfo –c)1), 2) and 4) above- and the appeals therefrom assigned to Judge Larimer –c)2)i) and ii)- should be removed in the interest of justice under 28 U.S.C. §1412 to an impartial court for trial by jury, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;

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

Respectfully submitted, under penalty of perjury,

Dr. Richard Cordero

on November 18, 2004

59 Crescent Street
Brooklyn, NY 11208

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

3. _____

[1] News Advisory released on May 26, 2004; www.house.gov/judiciary; Contact: Jeff Lungren/Terry Shawn, 202-225-2492.

[2] http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html; For Further Information Contact: Public Information Office of the U.S. Supreme Court at 202-479-3211.

[3] "Our Democratic Constitution", Stephen Breyer, Associate Justice, Supreme Court of the United States, The Fall 2001 James Madison Lecture, New York University Law School, New York, New York, October 22, 2001; http://www.supremecourtus.gov/publicinfo/speeches/sp_10-22-01.html.

[4] Associate Justice Stephen G. Breyer, "Liberty, Security, and the Courts", Association of the Bar of the City of New York, New York, New York, April 14, 2003; http://www.supremecourtus.gov/publicinfo/speeches/sp_04-15-03.html.

[5] "*Brown*: One Constitution.....One People.....One Nation", Stephen Breyer, Associate Justice, Supreme Court of the United States, 50th Anniversary of *Brown v. Board of Education,* Topeka, Kansas, May 17, 2004; http://www.supremecourtus.gov/publicinfo/speeches/sp_05-17-04b.html.

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

[7] Id.

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

# KEY DOCUMENTS AND DATES IN THE PROCEDURAL HISTORY

of the judicial misconduct complaints filed with
the Chief Judge and the Judicial Council of the Second Circuit
docket nos. 03-8547 and 04-8510
submitted in support of a petition for review to
**the Judicial Conference of the United States**
by Dr. Richard Cordero

Judicial misconduct complaint about WBNY Bankruptcy **Judge** John C. **Ninfo**, II, docket no. 03-8547

| **Judicial misconduct complaint** | | | | **Petition for review** | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Submission | Resubmission | Acknow-ledgment | Dismissal | Submission | Resubmission | Acknow-ledgment | Letter to Jud. Council | Update to Jud. Council | Denial |
| August 11, 03 | August 27, 03 | Septem. 2, 03 | June 8, 04 | July 8, 04 | July 13, 04 | July 16, 04 | July 30, 04 | August 27, 04 | Septem. 30, 04 |
| - | 1 | - | 10 & 11 | - | 23 | 28 | 29 | 31 | 36 &37 |
| page numbers of documents included among the exhibits | | | | | | | | | |

Judicial misconduct complaint about CA2 **Chief Judge** John M. **Walker**, Jr., docket no. 04-8510

| **Judicial misconduct complaint** | | | | **Petition for review** | | | | |
|---|---|---|---|---|---|---|---|---|
| Submission | Resubmission | Acknow-ledgment | Dismissal | Submission | Acknow-ledgment | Exhibits to Jud. Council | Rejection of exhibits | Denial |
| March 19, 04 | March 29, 04 | March 30, 04 | Sept. 24, 04 | October 4, 04 | October 7, 04 | October 14, 04 | October 20, 04 | November 10, 04 |
| 39 | - | - | 44 & 45 | 47 | - | 52 | 53 | 54 & 55 |
| page numbers of documents included among the exhibits | | | | | | | | |

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submitted to

**the Judicial Conference of the United States**

in support of a
petition for review of the actions of
the Judicial Council of the Second Circuit
concerning judicial misconduct complaints
docket nos. 03-8547 and 04-8510
by Dr. Richard Cordero


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LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

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

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel

# Dr. Richard Cordero

**Ph.D., University of Cambridge, England**
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**59 Crescent Street**
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July 29, 2004

Mr. Jeffrey N. Barr
Assistant General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

Dear Mr. Barr,

Thank you for taking my call last Thursday, July 22.

I also appreciate your sending me the missing pages of decisions of the Judicial Conference. Likewise, I would be grateful if you could send me a copy of the latest version of the following materials, which I cannot find anywhere else:

1. Administrative Office of U.S. Courts, Codes of Conduct for Judges and Judicial Employees, in Guide to Judiciary Policies and Procedures
2. Administrative Office of the United States Courts, Judicial Business of the United States Courts 44 tbl. S-3 (2000)
3. The Judicial Conference Rules for the Processing of Petitions for Review of Conduct Orders of Judicial Councils, the ones based on §351, not on §372

As discussed, I am hereby submitting to the Administrative Office of the United States Courts through you, who under 28 U.S.C. §602(d) perform by delegation functions vested in the Director of the Office, a formal complaint about court administrative and clerical officers of the Court of Appeals for the Second Circuit and their mishandling of judicial misconduct complaints and orders.

The complained-about officers should never have given grounds for complaint, but instead should have been guided by the profound conviction that their work is not simply a job to earn a paycheck, but rather consists in the lofty mission, endowed with public trust and laden with heavy responsibility, to dispense justice to others.

Therefore, despite my deep disappointment in the level of integrity and law-abiding zeal of court officers after dealing with them for years, I hope that the Administrative Office, as well as the entities that supervise it and those to which it reports, has the wholehearted commitment to fairness and the rule of law to do and appear to be doing justice to this complaint.

Hence, I look forward to hearing from you soon.

Sincerely,

Dr. Richard Cordero

**Dr. Richard Cordero**

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July 28, 2004

# Complaint
to
The Administrative Office of the United States Courts
About Court Administrative and Clerical Officers and
Their Mishandling of Judicial Misconduct Complaints and Orders
to the Detriment of the Public at Large as well as of
Dr. Richard Cordero

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## I. Court administrators violated their obligation to make judicial misconduct orders publicly available by shipping them to Missouri

This complaint, in so far as it concerns a matter that affects the public at large, is about the Clerk of Court of the Court of Appeals for the Second Circuit, Ms. Roseann MacKechnie, her

Chief Deputy Clerk, Mr. Fernando Galindo, and in his capacity as the top administrator of that Court, the Hon. John M. Walker, Jr., Chief Judge, for their violation of their legal obligation to make publicly available both the orders issued by chief judges and those issued by the Judicial Council of the Second Circuit to dispose of judicial misconduct complaints filed under 28 U.S.C. §351 et seq. and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers thereunder (page 1, infra; collectively hereinafter the Complaint Provisions).

The language of the specific provisions that were violated is unequivocal and the obligation that they impose is absolute, for they provide as follows:

> §360**(b) Public availability of written orders**.-Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, ***shall*** be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. *Unless contrary to the interests of justice*, each such order ***shall*** be accompanied by written reasons therefor. *(emphasis added)*
>
> RULE 17. PUBLIC AVAILABILITY OF DECISIONS
> (a) General Rule. *A docket-sheet record of orders* of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council *will be made public* when final action on the complaint has been taken and is no longer subject to review. *(emphasis added;* 11, infra)

It was despite the interest of justice in a legal system based on precedent and because of the irrelevant allegation of „lack of space" that, in response to my request of last June 16 to access those orders, and after having been made to wait for two weeks, Chief Deputy Galindo finally told me in person on June 30 in the reading room of the In-take Room 1803 of the Court that, with the exception of three binders containing orders for 2001-03, the orders were not available because they were stored -not in the Court"s basement, or in an annex to the building, or in another building in the City of New York, or even elsewhere in the State of New York, not even in another state of the circuit, but rather- in the National Archives in the State of Missouri!

Chief Deputy Galindo further told me that if I wanted to consult the archived orders, I would have to file a formal request, pay a search fee of $45, and wait at least 10 days for those orders to be shipped back from the National Archives in Missouri.

For Chief Deputy Galindo, Clerk of Court MacKechnie, and Chief Judge Walker to have failed to keep those orders in the Court building and instead to have sent them some 1,250 miles away is a clear violation of their obligation to keep them publicly available in the Courthouse, as required under the Circuit"s Complaint Rules:

> Rule 17(b) The records referred to in paragraph (a) will be made public by placing them in a **publicly accessible file** in the office of the clerk of the court of appeals at the **United States Courthouse, Foley Square, New York, New York 10007**. The clerk will send copies of the publicly available materials to the **Administrative Office of the United States Courts, office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E. Washington, DC 20544**, where such materials will also be *available for public inspection.* In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published. **(emphasis added;** 12, infra**)**

### A. The administrators also failed to create and keep up to date the required docket-sheet record of misconduct orders

Moreover, in response to my request under Rule 17(a) for "[the] docket-sheet record of [such] orders…", Chief Deputy Galindo told me on that occasion on June 30 that he could not produce it either because there was none. The non-existence of this list, which cannot possibly be explained away by alleging limited filing space, shows that the conduct of these officers is motivated, not by space management considerations, but rather by their sheer disregard for their legal obligation to make those orders publicly available.

Indeed, even the orders for 2001-03 that were said to be physically in the Courthouse were not made publicly available when I requested them in person on June 16 at the In-take Room. After I was referred to Chief Deputy Galindo by the Head In-taker, Ms. Harris, he told me on the phone on June 17 that he had to ask Clerk of Court MacKechnie to determine which ones he could show me since some had the names of the judge complained-about and of the complainant, which might not be disclosable. I had to call him the following day, June 18, only to find out that he and Clerk MacKechnie had decided to refer my request to Chief Judge Walker for him to decide which orders could be made available to me given the names that they disclosed. My argument that it was not at the time of a request that such an issue was to be looked at, thereby making those orders effectively unavailable, got no better response from Chief Deputy Galindo than to tell me to address my complaint in writing to the Chief Judge. I did so by letter of June 19 (14, infra). Till this day it has not been replied to, just as my letters of June 30, July 1 and 13 remain without response (15, 19, and 23, infra). No calls that I made to Mr. Galindo were returned until Tuesday, June 29, when he told me that I could see the orders the following day and that it had taken that long to white out the names that were not supposed to be disclosed. But not even at that time did he tell me that the available orders were merely those for 2001-03.

This means that I had to keep pressing for two weeks my request for the orders only to be shocked with the revelation by Chief Deputy Galindo that merely the minute fraction of three years worth of orders were available out of the 24 years during which orders have been issued since the enactment of the Judicial Conduct and Disability Act of 1980. Similarly, I was kept waiting only to be astonished by the non-existence of the docket-sheet record, which rendered it impossible for me to check against it the completeness of the set of orders for each year, assuming, of course, that all orders would have been scrupulously entered in that record. Yet, one must assume that the three top administrative officers of the Court knew all along that they had shipped to Missouri either all orders or those for the more recent years and were not keeping any docket-sheet record. It follows that they could have disclosed those facts to me from the very beginning.

Why did these top administrative officers fail to live up to the standard of competence and honesty that the public at large is entitled to expect from public servants, especially from those heading an institution whose mission it is to dispense justice and for whose effective performance it depends on earning the public‟s trust? Or was it that they did not want me in particular to consult those orders; if so, what motive would they have therefor? Consider the following sections of this complaint and determine whether the conduct of the complained-about administrative and clerical officers was motivated by bias against me or was the normal manifestation of their performance of their duties and dealings with the public…then decide which case is be worse.

## II. The administrators' violation in the context of my misconduct complaints, including one about Chief Judge Walker, and the Clerks' mishandling of it

When on June 16 I first requested access to the misconduct orders and at every opportunity thereafter, I made all Court officers aware of what they had reason to know (13, infra), namely, that I wanted to consult those orders to prepare my petition for review to the Judicial Council of the dismissal of my misconduct complaint, docket no. 03-8547 (34, 39 infra), and that time was of the essence because pursuant to the Court"s letter (13, infra) I only had until July 9 to file a review petition.

Although I filed that complaint on August 11, 2003, Chief Judge Walker disregarded the explicit obligation imposed under §352 on the chief judge to handle such a complaint "expeditiously" and "promptly" (40, infra); he even had my statement pointing this out returned to me unfiled (42, infra). The evidence shows that he did not conduct even a §352 and Rule 4(b) "limited inquiry" (4, infra) and did not notify the complained-about judge of any judicial misconduct complaint filed against him (43-44, infra); nor did he appoint a special committee under §353 and Rule 4(e) (5, infra). Yet, it took to do nothing but dismiss that complaint until June 8, 2004, that is 10 months! (13, infra)

Hence, I filed a judicial misconduct complaint about Chief Judge Walker himself on March 19, 2004, docket no. 04-8510 (43, 50 infra). I also raised a motion on April 11, 2004, to complain about Clerk of Court MacKechnie and other administrative and clerical officers for repeatedly placing obstacles to my submission of that second complaint (51, infra). No action has been taken so far to dispose of that complaint; but Clerk MacKechnie immediately returned the motion unfiled on April 13, 2004 (73, infra; more in section V, below).[1]

Moreover, it was not even Chief Judge Walker who dismissed my complaint of August 11, 2003, but rather the Hon. Dennis Jacob, Circuit Judge (30, infra). This constituted a violation of the non-delegable obligation under §353(b) and Rule 4(f)(1) requiring the chief judge to dispose of misconduct complaints by writing a reasoned order.[2]

Given these violations of the Complaint Provisions and my complaints about the Chief Judge and his top officers, which it was easily foreseeable I would not fail to bring up in my petition, as I did, were there independent efforts by individual officers or a coordinated effort by some or all of them to prevent, hinder, or dissuade me from consulting the orders in preparation of my petition? Let"s examine the facts to determine whether they provide prima facie evidence to answer this question.

## III. The Head In-taker warns me that she will call in the marshals if she finds me nodding again while reading misconduct orders in the reading room

On June 30, the first day when the orders were made available to me, I went to the In-take Room and checked out one of the three binders of orders from Mrs. Harris, the Head In-taker, and stepped into the adjoining reading room. I sat and read for some time the…,,There is no

[1] For a discussion of how the unavailability of these orders in the context of preparing my petition for review of the dismissal of my first misconduct complaint about judicial officers in Rochester, NY, relates to my second misconduct complaint about Chief Judge Walker himself, see 25-26, infra.

[2] Id., for a discussion of Chief Judge Walker's benefit in violating his non-delegation obligation.

sleeping in the reading room", a clerk told me. It appears that I was nodding. I went on reading for several hours and taking notes in my…„You are sleeping and there is no sleeping in the reading room". This time it was Head In-taker Harris. I told her that I had not gone there to sleep, but rather must have fallen asleep. She replied „You have already been warned and if you fall asleep again, I will call the marshals."

The marshals!, those security officers in charge of preventing criminals and terrorists from smuggling into the Courthouse guns and bombs to kill and maim federal employees and visitors. Mrs. Harris would call them away from manning the metal detectors in the lobby to catch me as I threatened everybody in the reading and In-take rooms with nodding!

Can you assure yourself, let alone others, that you will not nod while you make an effort for hours to concentrate on reading in a noisy room? And noisy that reading room is and was on that occasion. In that approximately 15" x 15" room, people were dropping coins in the copying machines to the right; air conduits vibrated loudly in a ceiling with a missing tile; people chatted while sat by the row of Court computers on the left, which are set against a partition dividing the reading room from an office where there frequently is and was a radio playing music!; and coming and going behind me were document filers talking with clerks and clerks bantering among themselves. If in that environment your brain short-circuited and you nodded, how would you feel if you, a professional and self-respecting person, were taken away in public by the marshals? I did not risk becoming the subject of Ms. Harris" abuse of power and did not go back. My letter of complaint thereabout to Chief Deputy Galindo of July 1 (19, infra) was not replied to.

Was Mrs. Harris indulging in such disproportionate exercise of "discipline" on her own initiative or as an agent in a Courthouse where…madhouse, the nurse! The infamous head nurse in "One Flew over the Cuckoos" Nest"! Did she need specific instructions to apply minute rules so insensitively to mentally ill inmates or was she the product of an institution, imitating top managers that had no respect for the obligations of their profession, psychiatry, and disregarded the rights of the inmates -particularly the one faking mental illness- whose requests they repressed with electroshocks to their brains to quash any sense of self-assertion in their minds? In this lawhouse, are there in effect the laws of trickle down unlawfulness and of power unchecked is power abused? Evidence thereof is that the Head In-taker will call in the marshals to straitjacket a reader dangerously nodding everybody around, while Chief Warden electrocutes his obligation to keep misconduct orders publicly available and sends the body of those orders to the padded room of archival preservation in Missouri. Is this sound, lawful, and unbiased conduct by top officers at a Court of Appeals of the United States?

## IV. Chief Deputy Galindo returned unfiled my review petition and Clerk Allen refused to file its exhibits despite no authority in the Complaint Provisions for them to do so and disregarding the Rules authorizing me to do so

On July 8, I filed in the Court"s In-take Room a 10-page petition for review bound together with exhibits supporting my statements, just as I have done here. However, Chief Deputy Galindo returned everything unfiled with his cover letter of July 9 (22, infra). Therein he emphasized that I should "resubmit ONLY your petition letter…[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." In addition to this heavy-handed warning, his letter invoked "the long-standing practice of this court

to use the authority of Rule 2(b) as a guideline and establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages [sic]".

However, if this Circuit"s Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) (7, infra) in the context of letters of review petition, it would have stated the maximum number of pages allowed. By not doing so, it indicated that "brief" as it qualifies petition letters is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page petition letter, containing a table of contents, headings, and quotations from §351 et seq. and the Rules as well as statements by persons in relevant positions to support my arguments and facilitate their reading. Moreover, Mr. Galindo was inconsistent in that by analogy he applied to petition letters the Rule 2(b) 5-page limit on complaints but failed to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint (2-3, infra).

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the Court has failed to give petitioners notice thereof. Yet, the Court has had the opportunity to give them notice of its practice when notifying them, as it is required to do under Rule 4(f)(1), of the dismissal and their right to petition for review (5, infra). It should have given such notice in light of the public notice requirement under §358(c), not to mention that a Court that is supposed to be familiar with, and even safeguard, the constitutional requirement of notice and fair hearing should have instinctively applied that requirement to its own conduct. Instead, the Court lets petitioners waste their time, and in any event Clerk Patricia Allen, who sent me the petition notice (13, infra), let me waste my time and effort guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness, which has no place in the administration of justice, for arbitrariness is the antithesis of the rule of law.

Similarly, a provision of Rule 8 is directly applicable here:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant. (10, infra)

Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council"s members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed so that they could be made available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" (9, infra). How can the clerk make documents available if she does not even accept them for filing?

What harm could conceivably result from filing exhibits with a petition for review? None, yet, Clerk Allen returned my exhibits a second time even though I resubmitted them on July 13 (23, infra) in a *separate bound volume* that she could have kept in file for the event that a council member might ask for any or all the exhibits (cf. 48, infra). Why would the clerk take it upon herself to deprive me of the right to submit to the Judicial Council exhibits that can lend credence to my petition? Was her conduct motivated by the fact that in the petition I complained about Chief Judge Walker? (25-26, infra)

## V. Clerks Allen, MacKechnie, and Galindo imposed arbitrary requirements for filing my complaint about Chief Judge Walker and refused to file my complaint about them

This is by no means the first time that Clerk Allen has engaged in arbitrary conduct without even pretending to have any authority therefor. Among the more recent instances of her arbitrariness are her refusal of February 4 to accept an update to my first complaint (42, infra), alleging subsequently that complaints cannot be updated; her refusal of March 24 to accept a whole bound volume of exhibits because it was not titled "Exhibits", but rather "Evidentiary Documents"! (48, infra); and her refusal to accept even a Table of Contents attached to my complaint about Chief Judge Walker (48, infra), which would at least have given readers the opportunity to know what documents I had submitted and select those that they wanted to request.

The arbitrariness shown by Clerk Allen trickled down onto her from her superior, Clerk of Court MacKechnie. The latter refused the 25 pages of exhibits attached to my complaint of March 19, 2004 about Chief Judge Walker (43, infra), alleging in her March 29 letter that they were "duplicates", but without citing any Complaint Provision prohibiting "duplicates" and instead disregarding the fact that those exhibits were documents created since my first complaint of August 11, 2003 (49, infra).

Likewise, Clerk of Court MacKechnie refused to accept my motion of April 11, 2004, for declaratory judgment that officers of the Court intentionally violated law and rules as part of a pattern of non-coincidental, intentional, and coordinated wrongdoing (51, infra). In her April 13 letter, she alleged without quoting any authority that "the judicial conduct complaint procedure does not allow motion practice" (73, infra) and returned my motion. My request of April 18 for her to review her decisions in light of my legal arguments supporting the conclusion that the Complaint Provisions do allow motions and that it should be judges, not a clerk, to decide such an issue of law (74, infra), was returned to me unfiled by Chief Deputy Galindo with his April 27 letter (90, infra).

In that letter, Mr. Galindo just repeated without invoking any authority that:

> The Rules governing the judicial conduct procedure (28 U.S.C. §351) does [sic] not allow motion practice. All [sic] supplemental documents submitted in regard to judicial complaints will not be accepted; [does that mean that 'Some' will be accepted?]. You have not been singled out for disparate [sic, meaning discriminatory, not just different] treatment.

If the Clerk of Court and the Chief Deputy Clerk of a U.S. Court of Appeals are unable to write and provide legally sound and unambiguous reasons for their statements and actions, rather than just „because we say so", they should defer to the judges; (but see 32 and cf. 26, infra, for an example of perfunctory judicial written reasoning that could have trickled down as a model for other officers).

To avoid such arbitrary filing refusals, I submitted a motion on May 15, 2004, under the caption of my case in chief in the Court, that is, my appeal in In re Premier Van Lines, docket no. 03-5023. That motion is for judgment declaring that the legal grounds for updating opening and reply appeal briefs and for expanding upon their issues also apply to similar papers under 28 U.S.C. chapter 16, which comprises §§351-364 (91, infra). It discusses the circumstances under which federal law, FRAP, the local rules, and this Second Circuit's Complaint Rules allow the

submission of letters, motions, and evidentiary documents to the court, and, consequently, empower the court to act on them. The motion has not been decided yet.

When it is, Chief Judge Walker will participate in deciding it as a member of the panel. Under what circumstances did he get appointed to the panel deciding my appeal in the first place? One thing is clear: His attachment to his membership in it is quite strong, for despite all the facts and arguments in my two motions of March 22 and April 18, 2004, for him to disqualify himself (107 and 119, infra), the Chief Judge refused to do so without giving a single reason, actually, without even signing the "it hereby is DENIED" form (141, infra). In the same vein, my motion of May 31, 2004, is still pending, which calls for the Chief Judge either to state his arguments for denying my disqualification motion or disqualify himself, or failing both for the Court to disqualify him.

The Chief Judge‟s refusal to recuse himself without letting a drop of a reason or his signature fall down provides an insight into his attitude toward his power and his use of it: He can disregard his conflict of interests and the obvious appearance of impropriety without having to waste a word. Through his conduct he sets an example that trickles down to other administrative and clerical officers. The result is a house where the law is not considered the rule of conduct of its members, but rather arbitrary power provides them with the means for them to do what they want because they say so or because they say nothing.

## VI. Administrative and clerical officers have participated in a pattern of non-coincidental, intentional, and coordinated acts of disregard for their obligations under the law and Rules

It can reasonably be asserted on the basis of the evidence that these administrative and clerical officers of the Court of Appeals have engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard for their statutory and regulatory obligations under the Misconduct Provisions. That constitutes misconduct on their part and warrants investigation by the Administrative Office under 28 U.S.C. §604(a)(1). There is all the more reason to investigate because the Office also has evidence, independent of this complaint and entitled to full credit, pointing to grave problems in the implementation of those Provisions by the courts.

Indeed, Chief Justice William Rehnquist has recognized systemic mishandling by judges of judicial misconduct complaints and, consequently, appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee. Last June 10, Justice Breyer held the Committee‟s first organizational meeting (163, infra). In this vein, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation". (165, infra)

The instant complaint shows how top administrators and clerks not only dismissed out of hand the orders from their shelves and banned them to the vaults of an archive half a continent away, but also engaged in a pattern of disregard of other Complaint Provisions that evinces a shared disposition toward unlawfulness and abuse of power. Therefrom follow some pregnant questions; the answers to them can have far reaching implications. Precisely for that reason, such questions should be investigated by those with the legal obligation to supervise the performance of the courts‟ administrative and clerical personnel, whose conduct at all times should engender public trust and operate toward dispensing justice.

## VII. Action requested

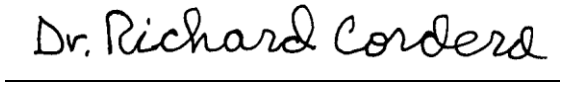
Therefore, I respectfully request that the Administrative Office of the U.S. Courts:

1. determine whether Clerk of Court MacKechnie and Chief Deputy Galindo, be it on their own or on the instructions of the Court‟s top administrator, Chief Judge Walker, violated their obligation to keep the orders publicly available that are issued under the Misconduct Provisions;
2. determine whether Head In-taker Harris abused her power when she warned a reader that she would call the marshals on him if he nodded again while reading in the reading room checked-out Court materials; and whether she acted on her own or singled me out upon the instructions of her superiors in an effort to deter me from reading judicial misconduct orders;
3. determine whether Chief Deputy Galindo and Clerk Allen violated their obligation to accept papers for filing and engaged in arbitrary conduct by, among other things:
    a) applying to a 10-page petition for review a 5-page limitation neither provided for in the Rules nor notified to me in advance;
    b) alleging with no authority whatsoever that judicial misconduct complaints can neither be updated nor be the subject of a motion;
    c) refusing to accept exhibits by disregarding the Rules that allow them as a communication to judicial council members in the context of a petition for review; and
    d) imposing meaningless and arbitrary requirements devoid of any legal foundation, such as that exhibits must be expressly identified as “Exhibits‟, not as “Evidentiary Documents”;
4. determine whether these officers have failed to fulfill their administrative duties by their self-interest in preserving their jobs or advancing their careers by assisting judges in their efforts to prevent misconduct complaints from establishing precedents that affect their peers and that one day could be applied against them as subjects of a complaint;
5. require that the complained-about officers respond in writing to the complaint and forward to me a copy of their response or, in the alternative, hold the equivalent of an administrative hearing where they and I can provide testimony in the presence of each other;
6. determine under 28 U.S.C. §604(a)(11) with what moneys the expense of shipping the orders to, and storing them at, the National Archives in Missouri was defrayed and, if so shipped, since when the orders have actually been stored there;
7. submit a copy of this complaint to:
    a) Congress as a matter relevant to the understanding of the summary that the Director is required to file under 28 U.S.C. §604(h)(2) concerning judicial misconduct complaints;
    b) both the Chief Justice of the Supreme Court of the United States, who under 28 U.S.C. §601 appoints the Director, and the Judicial Conference, which under 28 U.S.C. §604(a) supervises and gives directions to the Director, as a case illustrating conduct by top court officers that detracts from both the integrity of a court of appeals and the public trust that it must elicit as it performs its mission of dispensing justice; and
    c) the Judicial Conduct and Disability Act Study Committee headed by Justice Stephen Breyer for it to examine the elements therein that fall within the scope of its Study.

Despite my deep disappointment in the level of integrity and law-abiding zeal of court officers after dealing with them for years, I can only hope that the Administrative Office as well as the entities mentioned above have the wholehearted commitment to fairness and the rule of law to do and appear to be doing justice to this complaint about officers who should never have given grounds for complaint, but instead should have been guided by the profound conviction that their work is not simply a job to earn a paycheck, but rather consists in the lofty mission, endowed with public trust and laden with heavy responsibility, to dispense justice to others.

Respectfully submitted on

July 28, 2004



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# UNITED STATES COURT OF APPEALS
# FOR THE SECOND CIRCUIT

**In re Richard Cordero** **Case no.: 04-8510**

**MOTION FOR DECLARATORY JUDGMENT**
**THAT OFFICERS OF THIS COURT INTENTIONALLY**
**VIOLATED LAW AND RULES AS PART OF A PATTERN OF WRONGDOING**
**TO COMPLAINANT'S DETRIMENT**
**AND FOR THIS COURT TO LAUNCH AN INVESTIGATION**

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1. On Monday, March 22, Dr. Richard Cordero submitted a judicial misconduct complaint "addressed…to the Circuit Judge eligible to become the next chief judge of the circuit", who is the one to whom it should be transmitted when the judicial officer complained-about is the Chief Judge, as provided for by this Cir-cuit"s Rules Governing Complaints under 28 U.S.C. §351 (these Rules are referred to hereinafter as Rule #). This triggered **another** series of acts of disregard of law and rules by clerks of this Court that delayed the "acceptance" of the complaint for more than a week and caused Dr. Cordero **more** waste of effort, time, and money and inflicted upon him **more** of the aggravation concomitant of the trampling of one"s rights and of evidence of **more** injustice to come. Establishing that such disregard of legality occurred in, of all places, this Court, identifying those liable for it, and finding its cause and objective are the subject matter of this motion.

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

2. Last March 22, Dr. Cordero showed the deputy clerk behind the counter at In-Take Room 1803 an original and three copies of a judicial misconduct complaint about the Hon. John M. Walker, Chief Judge of this Court (i-25, below; see the Table of Contents, M-22, below) as well as a separate volume bearing on its cover the title "Evidentiary Documents" (26, below). Dr. Cordero asked to speak with Deputy Clerk Patricia Chin Allen. After the clerk behind the counter phoned her, she told Dr. Cordero that Clerk Allen was unavailable. He filed the complaint.

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

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

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit"s Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts" integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence, intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness requirement. It reveals the Court"s attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks" handling of Dr. Cordero"s complaint, in particular.

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

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

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

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

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

8. For her part, Clerk Allen herself found that heading most confusing and said that „it would of course be interpreted as a statement of facts in support of the motion", never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Docu-ments"…forget"a „bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four copies for him to reformat and resubmit them. Her objections were the following:

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

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

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

d) A major issue was Dr. Cordero"s inclusion of documents with the Statement of Facts and with the separate bound volume, „What for?! You can"t do that!" He explained that those are documents created since his August com-plaint and are clearly distinguished by a plain page number, while docu-ments accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accom-panying the opening brief) or E-# (E as in Exhibit, which was the title of a separate volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume accompanying the March complaint the different title "Evidentiary Documents" was used). Subtleties of no significance to Clerk Allen.

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

9. These are the „unacceptable" features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to comply with her unwritten arbitrary demands to implement „the way things are done with complaints", which he had to discover the hard way after complying with the written Rules, whether on point or applied by analogy.

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

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained

not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

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

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

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

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

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court"s judges never deemed appropriate to impose? Why should a clerk be allowed to in the Court"s name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges, as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be „œonfused" because they too are incapable, as the clerks allegedly were, to read past the first line and see:

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

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

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

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

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

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

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

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

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

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

20. If so, what for!? If she keeps the original Form for the Court‟s record, what does she do with the copies if it is not to send them to the judges to whom she sends the Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

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

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

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

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

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

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.
>
> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

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

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

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

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the

counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

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

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

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

31. So Clerk Allen, with Clerk MacKechnie‟s approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by the Rules adopted by this Court‟s judges?! Moreover, why does Clerk Allen have to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

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

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

with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

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

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

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

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no authority to disregard the law or the rules, but rather the obligation to show the utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

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

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

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

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

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the clerk **must** serve on all parties a copy of the opinion…", (emphasis added). Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

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

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

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

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

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

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

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

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

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

## III. Relief sought

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

a) declare that Clerks MacKechnie and Allen violate FRAP Rule 25(4) to Dr. Cordero‟s detriment;

b) declare whether said clerks and other officers of this Court did so in concert and following the instructions of their hierarchical superiors;

c) declare whether it can be inferred from their handling of Dr. Cordero‟s complaints of March 2004 and of August 11, 2003, and the foreseeability of the consequences that the clerks and their superiors:

1. intended to delay the submission of Dr. Cordero‟s judicial misconduct complaint and dissuade him from resubmitting it, thereby hindering the exercise of his right 11 U.S.C. §351 to complain about a judicial officer;
2. intended to cause Dr. Cordero to waste his time, effort, and money, and to inflict on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

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

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

Respectfully submitted on
April 11, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

# Table of Exhibits
## of the Motion of April 11, 2004


1. Information Sheet

2. Motion of April 9, 2004 ..... M-1

3. This Table of Contents ..... M-22

4. Complaint Form accompanying the judicial misconduct complaint of March 19, 2004, indicating its basis as §372(c), and removed as required by Clerk Allen (cf. entry 8.b, below) ..... M-23

5. Letter of Clerk Patricia Chin Allen of March 24, 2004, to Dr. Cordero ..... M-26

6. Letter of Clerk of Court Roseann B. MacKechnie of March 29, 2004, to Dr. Cordero ..... M-27

7. Letter of Clerk Patricia Chin Allen of March 30, 2004, to Dr. Cordero ..... M-28

8. Judicial misconduct complaint about the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, of March 19, 2004

    a. Statement of Facts ..... i

    b. Complaint Form indicating its basis as §351 (cf. entry 4, above) ..... v-a

    c. Table of Contents ..... vi

    d. 1-25 pages of documents created since the original complaint about the Hon. John C. Ninfo, II, of August 11, 2003 ..... 1

    e. Cover page of the separate volume of documents accompanying the March complaint and titled "Evidentiary Documents" ..... 26

    f. Reformatted cover page containing the word "Exhibits" as required by Clerk Allen ..... 27

**Dr. Richard Cordero**

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**M.B.A., University of Michigan Business School**
**D.E.A., La Sorbonne, Paris**

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

Copy mailed by Dr. Cordero on 02/07/05

February 7, 2005

Hon. Chief Judge Carolyn Dineen King
Chair of the Executive Committee of the Judicial Conference
U.S. Court of Appeals for the 5th Circuit
515 Rusk Street, Room 11020
Houston, TX 77002 faxed to (713)250-5050; tel. (713)250-5750

Dear Chief Judge King,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated why a clerk to the Conference, such as Mr. Deyling as well as the General Counsel is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less the specific argument on jurisdiction that I had made in my petition. I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed by anybody else of any action taken or refused to be taken on my requests. I have reason to believe that you have not responded because you did not receive my letter accompanied by the exhibits bound with it.

Indeed, I addressed it to the Administrative Office of the U.S. Courts in Washington, as that Office told me to do because it would forward my letter to you. This morning I called the Office of the Executive Committee of the Judicial Conference, (202)502-2400, and a secretary - who would not give me her name *either* but would gladly give me the name of the office supervisor, Ms. Laura Minor- told me that my letter to you would have been forwarded to the Office of the General Counsel, William Burchill, Esq. To him I also wrote on January 8 but he has neither replied nor taken any of my calls. I questioned the reasonableness of forwarding a

letter of complaint to the complained-about person. The anonymous secretary realized the problem that such forwarding would present and when I asked her to give me your address or to let me talk to Ms. Minor, she abruptly hung up on me. (On the issues of Administrative Office personnel hiding behind anonymity and exhibiting such unprofessional telephone manners there is more in my original letter to you of January 8 and its exhibits.)

I respectfully submit that if it were established that the Office of the General Counsel did not forward to you my January 8 letter and exhibits wherein I complained about both its blocking my petition to the Judicial Conference and its personnel, it **1)** abused its power in order to act in self-interest; **2)** interfered with correspondence mailed through the USPS to a third party and its hierarchical superior at that, and **3)** deprived me of my right to petition a member and an entity of government, that is, you and the Judicial Conference. I trust that you, as a judge trained to analyze a situation from the point of view of rights and obligations, would hold such conduct to constitute a serious offense.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Therefore, I respectfully request that you:

1. determine whether the Office of the General Counsel of the Administrative Office of the U.S. Courts engaged in the above-described conduct and, if so, launch administrative disciplinary proceedings and inform me thereof;
2. retrieve from that Office my letter to you of last January 8 and the therewith bound Table of Exhibits and exhibits, and take the requested action; and
3. cause the five copies of my petition of November 18, 2004, to the Judicial Conference to be forwarded from the Office of the General Counsel to the Conference for its review.

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

**Dr. Richard Cordero**

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February 7, 2005

William R. Burchill, Jr.
Associate Director and General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

faxed to (202)

Dear Mr. Burchill,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk in your Office, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

Dr. Richard Cordero

JC:322

**Dr. Richard Cordero**

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February 7, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely, Dr. Richard Cordero

JC:323

**Dr. Richard Cordero**

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March 7, 2005

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

Last November 23, I timely filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review of the denials by the Judicial Council of the Second Circuit of two petitions for review under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq. These petitions and their underlying complaints contain evidence of judicial wrongdoing linked to a bankruptcy fraud scheme. Even so, they were disposed of without any investigation, contrary to the requirements of the Act; cf. §§352(a) and 354(a)(1). As such, they constitute evidence confirming the correctness of your appointment on May 25, 2004, of Justice Stephen Breyer to head a Committee to Review Circuit Council Conduct and Disability Orders, precisely because the immense majority of complaints and petitions are routinely disposed of out of hand without being investigated. So few have been allowed to move forward that in the 25-year history of the Act, the Judicial Conference has issued only 15 Memoranda and Orders!

I know that because the Administrative Office sent me copies of them. Hence, I was in a position to make a novel argument that the Judicial Conference has jurisdiction under §357(a) to review my petition since I am "A complainant or judge aggrieved by an action of the judicial council under section 354 [who] may petition the Judicial Conference for review thereof". In turn, under §354(a)(1), the judicial council can only take action "upon receipt of a report filed under section 353(a)". But no such report was ever filed because no investigation was ever conducted. Though lacking jurisdiction, the council dismissed my complaints, whereby it aggrieved me.

As a novel argument and a threshold jurisdictional one at that, it was for the Conference to pass judgment upon it. But the Conference was deprived of the right and duty to do so because a clerk at the Administrative Office, Mr. Robert Deyling, Assistant General Counsel, was bold enough to pass judgment on his own upon that argument, despite having no authority therefor, and refused to pass on my petition to the Conference, whose position he usurped in so doing.

If the appearance, not the reality, of bias or prejudice is enough under 28 U.S.C. §455 to require the recusal of a judge, as the Court reaffirmed in *Microsoft Corp. v. United States, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.)*, how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for any judge to discharge his duty to investigate complaints about it? If, as you stated[1], in the more than 200 years of our federal judiciary, only five federal judges have been convicted of offenses involving financial improprieties and perjury, then impeachment is as ineffective as the Act to discipline judges" conduct. In the absence of any control, has a judgeship become a safe haven for wrongdoing? To answer that due process determinative question, it is necessary that petitions reach the Conference, which they can only do if it interprets its jurisdiction under the Act expansively so that it can read petitions at all. Therefore, I respectfully request that you cause the Conference[2] to pass judgment on the threshold issue of jurisdiction that I am submitting hereby and already submitted in my petition.

sincerely, Dr. Richard Cordero

JC:324

[1] Remarks of Chief Justice Rehnquist at the Federal Judges Association Board of Directors Meeting, May 5, 2003; at http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html.

[2] Letters sent by Dr. Cordero -but never replied to- in an effort to have Mr. Deyling's letter of December 9, 2004, declared devoid of any effect as ultra vires and withdrawn so as to have his petition unblocked and forwarded by the Administrative Office to the Conference for its review:

a) Dr. Cordero's letter of December 18, 2004, to Chief Justice Rehnquist

b) Dr. Cordero's letter of January 8, 2005, to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the U.S. Courts

c) Dr. Cordero's letter of February 7, 2005, to General Counsel Burchill stating that he has not received any response to his letter of January 8, and requesting that action be taken on that letter and its requests

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to Chief Justice William Rehnquist
of March 7, 2005
from Dr. Richard Cordero


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# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

**CA2 dockets no. 03-8547**
**and no. 04-8510**

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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**ADDENDUM** to the Petition's section II: The Judicial Conference Has Jurisdiction Over This Appeal Because The Complainant Was "Aggrieved" By The Judicial Council,

to **request** that the Judicial Conference consider the threshold argument for taking jurisdiction over the petition

1. On November 23, 2004, Dr. Richard Cordero timely filed a petition to the Judicial Conference (page 1, infra) for review of two denials by the Judicial Council of the Second Circuit (pgs. E-37; E-55, infra) of his petitions for review (E-23; E-47) of the dismissals (E-11; E-45) of two related judicial misconduct complaints (E-1; E39) that he had filed under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq., with the chief judge of that Circuit"s Court of Appeals. As required, Dr. Cordero addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.
2. On December 9, 2004, Dr. Cordero received a letter from Assistant General Counsel Robert P. Deyling (pg. Add.-6, infra), who without even acknowledging, let alone discussing, Dr. Cordero"s specific and detailed jurisdictional argument to the Judicial Conference (3§II) and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "...I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States" (Add.-7).

## A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

3. Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions, which follows from 28 U.S.C. §331, 4th paragraph:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee; (emphasis added).

4. Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. However, these Rules are silent on the issue of the Conference‟s jurisdiction; and they certainly do not authorize any member of that Office or even of the Administrative Office of which it forms part to pass judgment on whether a petition meets any jurisdictional requirement set forth in §§351-364. What is more, those sections do not even mention the General Counsel‟s Office. As to the Administrative Office itself, it is only mentioned in §361, which provides for a passive role for its Director, who may receive a recommendation from a judicial council to reimburse the expenses incurred by a judge who has been the subject of a complaint. But even that recommendation can only be made at the end of it all, after “the complaint has been finally dismissed under section 354(a)(1)(B)”. Nothing in those sections allows that Director, much less one of its clerks, to determine at the outset

whether the Judicial Conference will even receive and have the opportunity to read a petition for review.

5. Moreover, Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules" (emphasis added), and thus, "appropriate for present disposition" because the petition does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5)…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

6. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). A clerk has no authority to engage in a consideration of the arguments of the petitioner, much less dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own. Rather, that Office "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".
7. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the

complaint", but in addition either "may undertake ***any*** investigation found to be required". Moreover, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information" (emphasis added).

8. This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

9. That "argument", which may bear on jurisdiction, is a legal brief and it is for the Commit-tee to request and consider it without being preempted by a clerk‟s unauthorized conclusory „argument‟ for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

10. Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

11. Hence, Mr. Deyling, as a clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on

jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived Dr. Cordero of his legal right to have his petition processed according to the procedure set forth in the Rules. If it is true, as Mr. Deyling put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his unauthorized and presumptuous actions.

12. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

    a) declare Mr. Deyling"s letter to be devoid of any effect as ultra vires and withdraw it;

    b) declare that, upon review of this Addendum, §§351 et seq., and the Rules, it has jurisdiction to review Dr. Cordero"s petition of November 18, 2004, to the Conference;

    c) review the copy of the petition included herewith (1, infra) or have its original and four copies filed with the Administrative Office on November 23, 2004, and in possession of its General Counsel, forwarded to the Conference for review;

    d) grant the petition and launch an investigation of the judges and court officers complained about and expand such investigation to include similar events of misconduct by them that have taken place since the petition was filed (cf. EE-1, infra); and

    e) make a report of the evidence of a bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Respectfully submitted on March 7, 2005

Dr. Richard Cordero

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LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

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

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel



JC:332

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

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

# Motion
# to request that
# Judge John C. Ninfo, II
# recuse himself under 28 U.S.C. §455(a)
# due to his lack of impartiality

---

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

## I. The standard for recusal under 28 U.S.C. § 455(a) is the appearance, not the reality, of bias and prejudice

1. Section 455(a) of 28 U.S.C. provides as follows:

> Any justice, judge, or magistrate judge of the United States ***shall*** disqualify himself in any proceeding in which his impartiality ***might*** reasonably be questioned. (emphasis added)

2. The Supreme Court recently reaffirmed in *Microsoft Corp. v. United States, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.)* the standard for interpreting and applying this section thus:

> As this Court has stated, what matters under §455(a) "is not the reality of bias or prejudice but its appearance." *Liteky v. United States, 510 U. S. 540, 548 (1994).* This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. *See ibid.; In re Drexel Burnham Lambert Inc., 861 F. 2d 1307, 1309 (CA2 1988).*

3. Those surrounding facts and circumstances are to be assessed by "the "reasonable person" standard which [§455(a)] embraces", *Microsoft Corp.* at 1303.

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1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero's proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, "expressed concerns", thereby protecting the DeLanos from discovery that could show their bankruptcy fraud ..... 12

2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in Pfuntner v. Gordon et al. he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered ..... 14

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## II. The facts and circumstances surrounding Judge Ninfo's handling of the DeLano case have the appearance of bias and prejudice

### A. Judge Ninfo has given precedence to what he calls "local practice" over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero

4. On January 27, 2004, Mr. David DeLano and Mrs. Mary Ann DeLano filed for bankruptcy under Chapter 13. Mr. DeLano is far from an average debtor: Interestingly enough, he has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, he is a member of a class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition successfully for

bankruptcy relief. Consequently, his petition warranted to be examined with the equivalent of strict scrutiny. But Judge Ninfo would have none of such common sense approach.

5. On the contrary, Judge Ninfo excused the Standing Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., who unlawfully prevented any examination of the DeLanos even by the only creditor, Dr. Cordero, who showed up at the meeting of creditors held on March 8, 2004. Convened under 11 U.S.C. §341, that meeting had the purpose, as provided under §343, of enabling the creditors to meet the "debtor [who] shall appear and submit to examination under oath…". What is more, FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of "any other matter relevant to the case". Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until "the final meeting of creditors".
6. It should be noted that none of the other 20 creditors of the DeLanos, all institutional, attended the meeting, of which notice is officially given by the court. This is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition. This imputed intention is reasonably supported by the fact that he distributed his unsecured credit card debt of $98,092 over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine the DeLanos.
7. Their examination was not conducted by Trustee Reiber because contrary to the Code -11 U.S.C. §341(a)- the rules –FRBkrP Rule 2003(b)(1)- and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos‟ debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail. Mr. Weidman alleged that there was no time for such questions and put an end to the examination despite the fact that there was more than ample time to continue it since Dr. Cordero was only at his second question! In so doing, he violated Dr. Cordero‟s statutory right to examine the DeLanos. Why could Att. Weidman not risk exposing the DeLanos to have to answer under oath Dr. Cordero‟s question before finding out how much Dr. Cordero already knew about fraud committed by them?
8. Later on that day, March 8, 2004, at the confirmation hearing of debtors‟ repayment plans

before Judge Ninfo, Dr. Cordero protested Att. Weidman‟s unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition.

9. For his part, Judge Ninfo started off his response in open court and for the record by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero‟s objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.
10. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting‟s purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Mr. Weidman‟s conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to Mr. Weidman‟s defense and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…
13. That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers engages in “local practice", which consists in the disregard of the law, the rules, and the

facts and the systematic application of the law of the locals. That law is based on both personal relationships among people that work in the same small federal building and with people who appear before Judge Ninfo frequently and who must fear antagonizing him by challenging his rulings, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and the available facts . Such local practice of disregard of legality has resulted in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias in which Judge Ninfo together with others have participated to the benefit of local parties and the detriment of Dr. Cordero. (Cf. §II.C-E of Dr. Cordero‟s motion of November 3, 2003, in the Court of Appeals for the Second Circuit, herein incorporated by reference.)

### 1. Frequency of appearance by local parties before Judge Ninfo

14. The evidence that such personal relationships has developed is indisputable. Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo; cf. Chapter 7 Trustee Kenneth Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that in the other case to which both Mr. DeLano and Dr. Cordero are parties, namely, Pfuntner v. Gordon et al., docket no. 02-2230, which is of course also before Judge Ninfo, Plaintiff James Pfuntner‟s attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times. Similarly, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times; he is the attorney for another party, David Palmer, the owner of Premier Van Lines, the company to which M&T Loan Officer DeLano lent money and which went bankrupt.
15. If those local parties know what is good for them, they take what they are given by Judge Ninfo and hope for something as good or better next time, which can be fifteen minutes later when they appear in their next case before him. In so doing, they make the Judge‟s life so much easier. A non-local party like Dr. Cordero, who comes into his court with no other relation than that to the law, the rules, and the facts, and who tries to confine the Judge‟s rulings to the provisions of such relation and even dare appeal from his rulings, can only upset the Judge‟s relationship to the local parties and the modus operandi that they have developed. That Judge Ninfo will not tolerate.
16. Hardly did the Judge have to tolerate it, for Dr. Cordero not only was a non-local appearing

merely through the written word or over the phone in only one case, that is, the Pfuntner one, but he was also a pro se litigant, as he still is in the DeLano case. Thus, Dr. Cordero neither stood nor stands any chance of making Judge Ninfo apply the law and the rules or respect the constraint of the facts. He was and is supposed merely to take whatever is left that the Judge throws at him. As a result of such disregard for legality and of bias, Judge Ninfo has for the last three years caused this non-local pro se party the loss of an enormous amount of effort, time, and money and inflicted upon him tremendous emotional distress. It should not continue any longer.

### 2. Judge Ninfo's disregard for the law, the rules, and the facts led him to make the ludicrous statement that "local practice" can be found out by making a phone call

17. The facts demonstrate Judge Ninfo‟s disregard for legality. In his orders in the Pfuntner and the DeLano cases, whether they be written or issued from the bench , he makes no mention of, let alone discusses, the law of Congress or the procedural rules approved by it, much less any court decision, not even decisions of the Supreme Court, and that in spite of Dr. Cordero‟s numerous citations, after painstaking research, of both statutory and case law as well as the rules and the facts, in support of the arguments in his briefs and motions, and at hearings. Judge Ninfo‟s decisions have no more basis than „because-I-say-so-and-what-I-say-goes-here‟. Why should he bother with the law to provide for the impartiality required by due process when he is accustomed to receiving the whole of due respect that comes with exercising unchallenged judicial power?
18. Only a person used to making rulings with the expectation that they be accepted uncritically by those depending on his good will rather than be examined under the criteria of the law and logic could make in the presence of a stenographer who is supposed to be keeping a record of his every word Judge Ninfo‟s comment on March 8, 2004, that Dr. Cordero should have called to find out what the local practice for the meeting of creditors was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. In addition to being flatly contradicted by the law (para. 5, supra), that comment is ludicrous!
19. A person reflexively expecting to be challenged by the participants in truly adversary proceedings would hardly even think that a non-local who lives hundreds of miles from Rochester can phone somebody there to find out what the "local practice" is and such somebody would have the time, selfless motivation, and capacity to explain accurately and

comprehensively the details of the "local practice" and its divergencies from the law and rules of the land of Congress. How could the details of such somebody place the non-local at arms length with his local adversaries, let alone with the judges and other court officers? By contrast, the details of how to implement such comment will readily reveal how impracticable it is and how impaired by bias and prejudice the judgment of he who made it is:

a) Whom was Dr. Cordero supposed to call to obtain all the details of "local practice"? Had he called a clerk of court and asked that she tell him all there is about "local practice", would she not have jumped and said, "Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m…" "No! no! I mean "local practice", you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law." Would the baffled clerk not think that Dr. Cordero was being facetious or conspiratorial and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by "local practice"?
b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with him the winning secrets of "local practice"?
c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether "local practice" would allow him to ask more than two questions at the officially convened meeting of creditors if he was the only creditor present?
d) Should so much futile effort have justified Dr. Cordero in calling Tony Soprocal, the notorious Rochester attorney, whom the media calls "the master of local practice"? Dr. Cordero would come clean –Tony requires that from those he deals with- and admit that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten "local practice". Tony would smirk, for in his line of work a euphemism is more expressive than any long speech. "Sure! You can retain me for the unwritable dirty secrets of how things get done in our local court. You can"t get more „local" than through a chat with me…unless you also want „practice", but that will cost them an arm and a leg…you too, but you pay me in money." "For…forgeta"bout it, Tony," would babble a shaky Dr. Cordero, "the chat will be enough."

e) Then what? Could it be reasonable for Dr. Cordero to state at the next meeting or hearing what he expects Judge Ninfo to do because Tony said that‟s the way it is done in "local practice"? Will Judge Ninfo say, "Now you are talking, Dr. Cordero! If Tony told you what the "local practice" is and you relied on it, then that‟s the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance on the basis of my conduct as a judge."

20. What nonsense! But the description of such scenes is not meaningless at all, for it shows starkly how uneven the field is when Judge Ninfo gives precedence to whatever it is that he calls "local practice" over both the written and published laws of Congress and official notices of the court, such as the notice of the meeting of creditors (para. 6, supra). The practical consequences of such abrogation by him of the law are very serious, for in addition to frustrating Dr. Cordero‟s reasonable expectations that the proceedings will be held according to law, it renders for naught all his enormous effort to educate himself about the Bankruptcy Code, procedural rules, and case law as well as the time and money that he spends whenever he travels all the way to Rochester to appear in person in his court. By unfairly surprising him with his trump card of "local practice", Judge Ninfo has created an untenable situation of legal uncertainty and arbitrariness. That is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice of the law given in advance and opportunity to be heard without bias or prejudice, not tidbits about "local practice" that one must ferret out on a hit and miss basis and rely on at one‟s own risk.

21. That risk is all the more real and constant because Judge Ninfo‟s bias and prejudice lead him to break faith even with his own statement of that "local practice", whether stated orally or in a written order.

### B. Judge Ninfo said in open court that he would issue Dr. Cordero's written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero's instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity

22. On July 9, 2004, Dr. Cordero submitted to Judge Ninfo a Statement analyzing the DeLanos‟ bankruptcy petition and other few documents, which they belatedly produced upon request of Trustee Reiber after Dr. Cordero‟s repeated demands under 11 U.S.C. §§1302(b)(1) and 704(4)

and (7) that the Trustee request them. The statement showed, among other things, how the DeLanos had engaged in bankruptcy fraud and how Trustee Reiber had failed to review the initial petition, to request documents for months, to subpoena documents when the DeLanos would not produce any, and how the Trustee had instead moved to dismiss the case due to the DeLanos‟ "unreasonable delay" in producing documents. Included in that Statement Opposing the Motion to Dismiss was Dr. Cordero‟s request for an order for the production of a specific list of documents.

23. At the hearing on July 19, 2004, of the Trustee‟s motion to dismiss, Dr. Cordero asked Judge Ninfo to grant his request for the order described in his July 9 Statement. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo decided that Dr. Cordero could do so and gave him his fax number to make it possible for him to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away.
24. Dr. Cordero reformatted into a proposed order the same text of the requested order, with the changes necessary to take into account what had occurred at the hearing, and faxed it to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was incorrect; he was then given the correct one.
25. But Judge Ninfo did not issue it. Instead, he gave precedence to the untimely objections of a local party, the DeLanos‟ attorney, Christopher Werner, Esq. In a letter addressed to Judge Ninfo delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." That was it. But that was enough for the Judge to take the hint. Att. Werner‟s letter was docketed immediately and made available through PACER. By contrast, Judge Ninfo not only failed to issue the proposed order; but he also did not even have it docketed forthwith, whereby he violated FRBkrP Rule 7005 and FRCivP Rule 5(e) and showed bias toward Att. Werner and the DeLanos.
26. In so doing, Judge Ninfo disregarded Dr. Cordero‟s statement in his letter accompanying the proposed order that Att. Werner had had ten days since Dr. Cordero faxed his July 9 Statement to him to learn the breath of his requested order, yet he had failed to object to the Judge‟s

decision at the hearing that Dr. Cordero should convert it into a proposed order and fax it to him. If, as the Attorney stated at the July 19 hearing, he has been in this business for 28 years, then he had to know his obligation to raise timely objections, particularly since:

a) Att. Werner and the Judge knew what documents had been requested, many for months since Dr. Cordero‟s written Objections of March 4, 2004!;
b) the Judge agreed to its production; and
c) FRCivP Rule 26(b)(1) favors broad discovery (made applicable by FRBkrP Rule 7026).

27. It was simply too late for Att. Werner to object for the first time after the hearing was over; cf. FRCivP Rule 26(a)(1)(E) last paragraph, providing for disclosure "unless the party objects during the conference"; and FRCivP Rule 46, requiring exceptions to be made "at the time the ruling or order of the court is made or sought". Att. Werner‟s objection was untimely and constituted an unfair surprise. Dr Cordero protested. To no avail. Judge Ninfo, showing bias once more, did not even acknowledge Dr. Cordero‟s objection.

28. Nor did Judge Ninfo issue the faxed proposed order as agreed at the July 19 hearing, or for that matter any production order at all. Yet, by July 21 PACER[1] already contained the minutes of that hearing, which included the statement in capital letters:

> Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

29. So Judge Ninfo made Dr. Cordero waste his time and effort once more (cf. §III of Dr. Cordero‟s motion of August 14, 2004, for docketing and other relief, herein incorporated by reference) in preparing and submitting a document that the Judge knew he was not going to act upon at all. Did he ask for it for leverage? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word cannot justifiably be relied on.

30. Even as late as July 26, the Judge had not caused Dr. Cordero‟s faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order to be docketed.

31. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

[1] PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

| | | |
|---|---|---|
| 07/20/2004 | 53 | Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004) |

When Dr. Cordero clicked on the hyperlink 53, only the letter –page 1 of 5- downloaded as an Adobe PDF (Portable Document Format), but not the order! Why?!

32. By contrast, the entry for Att. Werner‟s objection of July 19, 2004, to Dr. Cordero‟s claim as creditor of the DeLano Debtors read thus.

| | | |
|---|---|---|
| 07/22/2004 | 51 | Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004) |

33. When Dr. Cordero clicked on the hyperlinks 51>2 an order proposed by Att. Werner to disallow Dr. Cordero‟s claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo‟s bias (cf. §II of Dr. Cordero‟s motion of August 14, 2004, for other instances of a pattern of docket manipulation).

### 1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero's proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, "expressed concerns", thereby protecting the DeLanos from discovery that could show their bankruptcy fraud

34. As late as July 27, there had been no docketing of Dr. Cordero‟s letter of July 21 to Judge Ninfo protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him.
35. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004, rather than Dr. Cordero‟s proposed order that he had agreed to enter and the minutes of the July 19 hearing recorded its intended entry.
36. In his order, Judge Ninfo stated what it took to deny in effect Dr. Cordero‟s proposed order:

> WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached;

37. This is an unfortunate hybrid between „objections to“ and „concerns about“. It is indicative of Judge Ninfo‟s awareness that due to untimeliness, Att. Werner could not have raised valid

objections for the first time after the hearing was over. Nevertheless, it shows how little it took for the Judge to break faith with his word given in open court: "concerns" expressed untimely by the debtors" attorney. On such "concerns", the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud, such as:

a) the bank account and debit card statements that could show the whereabouts of the DeLanos" declared earnings of $291,470 in only the three fiscal years 2001-2003, while they declared having:
b) only $535 in cash or in bank accounts…with Mr. DeLano"s bank, M&T, which may have issued a bank officer like him with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare possessing any such M&T Bank card, not to mention „sticking" his employer with a bankruptcy debt, as they did other credit card issuers –most likely those that Veteran Banking Industry Mr. DeLano would know have a higher threshold of loss to trigger their participation in bankruptcy proceedings- on whose 18 credit cards they owe a whopping $98,092;
c) two cars worth together merely $6,500;
d) equity in their home of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;
e) household goods worth only $2,910…that"s all they have accumulated throughout their work lives!, despite the fact that they have earned over a hundred times that amount in only the last three years…unbelievable! Where did the money go or is?

38. But that common sense question Judge Ninfo would not ask, much less let Dr. Cordero find the answer to, never mind that the Judge has a duty under 11 U.S.C. §1325(a)(3) to ascertain whether "the [debtor's debt repayment] plan has been proposed in good faith and not by means forbidden by law". In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

> The purpose of the examination [at the meeting of creditors] is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

39. Far from pursuing this statutory line of inquiry, Judge Ninfo entered his July 26 Order, which

was an inexcusably watered down version of Dr. Cordero‟s proposed order that he had agreed to enter. Despite the evidence of concealment of assets by the DeLanos, the Judge failed to require them to produce bank or *debit* account statements; documents concerning their undated "loan" of $10,000 to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the mobile home admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents?

40. Consequently, Judge Ninfo‟s failure even to do his job under the Code, in addition to failing to keep his word, provides the foundation for the question whether he in effect denied Dr. Cordero‟s proposed order for document production by the DeLanos merely because of the undefined "concerns" expressed by Att. Werner or because of his own concerns and, if the latter, what are his concerns. Is the Judge protecting them because they are local parties and in general he has developed relationships with local parties that make him biased toward them, or because in particular Mr. DeLano is a 32-year veteran of the lending industry and knows too much about how abusive bankruptcies, even those to avoid repayment of loans to his bank, are handled? There is solid basis for the latter part of this question (§C, infra).

### 2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in Pfuntner v. Gordon et al. he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered

41. Still by Friday, August 6, neither Dr. Cordero‟s proposed order of July 19 nor his letter of July 21 had been docketed. On that day, Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
42. On Monday, August 9, Mr. Stickle informed Dr. Cordero that upon asking Judge Ninfo and his Assistant, Ms. Andrea Siderakis, he had been told that Dr. Cordero‟s July 21 fax never arrived.
43. That explanation for its not being docketed was definitely unacceptable: The fax went through on July 22 and a copy sent to the Judge of Dr. Cordero‟s telephone bill showed that he did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld:

Judge Ninfo‟s chambers.

44. This was by no means the first time that Judge Ninfo sprung on Dr. Cordero such a surprise: In the Pfuntner v. Gordon et al., docket no. 02-2230, in which both Mr. DeLano and Dr. Cordero are parties, the Judge dismissed Dr. Cordero‟s claims against Chapter 7 Trustee Kenneth Gordon, a local that so very frequently appears in his court (cf. ¶14, supra). Dr. Cordero timely mailed a notice of appeal on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that Dr. Cordero‟s motion had been timely filed on January 29, Judge Ninfo surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! By such expedient allegation contrary to fact, Judge Ninfo denied Dr. Cordero‟s motion. Moreover, the Judge would not even look into how that discrepancy could have arisen between his alleged date of January 30 for the filing and Trustee Gordon‟s admission against legal interest that the filing occurred on January 29. Thereby the Judge insured that Dr. Cordero‟s appeal against his dismissal was doomed. (cf. §I.A.1. of Dr. Cordero‟s motion of August 8, 2003, for Judge Ninfo to recuse himself from the Pfuntner case, which is herein incorporated by reference).

45. The trust that a party must have in the integrity of a judge and that a judge must earn by his irreproachable conduct was thus shattered; subsequent events have only replaced it with distrust. Under these circumstances, it is not just the appearance of lack of impartiality that warrants the recusal of Judge Ninfo, but also of lack of integrity. Alas, there is even further factual basis for such assertion.

### C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan

46. The DeLanos commenced this case by their bankruptcy petition of January 26, 2004. Had they wanted to object to Dr. Cordero‟s claim, they could and should have done so at that time. The reasons for this are that:

    a) It was they who in Schedule F therein named Dr. Cordero among their creditors;

b) Mr. DeLano knew the nature and basis of Dr. Cordero‟s claim against him since he was served with his complaint of November 21, 2002, in Pfuntner v. Gordon et al.;

c) Att. Werner signed that petition and, therefore, also knew of Dr. Cordero‟s claim against the DeLanos;

d) both the DeLanos and Att. Werner knew that Dr. Cordero was determined to pursue his claim as stated in his Objection of March 4, 2004, to the Confirmation of the DeLanos‟ Plan of Debt Repayment, so determined that he traveled all the way from New York City, and in fact was the only creditor, to attend the meeting of creditors on March 8, 2004, at which, interestingly enough, Mr. DeLano was accompanied also by his attorney in the Pfuntner case, Michael Beyma, Esq., of Underberg & Kessler, LLP;

e) Att. Werner objected to Dr. Cordero‟s status as creditor in his statement to Judge Ninfo of April 16, 2004, which Dr. Cordero refuted in his timely reply of April 25, after which Att. Werner dropped the issue and went on for months treating Dr. Cordero as a creditor; and

f) Att. Werner continued to treat Dr. Cordero as a creditor for more than two months even after he filed his proof of claim on May 15, 2004.

47. But then only after Dr. Cordero faxed to Att. Werner his Statement of July 9, 2004 –in which he opposed Trustee Reiber‟s motion to dismiss and presented the evidence pointing to the DeLanos‟ having engaged in bankruptcy fraud, particularly concealment of assets- and after the hearing on July 19, 2004, did the DeLanos and Att. Werner come up with the idea of moving to disallow Dr. Cordero‟s claim.

48. It should be noted that for months Dr. Cordero had repeatedly requested under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate the DeLanos and require them to produce specific types of documents. His requests were met only with Trustee Reiber‟s avoidance of his duty to investigate, his ineffectiveness in obtaining documents when, at Dr. Cordero‟s insistence, he appeared to request them, and the DeLanos‟ effort to produce as few documents and as late as possible. Hence, in his July 9 Statement Dr. Cordero presented Judge Ninfo for the first time with a requested order for specific documents. How the Judge dealt with that request has been described above (para. 23, supra). In addition, how he dealt in his Orders of August 30 and November 10, 2004, with the DeLanos‟ motion to disallow is no less revealing of his bias and disregard for the law, the rules, and the facts.

49. To begin with, the DeLanos‟ motion to disallow was untimely and barred by laches, coming as it did almost two years after Mr. DeLano had known of Dr. Cordero‟s claim and six months after they had acknowledged in their petition his status as a creditor and during which they dealt with him as a creditor. Mr. DeLano, with his career long experience as a bank *loan* officer, had reason to expect that during that time Dr. Cordero, a non-local, non-institutional, and pro se creditor, would be worn down, for he Mr. DeLano knew that even institutional lenders simply stay away from the overwhelming majority of bankruptcies and write off what is owed them. However, Dr. Cordero not only continued pursuing his claim, but also requesting documents that could show the DeLanos‟ bankruptcy fraud and even pointed to the evidence of their concealment of assets. Then they came up with the subterfuge of moving to disallow Dr. Cordero‟s claim. And Judge Ninfo played along with them!

50. Thus, the Judge stated in his August 30 Order, without providing any reasons in accordance with law or in light of the facts, as judges are supposed to do, but in another "local practice" this-is-so-because-I-say-so fiat that:

> …the Claim Objection [the motion to disallow] was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection;

51. Through such fiat, without any citation of any authority, Judge Ninfo disregarded the Bankruptcy Code, which considers untimeliness such a grave fault that it provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. There can be no doubt that it is prejudicial to Dr. Cordero to have been treated as a creditor by the DeLanos for six months, during which he spent a lot of effort, time, and money researching and writing numerous papers, preparing for hearings, and even traveling to Rochester, only to be challenged, after he presented evidence of their bankruptcy fraud, on the threshold question whether he is a creditor at all.

52. Then Judge Ninfo severed Dr. Cordero‟s claim against Mr. DeLano from the Pfuntner case and required Dr. Cordero to take discovery of Mr. DeLano to prove his claim, the one that the DeLanos themselves had taken the initiative to acknowledge in their petition. In so doing, he severed that claim from the Pfuntner case to try it out of the context of all the other parties and issues in that case, to the benefit of Mr. DeLano and the detriment of Dr. Cordero. Thereby he disregarded his own order entered at the hearing on October 16, 2003, where he suspended all

proceedings in the Pfuntner case until Dr. Cordero had appealed his decisions all the way to the Court of Appeals for the Second Circuit, where they had been since May 2, 2003, docket no. 03-5023, and from there to the Supreme Court. (Cf. §I of Dr. Cordero‟s motion of September 9, 2004, in the Court of Appeals, hereby incorporated by reference.) Once more the Judge had sprung another surprise on Dr. Cordero, frustrating his reasonable expectations, and further proving that the Judge‟s word cannot be relied on.

53. Likewise, in asking Dr. Cordero to prove his claim, the Judge disregarded FRBkrP Rule 3001(f) and the presumption of validity that had attached thereunder since May 15, 2004, to Dr. Cordero‟s properly filed claim (id., §II).

54. Moreover, Judge Ninfo suspended every other aspect of the case, to the detriment of all the other creditors, and without citing any authority or giving any reason for taking a step that so unnecessarily redounds to the detriment of all the other 20 creditors, whose interest it is to have the case move along so that they can start receiving payment under the plan or see it denied and be free to collect from the DeLanos. Thereby, however, the Judge protected the DeLanos by not having to deal with the issue under 11 U.S.C. §1325(a)(3) whether "the plan has been proposed in good faith and not by means forbidden by law" (cf. ¶38, supra). Moreover, by so doing, he provided the DeLanos a subterfuge for not providing to Dr. Cordero the documents that could prove their bankruptcy fraud, so that they claimed in the Statement by Att. Werner of November 9, 2004, "All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtor's finances and have nothing to do with the matter at hand, which is Cordero's claim", targeted by the DeLanos‟ motion to disallow. Perfect pitcher-catcher coordination, but severely defective by its disregard of the rules (§C.2, infra).

#### 1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity

55. To comply with the Order to prove his claim, Dr. Cordero requested the DeLanos on September 29, to produce a specific list of documents very similar to those on his proposed request of July 19, as well as other documents relating specifically to his claim against Mr. DeLano stemming from the Pfuntner case.

56. In his Response of October 28, 2004, by Att. Werner, Mr. DeLano declined discovery of every item requested by Dr. Cordero either as irrelevant or not in the DeLanos‟ possession. However,

that statement is irreconcilable with the facts and the legal obligations of the DeLanos.

57. Let‟s begin with the pretense that the DeLanos did not have in their possessions the requested documents. At of Dr. Cordero‟s instigation, Trustee Reiber requested on April 20 and May 18, 2004, that the DeLanos produce documents to support their petition. Although his request was unjustifiably insufficient in its scope given the claims and statements that the DeLanos had made in their petition, the Trustee requested the statements for the last three years of each of 8 of the 18 credit cards that they had listed in Schedule F. Even so, what the DeLanos produced on June 14, 2004, was a single statement for each of those 8 cards and they were between 8 and 11 months old! That fell indisputably short of what they had been requested to produce and showed their effort to avoid producing any documents at all, so much so that the Trustee moved to dismiss their case for "unreasonable delay". Nevertheless, by producing them the DeLanos also showed that they did keep such statements for many months and presumably for all their cards, for it is implausible that they just happened to have one single statement of each of the cards that happened to be included in the request.

58. Dr. Cordero brought to Trustee Reiber‟s attention the gross insufficiency of what they had produced. Eventually, on July 28, 2004, the DeLanos produced some of the statements that Att. Werner had subpoenaed from issuers of those credit cards. Among them was the set produced by Discover Card for Mr. DeLano‟s account 6011 0020 4000 6645. It included the statements since April 16, 2001, until the one with the payment due date of May 29, 2004. All of them were addressed to him at the DeLanos‟ home on 1262 Shoecraft Road, Webster, NY 14580-8954. This shows that as late as May 2004, months after filing their petition, the DeLanos kept receiving monthly credit card statements. It is also all but certain that they kept receiving the monthly statements for the other credit card that they had. The evidence for this is found in the credit bureau reports for each of the DeLanos, which show credit cards with activity well into 2004.

| | **Credit reporting agency** | **Date of report** | **Person reported on** | **Credit card issuer** | **Credit card account no.** | **Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i** |
|---|---|---|---|---|---|---|
| 1. | Equifax | July 23, 04 | David D.=D | Capital One | 4388 6413 4765* | **i: July 2004**<br>**p: January 2004** |
| 2. | | | D | Capital One Bank | 4862 3621 5719* | **i: July 2004**<br>**p: February 2004** |

| | Credit reporting agency | Date of report | Person reported on | Credit card issuer | Credit card account no. | Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i |
|---|---|---|---|---|---|---|
| 3. | | | D | Cbusa sears | 3480 0743 0* | **i: July 2004** |
| 4. | | | D | Genesee Regional Bank | | **i: July 2004**<br>**p: June 2004** |
| 5. | | | D | MBNA Amer | 4313 0229 9975* | i: May 2004 |
| 6. | | | D | Wells Fargo Financial | 674-1772 | **i: February 2004** |
| 7. | Equifax | July 23,04 | Mary D.=M | Capital One | 4862 3622 6671* | p: February 2004 |
| 8. | Experian | July 26, 04 | D | Bank of America | 4024 0807 6136… | b: May 2004 |
| 9. | | | D | Bank of Ohio | 4266 86 99 5018 | **p: May 2004: $197** |
| 10 | | | D | Bk I TX | 4712 0207 0151… | **p: May 2004: $205** |
| 11 | | | D | Capital One Auto Finance | 6206 2156 8765 2 | b: June 2004 |
| 12 | | | D | Fleet M/C | 5487 8900 2018… | **p: May 2004: $172** |
| 13 | | | D | HSBC Bank USA | 5215 3170 0105… | **p: February 04: $160** |
| 14 | | | D | MBGA/JC Penney | 80246… | **p: *July* 2004: $57** |
| 15 | | | D | MBNA America Bank NA | 7499 0999 89… | b: May 2004 |
| 16 | | | D | MBNA America Bank NA | 5329 0319 9996… | b: May 2004 |
| 17 | | | D | W F Finance | 1070 9031 772… | b: June 2004 |
| 18 | | | D | First Premier Bank | 4610 0780 0310… | **p: *July* 2004: $48** |
| 19 | | | D | Kaufmanns | R25243 | b: April 2004 |
| 20 | | | D | The Bon Ton | 8601… | b: June 2004 |
| 21 | Experian | July 26, 04 | M | Capital One Bank | 4862 3622 6671… | b: February 2004 |
| 22 | | | M | Fleet M/C | 5487 8900 2018… | **p: May 2004: $172** |
| 23 | | | M | MBGA/JC Penney | 80246… | **p: *July* 2004: $57** |
| 24 | | | M | MBNA America Bank NA | 4313 0229 9975… | b: May 2004 |
| 25 | | | M | Kaufmanns | R25243 | b: April 2004 |
| 26 | | | M | The Bon Ton | 8601… | b: June 2004 |
| 27 | TransUnion | July 26, 04 | D | Norwest Finance | 1070 9031 7720 544 | u: June 2004 |
| 28 | | | D | First USA Bank. | 4712 0207 0151 3292 | u: April 2004 |
| 29 | | | D | First USA Bank | 4266 8699 5018 4134 | u: April 2004 |
| 30 | | | D | Summit Acceptance Corp | 6206 2156 8765 2100 1 | u: June 2004 |
| 31 | | | D | Citi Cards | 3480 0743 0593 0 | u: July 2004 |
| 32 | | | D | MBNA America | 4313 0228 5801 9530 | u: April 2004 |
| 33 | TransUnion | July 26, 04 | M | Discover Financial Svc | 6011 0020 4000 6645 | u: June 2004 |

| | Credit reporting agency | Date of report | Person reported on | Credit card issuer | Credit card account no. | Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i |
|---|---|---|---|---|---|---|
| 34 | | | M | Chase NA | 4102 0082 4002 1537 | u: May 2004 |
| 35 | | | M | Citi Cards | 3480 0743 0593 0 | u: July 2004 |
| 36 | | | M | JC Penney/MBGA | 1069 9076 5 | **p: July 2004** |

59. These 36 accounts are by no means all those that the DeLanos have, just those for which those particular credit bureau reports as of July of last year provide a date under any of the categories of the last column of the table above and for which that date is in 2004. Nevertheless, they are enough to show that only an utterly biased person toward the DeLanos could even imagine that they did not receive any credit card statements so that they could no produce them to comply with the requests for those statements. They had no shortage of such requests: of April 20 and May 18 by Trustee Reiber; of August 14, September 29, and November 4 by Dr. Cordero; and the Order of July 26 of Judge Ninfo. Only a person utterly biased could disregard the fact that the DeLanos not only were billed, but also paid credit card charges as late as July 2004, the month when they requested those credit bureau reports. In fact, at the meeting of creditors held on February 1, 2005, at Trustee Reiber‟s office, Mr. DeLano admitted for the record that he currently uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156.
60. Likewise, only a person utterly biased toward the DeLanos could assume that they no longer have any checking or savings accounts despite their reference in Schedule B to their having them with M&T Bank, where Mr. DeLano still works. Therefore, they must have received monthly statements of those accounts, which they could also have produced.
61. Consequently, they must be presumed to have concealed those statements. But if they did not have them in their possession, that would only mean that they systematically destroyed them. In so doing, they could have followed the example of their advisor, Att. Werner. He stated for the record at their examination that he destroyed documents that the DeLanos had provided him for the preparation of the petition and that he engages in that practice routinely. That constitutes a flagrant violation of 18 U.S.C. §1519, found in Chapter 73-Obstruction of Justice and providing as follows:

> Whoever knowingly alters, destroys, mutilates, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of…any case filed under title 11, or in relation to or contemplation of any such…case, shall be fined under this title, imprisoned not more than 20 years, or both.

62. In the same vein, the few credit card statements that they produced, and more so the credit bureau reports, show that the DeLanos were systematically engaged in a skip and pay pattern for juggling their astonishingly high number of credit cards. This follows from the Equifax reports of July 23, 2004, which show that the DeLanos failed to make the minimum monthly payment a staggering 279 times!

63. It follows that Att. Werner's assertion in that April 16 Statement to the Court that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" was plainly untrue. If Att. Werner had conducted even a cursory inquiry, let alone a reasonable one under the suspicious circumstances of a bank loan officer that goes bankrupt owing $98,092 on unsecured credit cards, he would have readily realized that such a statement was untrue. Therefore, Att. Werner violated FRBkrP Rule 9011(b). As to the DeLanos, to the extent that they gave him that information, they intentionally misled him, the Court, and all the creditors and parties in interest.

64. Consequently, the DeLanos' **1)** scores of credit card accounts; **2)** their charging since "1990 and prior credit card purchase" (Schedule F) tens of thousands of dollars for "living expenses" (Att. Werner's written statement to the Court dated April 16, 2004) and for the two-year educational expenses of their two children at a low in-state tuition, near-home community college; **3)** their systematic failure to make even the minimum payments, **4)** their expert knowledge about the lending industry's handling of delinquencies and bankruptcies; and **5)** their concealment of account statements that they indisputably received and were legally bound to keep, show that the DeLanos made the life-style choice to live it up on credit cards without ever intending to pay their unsecured issuers while concealing the whereabouts of the $291,470 that they earned in just the 2001-03 fiscal years according to their petition and their 1040 IRS forms.

65. Consequently, only a disingenuous person could pretend that the DeLanos did not produce the requested documents because they did not have them in their possession. Moreover, only a person utterly biased toward them could disregard these facts about the conduct of the DeLanos

for more than 15 years, since „1990 and prior years", and still refer to them, as Judge Ninfo did in his August 30 Order, as "honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case". How impartial can he appear to a reasonable observer?

**2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!**

66. Confirming this favorable prejudgment of the DeLanos before they had ever taken the stand or even had their petition formally submitted to him by Trustee Reiber, Judge Ninfo stated in his Order of November 10, 2004, that he "in all respects denied…the Cordero Discovery Motion" of November 4, "because DeLano indicated in the Response [to Dr. Cordero's discovery request of September 29] that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding". This the Judge stated although Mr. DeLano did not provide a single document requested by Dr. Cordero! He just took Mr. DeLano"s self-serving assertion at face value and purely and simply disregarded the facts and common sense.
67. Judge Ninfo made that decision by disregarding once more the rules. He did not even mention, let alone discuss, as judges do who apply the law, Dr. Cordero"s argument in his November 4 motion about the broad scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), providing that "Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or **defense** of any party" (emphasis added). Based thereon, Dr. Cordero argued that he was entitled to defend against the DeLanos" untimely motion to disallow his claim, which led to Judge Ninfo"s August 30 Order requiring him to take discovery from Mr. DeLano. His defense is dependent precisely on taking discovery that will allow him to establish, among other things, that the DeLanos" motion is a desperate attempt in contravention of FRBkrP 9011(b) to eliminate him from their case because he is the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of documents that can show whether they submitted their petition in bad faith in violation of 11 U.S.C. §1325(a)(3) and are engaged in bankruptcy fraud, particularly concealment of assets.
68. Had Judge Ninfo had any regard for the rules, he would not have uncritically sustained Att.

Werner‟s wholesale denial in his October 28 Response to Dr. Cordero‟s discovery request on the pretense that "all of such demands are not relevant to the claim of Richard Cordero against the Debtors." Instead, he would have complied, as judges respectful of the legality do, with FRCivP Rule 26(b)(1), which provides that:

> …Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

69. Moreover, had Judge Ninfo not been so blind by his bias, he would have put two and two together to conclude that the DeLanos‟ avoidance for months of their duty to comply under 11 U.S.C. §521(3) and (4) with Trustee Reiber‟s document production requests to the point that the Trustee moved to dismiss for "unreasonable delay" constituted reasonable evidence that in refusing to provide even one single document requested by Dr. Cordero Mr. DeLano was engaging in the same conduct aimed at the same objective, namely, concealing documents to prevent the discovery of his bankruptcy fraud.

70. By Judge Ninfo forcing Dr. Cordero to take discovery of Mr. DeLano to prove his claim against Mr. DeLano without requiring the latter to overcome the presumption of validity attached to a properly filed claim under FRBkrP Rule 3001(f), only to deny him every single document requested, the Judge has made sure that Dr. Cordero is deprived of the means of examining effectively Mr. DeLano at the upcoming evidentiary hearing. Judge Ninfo has set up Dr. Cordero to fail at a hearing that will be a sham!

### 3. Judge Ninfo has protected from Dr. Cordero's discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero's application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge's bias or because a 32-year veteran bank loan officer knows too much not to be protected

71. Mr. DeLano was the M&T Bank Officer who lent money for Mr. David Palmer to run his moving and storage company Premier Van Lines, which went bankrupt and gave rise to Pfuntner v. Gordon et al., in which both Mr. DeLano and Dr. Cordero are parties. Mr. Palmer too is a party in that case. He was supposed to store Dr. Cordero‟s property, but in fact abandoned it while he kept taking in his storage and insurance fees. Dr. Cordero served him with a summons and complaint, which Mr. Palmer never answered. Consequently, Dr. Cordero served him with an application dated December 26, 2002, for default judgment for a sum certain

under FRCivP Rule 55, made applicable by FRBkrP Rule 7055, and applied to Judge Ninfo for the entry of such judgment.

72. However, even after Mr. Palmer was defaulted by the Clerk of Court Paul Warren on February 4, 2003, the Judge would not enter such judgment. Instead, flatly contradicting the requirements of Rule 55, Judge Ninfo imposed on Dr. Cordero the obligation to conduct an "inquest" to establish loss or damage of his property. Dr. Cordero participated in such an "inquest" on May 19, 2003. At the hearing on May 21, it was established that there had been loss or damage of Dr. Cordero‟s property to the point that Judge Ninfo himself asked Dr. Cordero to resubmit his application for default judgment. Dr. Cordero did resubmit the same application on June 7. Nevertheless, at the hearing on June 25, 2003, Judge Ninfo would not enter it! He denied it by raising for the first time the pretext that Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back in December 2002 and that the Judge had had six months to examine! (Cf. §§I.B. and C. of Dr. Cordero‟s motion of August 8, 2003.)
73. Why would Judge Ninfo ask him to resubmit the application, make him spend his effort, time, and money to do so while getting his hopes high if the Judge was going to deny it on the basis of an element that he had known for six months? Why did Judge Ninfo feel the need to become the advocate of defaulted Mr. Palmer and keep him away from his court rather than protect Dr. Cordero, whose property Mr. Palmer had lost or damaged through negligence, recklessness, and fraud? These questions are particularly pertinent because it was Mr. Palmer who had invoked the protection of the law by applying for voluntary bankruptcy on March 5, 2001, and thereby submitted himself to the jurisdiction of Judge Ninfo, under which he still was. Why did the Judge not hold Mr. Palmer to his obligation under the law to answer a summons or let him contest for himself a default judgment, as he could do under FRCivP Rules 55(c) and 60(b)?
74. Therefore, how inconsistent for Judge Ninfo to state in his Order of August 30, 2004, that "…the Court is not aware of any evidence whatsoever, produced either in the Premier A[dversary]P[roceeding] or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage…". How can the Judge cast doubt on the fact of such loss or damage since he so much acknowledged that there had been such that he asked Dr. Cordero to resubmit the application for default judgment?…only to deny it again! What this shows is that Judge Ninfo

does not know what he has done and only knows that he will do and say anything so long as it is to protect the local parties and injure Dr. Cordero. (Cf. §II of Dr. Cordero‟s motion of November 3, 2003, in the Court of Appeals.)

75. This background provides the foundation for asking how much Mr. DeLano, as a party in the Pfuntner case and the lender to Mr. Palmer, knows that could incriminate others in bankruptcy fraud. In turn, this begs the question in how many other cases during his 32-year long career as a bank officer Mr. DeLano has been involved one way or another so that now he knows too much not to be protected. The same motives for Judge Ninfo to protect Mr. Palmer from Dr. Cordero‟s application for default judgment may explain why he is now protecting Mr. DeLano from Dr. Cordero‟s effort to obtain the documents showing his involvement in bankruptcy fraud. None of those motives, however, can legally justify Judge Ninfo‟s bias and prejudice against Dr. Cordero.

## III. The totality of circumstances assessed by a reasonable person gives rise to the appearance of bias and prejudice on the part of Judge Ninfo that requires his recusal

76. Every assertion that Dr. Cordero has made in this motion or in his other papers referred to here has been supported either by citations and discussion of the applicable law and rules or facts established by other documents in the dockets of the cases under consideration (Table of References, infra). Moreover, in our system of justice a person can lose his property, his freedom, and even his life on the basis of circumstantial evidence. Hence, the approach taken by fair and impartial persons, whether they be judges, jurors, or observers, when examining evidence is, not to chip away at it by discarding its elements one by one out of context, but rather to take into consideration "the totality of circumstances" and analyze it from the point of view of the reasonable persons that the law requires people to be. Such persons would proceed on the sound principle that two similar events can be explained away as a coincidence, but three form a pattern.

77. In the DeLano case, just as in the Pfuntner case, Judge Ninfo, without citing a single law or rule, let alone discussing any, but rather disregarding their provisions as well as the surrounding facts and instead engaging in his very own "local practice" (§§9 et seq., supra), has made a series of decisions that so consistently benefit the local parties and injure Non-local Pro se Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias. This is the antithesis of process in accordance with law and constitutes a denial of due process

(cf. §III of Dr. Cordero‟s motion of November 3, 2003, in the Court of Appeals).

78. In light thereof, would it appear to a reasonable person informed of all the surrounding facts and circumstances of these cases that in the DeLano case generally, and at the upcoming evidentiary hearing in particular, Mr. DeLano or Dr. Cordero could say anything that would cause Judge Ninfo to reach any other but the forgone conclusion that Dr. Cordero has no claim against Mr. DeLano, that his claim should be disallowed, and that he has no standing to oppose the confirmation of the DeLanos‟ plan?…and good riddance! If so, the appearance of partiality has been reasonably questioned and Judge Ninfo has a statutory duty to recuse himself from the DeLano case. (Cf. §II of Dr. Cordero‟s motion of August 8, 2003.)

## IV. Relief Requested

79. Therefore, Dr. Cordero respectfully requests that:
    1) in the interest of justice the DeLano case and the Pfuntner case, and at any rate the former, be removed under 28 U.S.C. §1412 to another district where a court unrelated to any of the parties or Judge Ninfo can give rise to the expectation that it will afford all parties a fair and impartial process, as presumably will do the U.S. court for the Northern District of New York in Albany (cf. §III of Dr. Cordero‟s motion of August 8, 2003);
    2) a report be made under 18 U.S.C. §3057(a) of these cases to U.S. Attorney General Alberto Gonzales for investigation into bankruptcy fraud; into concealment of assets and other bankruptcy offenses under 18 U.S.C. §152 et seq.; and of the trustees pursuant to 28 U.S.C. §526(a)(1); and that it be recommended that the investigation be conducted by neither the U.S. Attorney‟s Office nor the FBI Office in Rochester or Buffalo, NY, but rather by such Offices whose personnel is not related to or familiar with any party in these cases, as presumably are the Offices in Washington, D.C., and Chicago;
    3) Judge Ninfo recuse himself from both cases, and at any rate from the DeLano case.

Dr. Richard Cordero

February 17, 2005

59 Crescent Street
Brooklyn, NY 11208

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

# CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated February 17, 2004, for Judge John C. Ninfo, II, WBNY, to recuse himself:

---

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February 17, 2005

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# TABLE OF REFERENCES

## papers and documents referred to in the motion for Judge Ninfo to recuse himself of February 17, 2005, by Dr. Richard Cordero

1. ***Dr. Cordero**'s motion of **August 8**, 2003, **for** Judge **Ninfo** to remove the Pfuntner case and **recuse himself**
2. ***Dr. Cordero**'s motion of **November 3**, 2003, **to** the **Court of Appeals** for the Second Circuit for leave to file updating supplement of evidence of **bias** in Judge **Ninfo**'s denial of Dr. Cordero's request for a trial by jury
3. Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines
4. Voluntary Petition of January 26, 2004, under Chapter 13 of the Bankruptcy Code, with Schedules, of David DeLano and Mary Ann DeLano
5. Chapter 13 Plan of January 26, 2004
6. Dr. Cordero's Objections of March 4, 2004, to the confirmation of the DeLanos' Chapter 13 debt repayment plan
7. "Debtors' statement of April 16, 2004, in opposition to Cordero objection [sic] to claim of exemptions", submitted and filed with the court by Att. Werner
8. Dr. Cordero's Statement of July 9, 2004, in opposition to Trustee Reiber's motion to dismiss the DeLano petition and containing in the relief the text of a requested order
9. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:

   Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004, to the court
10. Att. Werner's notice of hearing and order of July 19, 2004, objecting to Dr. Cordero's claim and moving to disallow it
11. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:
12. Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004

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* Incorporated by reference.

13. Att. Werner's letter of July 20, 2004, to Judge Ninfo, delivered via messenger, objecting to Dr. Cordero's proposed order for document production

14. Att. Werner's letter of July 20, 2004, to Dr. Cordero accompanying the following document:

    Dr. Cordero's letter of July 21, 2004, faxed to Judge Ninfo, requesting that he issue the proposed order as agreed at the hearing on July 19, 2004

15. Judge Ninfo's order of July 26, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter"

16. *Dr. **Cordero**'s motion of **August 14**, 2004, for **docketing** and issue, **removal**, referral, examination, and other relief, noticed for August 23 and 25, 2004

17. Judge Ninfo's Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor DeLano arising from the Pfuntner v. Gordon et al. case on appeal in the Court of Appeals for the Second Circuit

18. ***Dr. Cordero**'s motion of **September 9**, 2004, in the **Court of Appeals** for the Second Circuit to **quash** the **order** of Bankruptcy Judge John C. **Ninfo**, II, of August 30, 2004, to sever a claim from the case on appeal in the **Court of Appeals** to try it in the DeLano bankruptcy case, docket no. 04-20280

19. Dr. Cordero's letter of September 29, 2004, to Att. Werner requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals

20. Att. Werner's letter of October 28, 2004, to Dr. Cordero accompanying Mr. DeLano's Response to discovery demand of Richard Cordero-Objection to Claim of Richard Cordero, where discovery of every item requested is denied as not relevant and the item concerning Mr. Palmer is said not to be in Mr. DeLano's possession

21. Dr. Cordero's motion of November 4, 2004, to enforce Judge Ninfo's Order of August 30, 2004, by ordering Mr. DeLano to produce the requested documents and declaring that the Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos

22. Att. Werner's statement of November 9, 2004, to the court on behalf of the DeLanos to oppose Cordero [sic] motion regarding discovery and request that it be denied in all respects

23. Judge Ninfo's Order of November 10, 2004, denying in all respects Dr. Cordero's motion of November 4 and holding the hearing, noticed for November 17, to be moot

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* Incorporated by reference.

United States Court of Appeals
SECOND CIRCUIT

CHAMBERS OF
RALPH K. WINTER
U.S. CIRCUIT JUDGE
U.S. COURTHOUSE
141 CHURCH STREET
NEW HAVEN, CT 06510

(203) 782-3682

February 15, 2005

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

Dear Dr. Cordero:

Thank you for your two letters, dated January 8 and February 9, 2005, regarding your November 20, 2004 request for review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit. Those orders denied review of the dismissals by the Chief Judge of the Second Circuit of two judicial conduct complaints: your August 11, 2003 complaint against United States Bankruptcy Judge John C. Ninfo, II, and your March 19, 2004 complaint against Chief Judge John W. Walker, Jr.

Please note that I am also aware of your nearly identical letters to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, to Judge Carolyn King, Chair of the Executive Committee of the Judicial Conference, and to members of the Judicial Conference. My response in this letter will eliminate any need for their further responses to your correspondence.

Your January 8th letter requested several actions, and I will address your requests in the order they appear.

First, you suggest that the December 9, 2004 letter you received from Assistant General Counsel Robert P. Deyling should be declared "devoid of any effect as ultra vires" and withdrawn. Having reviewed the material you sent me as well as the December 9th letter, I can confirm for you that Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act ("the Judicial Conference Rules").

As Mr. Deyling's letter correctly noted, the Judicial Conference does not have jurisdiction for further review of your complaint. The process for addressing complaints against judges is specified at 28 U.S.C. §§ 351 - 364. You correctly followed the statutory complaint process to its final conclusion when you obtained the orders from the Judicial Council of the Second Circuit denying your petition to review the dismissal of your complaints. A careful reading of the statute makes this very clear.

Under 28 U.S.C. § 352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed. As permitted by 28 U.S.C. § 352(c), you then petitioned to the judicial council for review of the chief judge's dismissal. The judicial council unequivocally denied your petitions. Those two denials, both taken under § 352(c), are "final and conclusive and shall not be judicially reviewable on appeal or otherwise."

The Judicial Conference review you seek is only available in certain extremely limited circumstances, and your request for review does not meet the statutory standard. Again, a careful reading of the statute leads inexorably to this conclusion, as Mr. Deyling's letter correctly explained. Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by a judicial council under § 354. A judicial council may take action under § 354 only following receipt of the report of a "special investigating committee" convened pursuant to § 353.

The chief judge did not appoint a special investigating committee under § 353 in your case. The judicial council denied your petition for review under § 352, not under § 354. Accordingly, it is clear that the only review available in your case was the review you already obtained from the Judicial Council of the Second Circuit.

This analysis, which confirms the conclusions Mr. Deyling reached in his letter to you, leads me to your second request. You ask me to forward your materials to the Judicial Conference and/or to the Committee to Review Circuit Council Conduct and Disability Orders ("the Committee"). As the Chair of the Committee, I must deny your request. Under the controlling statute, and under the Judicial Conference Rules for processing petitions for review, neither the Committee nor the Judicial Conference has jurisdiction or authority to act upon your request for review.

I also note your various references to the Judicial Conference Rules, and your arguments that the rules provide some independent basis for jurisdiction, or require the Committee or the Judicial Conference itself to take various actions with respect to your request for review. You have misinterpreted the scope and applicability of the Judicial Conference Rules. By their express terms, the rules apply to *"petitions for review submitted to the Conference under 28 U.S.C. § 357 [former 28 U.S.C. § 372(c)(10)], seeking review of circuit council actions taken under 28 U.S.C. § 354 [former 28 U.S.C. § 372(c)(6)] upon complaints of judicial conduct or disability"* (emphasis added). As I explained above, your petition seeks review of a judicial council action taken under 28 U.S.C. § 352(c). The governing statute does not provide you with any entitlement to review, by the Committee or by the Judicial Conference itself, of an action taken under § 352(c).

My answer to your first two requests implicitly addresses your remaining two requests.

Namely, you asked me to "consider and take action on the accompanying Statement of Facts and Request for an Investigation." You appear to request this action under Rule 12 of the Judicial Conference Rules. Again, I emphasize that neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review, because it is not reviewable under the statutory scheme noted above. Accordingly, I cannot take any of the actions you request. For similar reasons, I cannot report the alleged judicial misconduct to the U.S. Attorney General.

I hope that you find this letter helpful to explain why no further action will be taken on your request for review. Thank you.

Sincerely,

Ralph K. Winter
United States Circuit Judge

RKW/mrd

cc: Hon. Pasco M. Bowman II
Hon. Carolyn R. Dimmick
Hon. Barefoot Sanders
Hon. Dolores K. Sloviter
Robert P. Deyling, Assistant General Counsel

**Dr. Richard Cordero**

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

**59 Crescent Street**
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March 24, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re petition for review by the Judicial Conference

Dear Judge Winter,

Thank you for your letter of February 15 concerning my letters of last February 7 and January 8, and my petition of November 18, 2004, to the Judicial Conference for review under the Judicial Conduct and Disability Act. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue. I requested that you cause my petition to be forwarded to the Conference for it to determine the issue of jurisdiction and eventually the petition itself.

I have prepared a reply to your letter and for the reasons stated therein, I respectfully request that you formally submit it to the other members of the Committee as well as to the Judicial Conference.

sincerely,

Dr. Richard Cordero

JC:366

# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

**CA2 dockets no. 03-8547**
**and no. 04-8510**

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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## REPLY
## to the Chairman of the Committee to Review Circuit Council Conduct and Disability Orders on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions for review to the Judicial Conference and on the need for the Conference to decide the issue of jurisdiction

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Dr. Richard Cordero, Pro se Petitioner, affirms under penalty of perjury the following:

1. On November 18, 2004, Dr. Richard Cordero filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §351 et seq., (hereinafter the Act) of two orders of the Judicial Circuit of the Second Circuit denying his petitions for review concerning two judicial misconduct complaints dismissed by the Circuit‟s chief judge.
2. By letter of December 9, 2004, the Assistant General Counsel of the Administrative Office, Robert P. Deyling, Esq., (Exhibits page 15=E-15, infra) informed Dr. Cordero that "no jurisdiction lies for further review by the Judicial Conference of the United States" and failed to forward the petition to the Conference.
3. Dr. Cordero contends that Mr. Deyling and the Administrative Office only render clerical work for the Conference and have no authority either under the Act or the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (hereinafter the Conference Rules), to pass judgment on any issue, much less on the threshold issue of jurisdiction, and thereby prevent the Conference from even receiving a petition for review, let alone determining by itself the issue of its jurisdiction to entertain the petition.

4. Hence, on January 8 and February 7, 2005, (E-4; E-13) Dr. Cordero wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee for the Review of Circuit Council Conduct and Disability Orders (hereinafter the Committee), to request that he declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it and to have his petition forwarded to the Conference for review. Judge Winter replied by letter dated February 15, 2005 (E-1)

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## I. 28 U.S.C. §331 requires that "*all* petitions for review *shall* be reviewed by that committee [to review circuit orders]", so while its chairman can cause it to review a petition, he cannot prevent it or the Judicial Conference from engaging in such review, which should be undertaken by the Conference given the far reaching impact of a decision on the scope of its jurisdiction

5. In his letter Judge Winter stated that "Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules". However, Judge Winter failed to cite any Conference Rule or provision of law that gives either Mr. Deyling or the Administrative Office authority to pass judgment on any issue, much less on the threshold issue of jurisdiction. Therefore, his conclusory statement is insufficient to dispose of Dr. Cordero"s contention that neither Mr. Deyling nor the Office is authorized under the Act or the Rules to do anything other than clerical work, such as receiving a petition and distributing it to the Conference, which is the only entity that can pass judgment on whether it has jurisdiction to review a petition. "A careful reading of the statute makes this very clear."
6. Thus, Conference Rule 9 states the limited scope of clerical work that either can perform:

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

In turn, 28 U.S.C. §331, 4th paragraph, provides as follows:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and ***all*** petitions for review ***shall*** be reviewed by that committee. (emphasis added)

7. This provision is authority for the proposition that the Committee has the legal obligation to act and do so with respect to "all petitions for review", such as Dr. Cordero"s and not just such as in the judgment of the Administrative Office or a clerk thereof can be forwarded to the Conference; and *"all"* of them "shall be reviewed by that committee". This means that not even the chairman of that Committee, in this case Judge Winter, has the legal authority to decide in lieu of the whole Committee to deny review.
8. In this case, however, it should be the Judicial Conference itself that undertakes such review. This is so because the issue of jurisdiction goes to the essence of its power to function in the context of the Act and because the argument made in Dr. Cordero"s petition in favor of its

jurisdiction is novel. The basis for calling it novel is that in the 25 years since the Act was adopted in 1980, the Conference has only issued 15 orders and Dr. Cordero read all of them after managing to have the Administrative Office send them to him. None of them contains an argument for jurisdiction based on an analysis of the Act. As an issue on first impression that requires the interpretation of the inner workings of the Act‟s provisions, as shown below, and that will have an impact far beyond this petition by affecting the availability of review under the Act of all other complainants, the scope of the Conference‟s jurisdiction should be determined by the whole Conference, not the Committee.

9. It is the Conference that has the necessary power to depart, if need be, from a narrow interpretation of its jurisdiction that has rendered the Act a useless mechanism for processing judicial misconduct complaints and eliminating the underlying causes for such complaints. This has frustrated Congress‟ purpose in enacting it and even led Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair a committee to study its misapplication. Therefore, for the Conference to decide this petition‟s arguments for its jurisdiction and eventually decide the petition will be a step toward correcting the profound, long-standing problem of the Act‟s evisceration as well as one consistent with the action taken to that end by the Conference‟s president and the top officer of the Judicial Branch. Under these circumstances, the Committee should defer to the Conference and the Conference should take the opportunity to deal in depth with the Act through this petition.

## II. The petition to the Judicial Conference explicitly seeks review under §357(a), which is not excluded by action allegedly taken under §352(c) by the Council, although it never even pretended to have acted thereunder

10. Judge Winter stated in his letter that “your petition seeks review of a judicial council action taken under 28 U.S.C. §352(c)”. That statement is inaccurate both as a matter of fact and in legal terms.

11. To begin with, Dr. Cordero‟s petition for review to the Conference explicitly states what basis of jurisdiction it invokes. Its first substantive section after the statement of the questions presented for review is this: “II. The Judicial Conference has jurisdiction over this appeal because the complainant was “aggrieved” by the Judicial Council”. The term “aggrieved” appears in §357(a), which reads thus:

> **28 U.S.C. §357. Review of orders and actions**
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial

> Conference of the United States for review thereof.

12. It is on the basis of §357(a) that Dr. Cordero invoked the Conference"s jurisdiction to review his petition. By its own terms, that section is broad enough to encompass his petition because he was "aggrieved" by the Council when without any investigation it denied his two petitions for review of the dismissals without any investigation either by the acting chief judge of his two complaints, thereby leaving him to continue to suffer the misconduct of the complained-about judges.
13. Moreover and as a matter of fact, the Council did not even pretend to have denied the petition under §352(c). Anybody who is familiar with the way the Council systematically discards petitions for review, knows that it only issues a form that none of its members bothers to sign and that by hand of the circuit executive states that:

> Upon consideration thereof [of the chief judge's order dismissing the complaint and the complainant's petition for review]
>
> ORDERED that the petition for review is DENIED for the reasons stated in the order dated [and the date of the chief judge's order].

14. That is the stated basis on which the Judicial Council of the Second Circuit denied each of Dr. Cordero"s two petitions (E-17; E-18) for review of the acting chief judge"s orders of dismissal of June 8 and September 24, 2004, respectively. Since the acting chief judge dismissed each of the complaints with disregard for his obligations under §§351-353 with respect to those complaints and as part of a pattern of systematic dismissal of judicial misconduct complaints (see §IV of the petition), the Council only further "aggrieved" Dr. Cordero for having lent its support to such disregard for the Act.
15. By its own words, the Council could not have taken action under §352(c). Its own *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §351 et seq.* (hereinafter JC2nd Rules), do not even mention §352(c). Neither the members of a review panel nor those of a whole council are afforded the opportunity or have the means of expressing whether they are taking action under §352(c), or for that matter any other provision, such as §354. Their options for action are these:

> **JC2nd Rule 8. Review by the Judicial Council of a Chief Judge's Order**
>
> **…**
>
> **(b) Mail ballot.** Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) ***deny*** the petition for review, or (2) ***refer*** the petition to the full membership of the judicial council. The form

> will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.
>
> Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council ***member voting to place the petition on the agenda*** of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.
>
> The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be **placed on the agenda** of a council meeting upon the **votes** of at least **two members** of the council; **otherwise**, the petition for review will be **denied**. (emphasis added)

16. Panel members have nothing more to do than to put a check mark in a denial or referral box. But if any of them or any other member of the council writes anything else, it is to explain why the council as a whole should consider the petition, rather than why it should deny it. Denial comes by default, due to the failure of any other judge to second a judge's initial vote for consideration. Furthermore, even if the whole council takes a decision, it does not have to state whether it was under §352(c) or §354. As a matter of fact, it does not even have to explain its decision in a memorandum:

> **JC2nd Rule 8. (f) Notice of Council Decision.**
>
> (1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

## A. Subsection 352(c) only states the prerequisite of being "aggrieved" for petitioning a council and the effect of a council's denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council's action

17. This is what subsection §352(c) provides:

> **§352(c) Review of orders of chief judge.** –A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

18. The first sentence of this subsection shows that if a complainant can be "aggrieved" by a chief judge's final order, then he can be equally "aggrieved" when a council denies his petition expressly on the basis of that very same order. That reason for being "aggrieved" falls within the very broad scope of the term, which the Act does not limit by reference either to the order's

content or circumstances of issue.

19. No analysis of that sentence or the whole subsection, let alone a gloss over it, can possibly conclude that if a council denies a petition allegedly under §352(c), then the complainant cannot legally be "aggrieved" by its denial or that he cannot be so much so as to qualify within the purview of the very same term "aggrieved" under §357(a). A basic rule of construction provides that a word in a legal instrument has the same meaning everywhere it is used with no differentiating qualifier. Both §352(c) and §357(a) use the term the same way: „An aggrieved complainant or judge".

20. Not only that key term links those two provisions, but also the Act's structure and workings link §352(c) to §354. Indeed, the second sentence of §352(c), by its own terms only states the **effect** of a council's denial of a petition for review. It does not state how a council can review a petition, let alone deny it. That cannot mean that §352(c) constitutes an unbounded grant of power to a council to do whatever it wants. It should be axiomatic that in a government subject to the rule of law no entity of any of its branches, such as a council is within the Judicial Branch, can act or refuse to act arbitrarily, just because it feels like it or it suits the interest of the class of persons that compose it, which in this case would be the interest of protecting complained-about peer judges and the public image of the class. Therefore, even a council constrained or permitted to take action must do so within the bounds set down by law or rule.

21. Section 354 is where the Act imposes on a council the duty and grants it the power to act. This is expressed unequivocally by its title:

    **§354. Action by judicial council**

22. By contrast, §352 provides for a different type of action by a different actor and at an earlier stage, so it is titled thus:

    **§352. Review of complaint by chief judge**

23. It is not in the latter section dealing with action by a chief judge, let alone in a subsidiary sentence of a subsection therein, where the council would reasonably go to find out what it is that it can do under the Act. Legislative drafting is assumed to be carried out by as reasonable people as the reasonable man and woman who provide the standard of conduct against which the conduct of the addressees of the law is measured. Hence, it is untenable to assume that Congress was so unreasonable as to nest in a sub-sub level of a section concerned with a chief judge a grant to a council of its largest measure of power: to deny a petition for any reason and

no reason without any procedural requirements.

24. Reasoning by opposite also leads to the conclusion that §352(c) is not a stand alone provision that grants a council unbounded power to act and not to act without regard for the rest of the Act: Suppose that instead of denying the petition for review of the chief judge‟s order, a council were to grant it. Could the mere fact that no special committee was appointed and that the council lacked the information that its report would have contained constitute the grounds for the council to claim authority to take any action whatsoever that it fancied, including any action that the complainant requested as relief in his petition? *"Of course not!",* the complained-about judge would scream and any person of sound judgment would have to agree with him. By the same token, the complainant would argue, the complained-about judge could not, just because of those circumstances, be the one to set bounds on what the council could do. Rather, a conscientious council striving to avoid even the appearance of taking arbitrary and biased action and to demonstrate its respect for the rule of law would have to look to §354 to determine what action it had the duty to take, what powers it had to discharge it, and the bounds for their exercise. It follows that even if a council took action under §352(c), it would still have to look to §354 to determine what actions it had to take to achieve the purpose of the Act and could take to remain within its bounds.

25. Section 354 opens by setting a bound thus:

> **§354. Action by judicial council**
> **(a) Actions upon receipt of report.-**
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-…

26. To take action under §354(a), the council must have received a report. The Judicial Council of the Second Circuit could not have remained within that bound when it denied Dr. Cordero‟s petition for review because the Council could not have received a report since no special committee was ever appointed so that no committee conducted any investigation on which a report could have been submitted.

27. Just because the Council was deprived of the benefit of a special committee report it was not constrained to take action under §352(c) and deny any and all petitions. Section 354(b) empowered it to conduct its own investigation. It provides thus:

> **§354. (b) Referral to Judicial Conference.-**
> **(1) In general.**- In addition to the authority granted under subsection (a), the judicial council may, ***in its discretion***, refer any complaint under section 351,

> together with the record of ***any*** associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States. (emphasis added)

28. This subsection endows a council with discretionary power to forward a complaint on its own to the Conference, and if "any associated proceedings" have taken place, then it must join them to the complaint upon forwarding it to the Conference. The terms "any complaint under section 351" and "any associated proceedings" are sufficiently broad to allow a council „to conduct any investigation which it considers to be necessary", cf. §354(a)(1)(A), of any complaint regardless of how the chief judge disposed of it. This grant of power encourages referral to the Conference precisely where the chief judge has failed to undertake proceedings that he should have associated to his handling of the complaint, such as „conducting a limited inquiry" under §352(a) or „appointing a special committee" under §353.
29. Both the chief judge and the council failed to investigate although they should have done so on the strength of the evidence of judicial misconduct presented in the complaint and of the injury that the misconduct caused to Dr. Cordero in particular and to the administration of justice by the courts for the public benefit in general. Their failure to investigate constituted abuse of discretion. Worse still, their failure was part of their systematic dismissal of complaints and denials of petitions. It constituted dereliction of duty, the intentional disregard of their duty to eliminate judicial misconduct "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)), so as to achieve the purpose of the Act. On both counts the chief judge and the council "aggrieved" Dr. Cordero and afforded him the basis for petitioning the Conference.

### B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is "aggrieved"

30. A chief judge cannot insulate himself from review by the Judicial Conference by the simple maneuver of not appointing a special committee to investigate whether a judge's conduct has been "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)). To do so would only allow the business of the courts to continue being administered ineffectively and sluggishly, thereby defeating the Act's purpose, which is not to protect the chief from embarrassment, but rather to eliminate such prejudice. Hence, such non-appointment

is a particularly perverse maneuver because it covers for the chief judge‟s interest in not having instances of bad administration exposed during his term in office and associated with him.

31. In the same vein, a council, precisely when it is least informed because it lacks the report of a §353 special committee‟s investigation, cannot spare itself any investigation under §354(b) of the complaint and, by merely pretending to have denied under §352(c) a petition for review of a chief judge‟s uninformed and likely self-serving order, insulate itself from review by the Judicial Conference. Such expediency only compounds the prejudice to the Act‟s purpose and aggravates the deleterious effect of the perverse maneuver on the courts‟ business.
32. If the chief judge looks after himself, and the council of his peers looks only at his order, and the Conference never even sees a petition, who ever reviews the causes for complaint in the business of the courts? No wonder the Conference has issued only 15 orders in the 25 years since the Act was passed in 1980. Such a self-defeating construction of the Act cannot be the way Congress intended the Act to be read. This is particularly so when there is an alternative and reasonable construction of the second sentence of §352(c): A judicial council‟s denial of a petition is final unless the complainant or the judge is "aggrieved" under the terms of §357(a) and §354, such as by their failure to investigate a complaint, but if so, an appeal lies only in the Judicial Conference, not in an appeal to the courts.

## III. Although both the chief judge and the Council are required by the Act to handle complaints "expeditiously" and "promptly", they failed so to handle the complaints of Dr. Cordero, whereby they also "aggrieved" him and provided further basis for his petition to the Conference

33. Judge Winter also wrote that "Under 28 U.S.C. §352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed." This statement is contrary to the facts.
34. Dr. Cordero‟s complaint against Bankruptcy Judge John C. Ninfo, II, WBNY, dkt. no. 03-8547, was filed on August 11, and reformatted and resubmitted on August 27, 2003. It was dismissed only on June 8, 2004. Under what conceivable notion of "expeditious" is action taken 10 months later "expeditious"!? Ten months despite the evidence that neither Chief Judge John M. Walker, Jr., nor Acting Chief Judge Dennis Jacobs used the time to "conduct a limited inquiry", as required under §352(a), and the fact that neither appointed a special committee. Ten months without taking action while a pro se and non-local litigant was being abused by a biased judge! Ten

months even though on February 2, 2004, Dr. Cordero wrote to the Chief Judge to expressly bring to his attention the requirement that the Act laid upon him to handle a judicial misconduct complaint "promptly" and "expeditiously".

35. Ten months despite the fact that on March 19, 2004, Dr. Cordero filed a complaint against the Chief Judge himself precisely for his failure to act "promptly" and "expeditiously", whereby he was unlawfully and insensitively tolerating further injury to Dr. Cordero at the hands of one of his peers, Judge Ninfo. For its part, that complaint, dkt. no. 04-8510, was not dismissed until September 24, 2004, that is, more than half a year later again without even a limited inquiry or the appointment of a special committee. What is more, it was dismissed on the allegation that it had become moot by the dismissal of the earlier complaint. So why did Acting Chief Judge Jacobs fail to state so "promptly" and "expeditiously" since he was the one who dismissed the earlier complaint rather than inconsiderately make Dr. Cordero wait for months in vain during which he could have engaged the petition process?

36. Consequently, when the Judicial Council of the Second Circuit failed to exercise its discretionary power under §354(b)(1) to conduct the investigation that Chief Judge Walker and Acting Chief Judge Jacobs should have undertaken and that could have allowed them to corroborate Dr. Cordero‟s contention of judicial misconduct and take corrective action, the Council disregarded the purpose of the Act and its duty thereunder to attain it. By so doing, the Council left undisturbed the complained-about Judge Ninfo and other court officers who have engaged in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the benefit of the local parties and to the detriment of Dr. Cordero, the only non-local and pro se party, as to constitute a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. Through such disregard for legality and bias Judge Ninfo has caused Dr. Cordero since 2002 an enormous waste of effort, time, and money and inflicted upon him tremendous aggravation. By their inaction, the Chief Judge, the Acting Chief Judge, and the Council have condoned Judge Ninfo‟s misconduct and thus encouraged him to further engage in it, which he has done since Dr. Cordero filed his complaint in 2003, and as recently as March 1, 2005 (E-19). Through dereliction of their duty under the Act, Chief Judge Walker, Acting Chief Judge Jacobs, and the Council of the Second Circuit have insensitively and wrongfully failed to protect a complaint. What is more, they have condoned the denial by Judge Ninfo and thereby engaged themselves in the denial to Dr.

Cordero of due process of law under the Constitution. By so doing, they have "aggrieved" Dr. Cordero. As an "aggrieved" complainant under §357(a), Dr. Cordero now has the right to have his petition reviewed by the Judicial Conference.

## IV. The request for a report under18 U.S.C. 3057(a) to the U.S. Attorney General for an investigation into bankruptcy fraud called on the judges to abide by their obligation thereunder and is totally independent from any issue of jurisdiction of the Conference or the Committee under the Act

37. Judge Winter also stated that he "cannot report the alleged judicial misconduct to the U.S. Attorney General [because] neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review".

38. To make that request, Dr. Cordero explicitly invoked 18 U.S.C. 3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…(emphasis added)

39. By its own terms, this provision has absolutely nothing to do with the Conference or the Committee, much less with whether either has jurisdiction under the Act to review a petition. It has to do only with whether a person is a "judge, receiver, or trustee" and has, not even evidence or certainty, but rather just "any reasonable grounds for believing" that any provision of Title 18, Chapter 9 on bankruptcy, has been violated, such as that at §152(6) prohibiting the „offer or receipt of a benefit for acting or forbearing to act in a bankruptcy case" or at §152 (8) prohibiting „the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor". If so, he "***shall*** report to the appropriate United States attorney". This is not an option; it is an obligation to act. That is what the law imposes on such a judge.

40. Hence, when judges shirk that obligation by mixing it with something totally extraneous to it, what confidence do they instill in the public that they in fact abide by their oath of office at 28 U.S.C. §453 to "administer justice without respect to persons", that is, even if for the sake of the integrity of judicial process, the law must be applied to investigate one of their peers? Do judges apply the law because a moral duty compels them to abide by their professional obligation to do so or do they apply it only when it suits them and their peers because, after all, who is there to

complain successfully against them? These are legitimate questions justified by the facts, the same that caused Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair the committee to study the misapplication of the Act.

## V. Relief requested

41. Therefore, Dr. Cordero respectfully requests:

a) that Judge Winter reconsider the position that he expressed in his February 15 letter and in light of the statutory requirement of 28 U.S.C. §331, 4th paragraph, that "***all*** petitions for review ***shall*** be reviewed by that committee", not just its chairman, submit to the Committee this statement together with Dr. Cordero"s letters of February 7 and January 8, and his petition for review of November 18, 2004, to the Judicial Conference;

b) that Judge Winter cause the Committee to submit to the Judicial Conference Dr. Cordero"s petition and arguments for the Conferences" jurisdiction;

c) that the Conference decide that issue of jurisdiction and, if it decides to exercise it, that it determine the petition itself;

d) that the judges in the Committee and the Conference, individually and collectively, make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in Dr. Cordero"s petition, subsequent writings, and their exhibits, and request that the ensuing investigation be conducted by U.S. attorneys and FBI agents that are neither acquainted nor friends with any of the court and bankruptcy officers that may be investigated and that to that end neither the DoJ or FBI offices in Rochester or Buffalo, NY, be involved.

Respectfully submitted on March 25, 2005

Dr. Richard Cordero

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United States Court of Appeals
SECOND CIRCUIT

CHAMBERS OF
RALPH K. WINTER
U.S. CIRCUIT JUDGE
U.S. COURTHOUSE
141 CHURCH STREET
NEW HAVEN, CT 06510

(203) 782-3682

February 15, 2005

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

Dear Dr. Cordero:

Thank you for your two letters, dated January 8 and February 9, 2005, regarding your November 20, 2004 request for review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit. Those orders denied review of the dismissals by the Chief Judge of the Second Circuit of two judicial conduct complaints: your August 11, 2003 complaint against United States Bankruptcy Judge John C. Ninfo, II, and your March 19, 2004 complaint against Chief Judge John W. Walker, Jr.

Please note that I am also aware of your nearly identical letters to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, to Judge Carolyn King, Chair of the Executive Committee of the Judicial Conference, and to members of the Judicial Conference. My response in this letter will eliminate any need for their further responses to your correspondence.

Your January 8th letter requested several actions, and I will address your requests in the order they appear.

First, you suggest that the December 9, 2004 letter you received from Assistant General Counsel Robert P. Deyling should be declared "devoid of any effect as ultra vires" and withdrawn. Having reviewed the material you sent me as well as the December 9th letter, I can confirm for you that Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act ("the Judicial Conference Rules").

As Mr. Deyling's letter correctly noted, the Judicial Conference does not have jurisdiction for further review of your complaint. The process for addressing complaints against judges is specified at 28 U.S.C. §§ 351 - 364. You correctly followed the statutory complaint process to its final conclusion when you obtained the orders from the Judicial Council of the Second Circuit denying your petition to review the dismissal of your complaints. A careful reading of the statute makes this very clear.

Under 28 U.S.C. § 352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed. As permitted by 28 U.S.C. § 352(c), you then petitioned to the judicial council for review of the chief judge's dismissal. The judicial council unequivocally denied your petitions. Those two denials, both taken under § 352(c), are "final and conclusive and shall not be judicially reviewable on appeal or otherwise."

The Judicial Conference review you seek is only available in certain extremely limited circumstances, and your request for review does not meet the statutory standard. Again, a careful reading of the statute leads inexorably to this conclusion, as Mr. Deyling's letter correctly explained. Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by a judicial council under § 354. A judicial council may take action under § 354 only following receipt of the report of a "special investigating committee" convened pursuant to § 353.

The chief judge did not appoint a special investigating committee under § 353 in your case. The judicial council denied your petition for review under § 352, not under § 354. Accordingly, it is clear that the only review available in your case was the review you already obtained from the Judicial Council of the Second Circuit.

This analysis, which confirms the conclusions Mr. Deyling reached in his letter to you, leads me to your second request. You ask me to forward your materials to the Judicial Conference and/or to the Committee to Review Circuit Council Conduct and Disability Orders ("the Committee"). As the Chair of the Committee, I must deny your request. Under the controlling statute, and under the Judicial Conference Rules for processing petitions for review, neither the Committee nor the Judicial Conference has jurisdiction or authority to act upon your request for review.

I also note your various references to the Judicial Conference Rules, and your arguments that the rules provide some independent basis for jurisdiction, or require the Committee or the Judicial Conference itself to take various actions with respect to your request for review. You have misinterpreted the scope and applicability of the Judicial Conference Rules. By their express terms, the rules apply to *"petitions for review submitted to the Conference under 28 U.S.C. § 357 [former 28 U.S.C. § 372(c)(10)], seeking review of circuit council actions taken under 28 U.S.C. § 354 [former 28 U.S.C. § 372(c)(6)] upon complaints of judicial conduct or disability"* (emphasis added). As I explained above, your petition seeks review of a judicial council action taken under 28 U.S.C. § 352(c). The governing statute does not provide you with any entitlement to review, by the Committee or by the Judicial Conference itself, of an action taken under § 352(c).

My answer to your first two requests implicitly addresses your remaining two requests.

Namely, you asked me to "consider and take action on the accompanying Statement of Facts and Request for an Investigation." You appear to request this action under Rule 12 of the Judicial Conference Rules. Again, I emphasize that neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review, because it is not reviewable under the statutory scheme noted above. Accordingly, I cannot take any of the actions you request. For similar reasons, I cannot report the alleged judicial misconduct to the U.S. Attorney General.

I hope that you find this letter helpful to explain why no further action will be taken on your request for review. Thank you.

Sincerely,

Ralph K. Winter
United States Circuit Judge

RKW/mrd

cc: Hon. Pasco M. Bowman II
Hon. Carolyn R. Dimmick
Hon. Barefoot Sanders
Hon. Dolores K. Sloviter
Robert P. Deyling, Assistant General Counsel

**Dr. Richard Cordero**

**Ph.D., University of Cambridge, England**
**M.B.A., University of Michigan Business School**
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**59 Crescent Street**
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January 8, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit"s Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

## I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of

jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized „argument" for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdic-

tion, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his actions.

Therefore, I respectfully request that you, as Chair of the Judicial Conference Misconduct Committee:

1. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
2. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
   a. forwarded to the Conference for review;
   b. otherwise, provide me with the names and addresses of the other members of the Committee to Review Circuit Council Conduct and Disability Orders;
3. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
4. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

## II. Accompanying Document and Exhibits


1. Dr. Richard Cordero's Statement of facts of December 18, 2004, and Request for an Investigation into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero .....5
2. Dr. Cordero's Petition of November 18, 2004, to the Judicial Conference of the United States for review of the actions of the Judicial Council of the Second Circuit In re: Judicial Misconduct Complaints CA2 docket no. 03-8547 and no. 04-8510, .....E-1
3. Key Documents and Dates in the procedural history of the judicial misconduct complaints filed with the Chief Judge and the Judicial Council of the Second Circuit docket nos. 03-8547 and 04-8510, submitted in support of the petition ..... E-xxiii
4. Table of Exhibits of the Petition..... E-xxv
5. Letter of December 9, 2004, of Assistant General Counsel Robert P. Deyling at the Office of the General Counsel of the Administrative Office of the U.S. Courts .....E-31
6. Dr. Cordero's letter of July 29, 2004, to Assistant General Counsel Jeffrey N. Barr at Office of the General Counsel Administrative Office of the U.S. Courts .....E-33
7. Dr. Cordero's Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero .....E-35
8. Table of Exhibits of the Complaint..... E-xlv
9. Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of the Court of Appeals for the Second Circuit intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this court to launch an investigation .....E-49

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# STATEMENT OF FACTS
# of December 18, 2004

## Accompanying the letter of January 8, 2005, to

## The Hon. Judge Ralph K. Winter, Jr.

### Chair of the Committee to Review Circuit Council Conduct and Disability Orders
### of the Judicial Conference of the United States

## and

# REQUEST FOR AN INVESTIGATION

## into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero

It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to „dispose" of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling"s boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office"s normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks" misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let"s call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel"s Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel"s Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel"s Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".

I called Ms. Bryson in Mr. Mecham"s Office and told her what had happened, but it was to no avail, for she said that the GC"s Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that

asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC"s Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC"s Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel"s Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he „processing" it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office"s website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What"s wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single

me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel"s Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel"s Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director"s and the GC"s Office.

Therefore, I respectfully request that you, as the Chair of the Misconduct Committee, and the Conference itself:

1. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office"s handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and

2. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),

   a. consider it hereby resubmitted;

   b. and cause its original, which is both bound with a file of supporting documents (cf. E-xlv), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on
January 8, 2005

Dr. Richard Cordero

**Dr. Richard Cordero**

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February 7, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

Dr. Richard Cordero

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

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

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

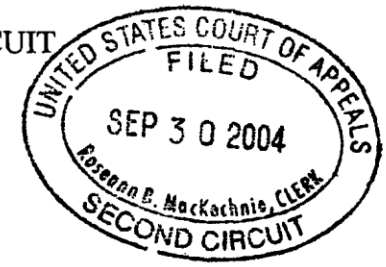
Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT




In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 03-8547

Before the Judicial Council of the Second Circuit:

A complaint having been filed on August 8, 2003, alleging misconduct on the part of a Bankruptcy Judge of this Circuit, and the complaint having been dismissed on June 8, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on July 14, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated June 8, 2004.

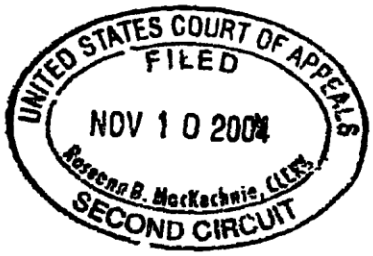
The clerk is directed to transmit copies of this order to the complainant and to the Bankruptcy Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: September 30, 2004
New York, New York

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT




In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 04-8510

Before the Judicial Council of the Second Circuit:

A complaint having been filed on March 29, 2004, alleging misconduct on the part of Circuit Judge of this Circuit, and the complaint having been dismissed on September 24, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on October 5, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated September 24, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Circuit Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: November 10, 2004
New York, New York

3/1/05

1 pk – 6 – 158½ – Numbered.
2 pk – 3 – 181 – numbered.
3 pk – 188 folds.
4 pk – 99½ folds.

Mary Dianetti.

Statement by Bankruptcy Court Reporter Mary Dianetti of the number of stenographic tapes and folds comprising her recording of the evidentiary hearing in the DeLano case held on March 1, 2005

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**********

**Judge Ninfo's bias and disregard for legality can be heard from his own mouth through the transcript of the evidentiary hearing held on March 1, 2005, and can be read about in a caveat on ascertaining its authenticity that illustrates his tolerance for wrongdoing**

1. The transcript in question concerns an evidentiary hearing that Judge John C. Ninfo, II, WBNY, ordered in connection with the DeLano Debtors" motion to disallow Dr. Richard Cordero"s claim against Mr. David DeLano, which claim the latter and his wife, Ms. Mary Ann DeLano, had taken the initiative to include in their bankruptcy petition of January 26, 2004. The hearing took

place on March 1, 2005, and was recorded by Reporter Mary Dianetti. She also recorded the very first hearing before Judge Ninfo in which Dr. Cordero participated. What happened with the transcript of that earlier hearing illustrates the kind of bias and disregard for the law, the rules, and the facts that occur when Judge Ninfo is in the background. Knowing it will help to understand the circumstances surrounding the above statement by Ms. Dianetti and the need to ascertain the authenticity of the transcript of the recent hearing so that through it the peers of Judge Ninfo can witness the blatant bias and disregard for legality that he engages in when he is very much in the foreground.

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### A. Court Reporter Dianetti participated in the manipulation of a trans-cript of a hearing before Judge Ninfo, which she failed to deliver to Dr. Cordero in more than two and a half months after he requested it

2. On December 18, 2002, the hearing was held of motion of Chapter 7 Trustee Kenneth Gordon to

dismiss Dr. Cordero‟s cross-claims in Pfuntner v. Gordon et al., docket no. 02-2230, WBNY. Dr. Cordero appeared by telephone. Judge Ninfo dismissed his cross-claims for negligence, recklessness, and defamation in the context of the Trustee‟s liquidation of Premier Van Lines, a moving and storage company. The Judge did so despite the legitimate issues of material fact that Dr. Cordero had raised and although the Trustee had provided no disclosure and there had been no discovery under FRCivP Rule 26. At the end of the hearing, Dr. Cordero stated that he would appeal.

3. After Judge Ninfo‟s order of December 30, 2002, was sent from Rochester and arrived in New York City, where Dr. Cordero lives, he called Reporter Dianetti on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Yet, weeks went by without hearing from her. Dr. Cordero had to call her on several occasions to ask why he had not received it. She screened part of another message that he was leaving on her answering machine and finally picked up the phone on Monday 10, 2003. She said that the transcript would be ready in two days.

4. As attested to by her certificate, Ms. Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after she was first requested it, whereby she violated FRBkrP Rule 8007(a). Moreover, in violation of 28 U.S.C. §753(b), Ms. Dianetti did not deliver the transcript directly to Dr. Cordero. Much worse yet, although the date on Ms. Dianetti‟s certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero‟s motion for rehearing for relief from Judge Ninfo‟s denial of his motion to extend time to file the notice of appeal from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26, in violation of FRBkrP Rule 8007(b). Interestingly enough, after Dr. Cordero made a statement at the March 26 hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. This reasonably suggests that the transcript was unlawfully withheld from Dr. Cordero until it could be found out what he would say at the hearing.

5. The transcript turned out to consist, not of 27 pages, but only of 15 pages of transcription! Were

pages left out containing what was said between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after Judge Ninfo cut him off at the December 18 hearing? That would constitute an ex parte communication between them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP Rule 9003.

6. Interestingly enough, when Ms. Dianetti finally picked up the phone on March 10, she said to Dr. Cordero „you want it [the transcript] from the moment you came in on the phone", that is, speakerphone. This implies that something had been said before or after Dr. Cordero was on the phone and that she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said „Good morning, Dr. Cordero." He said no, that he wanted everything from the moment the Judge had said „Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

7. Was Reporter Dianetti told to leave exchanges between Judge Ninfo and Trustee Gordon while Dr. Cordero could not hear them and, if so, who told her so and why? Was the mailing of the transcript to Dr. Cordero delayed so that it could first be vetted for compliance with those instructions? Have transcripts in other cases been manipulated to alter their contents or delay or even prevent their transmission either to the clerk or the party who ordered it? Was a benefit offered or received to participate in such manipulation? None of these and many other questions have been answered through any investigation. Yet, they arouse suspicion that transcripts may not be reliable. This experience prompted Dr. Cordero to ask certain questions of Reporter Dianetti at the recent hearing.

### B. Reporter Dianetti suffered a most strange attack of confusion and nervousness when at the end of the hearing on March 1, 2005, Dr. Cordero asked for a count of stenographic packs and folds

8. When the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim against

Mr. DeLano began at 1:31 p.m. on March 1, 2005, Dr. Cordero asked Reporter Dianetti whether there was any marker for the point where she was beginning to record. She said that she was beginning a new pack, that is, a pack of folds of stenographic tape.

9. After the hearing ended at 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Larraine Parkhurst was still by her side. He asked the Reporter how many packs she had used. That question spun Ms. Dianetti into an astonishing state of confusion and nervousness, all the more astonishing since she was still gathering the materials that she had just finished using to record the single hearing that afternoon.

10. First she said that there were two, but then she said that there was also a third pack that she had made by taping two sections together. Dr. Cordero asked her that she count the folds in each pack. She said that the estimate of pages was difficult to make because it could be three or four…He told her that he was not asking for an estimate of pages but for a simple count of folds in each pack. That only heightened her nervousness. She said that she needed a pencil. He asked what for. She said to count them. He asked what a pencil had to do with counting folds. She said she needed the head, that is, the head of the pencil, the eraser at the head, then she dropped that and began to show him the numbers on the back of the folds to try to determine the range, but that only made her confusion more pronounced and she said that it depended where she had began in pack the pack fold 1 to this is 159 then she no it is begun she began on fold it is 3 to 159 said that she rather it is 6 in one to 158 and a half she jumped to pack three that she had not marked pack 3 said came back to the issue of the estimate the pages of estimating the how many pages per fold she protested that nobody ever had asked her to do so why you are asking me to do counting what for you don‟t trust you think that when the pages come more pages but last time there were the number of the pages what she would send and the cost what had happened before that she had asked another person because she had not understood some words and it doesn‟t pay to be honest and this counting the pack is that it depende…„Ms. Dianetti, please, I just want to know the number of the packs and folds used today.‟

11. Dr. Cordero noticed the date on two packs that she had said belonged among those used for that hearing. He asked Court Attendant Parkhurst to look at them, she did, and he pointed out that they had been dated 2/1/05! Ms. Dianetti protested and asked Dr. Cordero whether he never made mistakes. Then she wrote on them the correct date of March 1.

12. Ms. Dianetti‟s state of confusion was such that Dr. Cordero asked Ms. Parkhurst whether she would count the folds. She agreed to do so but Ms. Dianetti protested because it was not fair to keep Ms. Parkhurst in the courtroom that she had to go to the house to stay here when she should be so late that it was…„Ms. Parkhurst, asked Dr. Cordero, do you mind staying here a while longer to count the folds? If we do not know exactly how many packs and folds were used, all that was said today and all the effort in preparing and attending this hearing will have been in vain‟. Ms. Parkhurst said that she did not mind and with Dr. Cordero at her side, she counted aloud the folds of the three packs and made a note for herself of what she had counted. Then he asked Ms. Dianetti to copy the numbers on his notepad so that she could sign it. She protested but went ahead and did it…„and this pack too I used today‟. Unbelievable! There was a fourth pack! It had been right there on her table all along. Dr. Cordero asked Ms. Parkhurst to count its folds, she did, and then added her count to her list; Reporter Dianetti also added it to the list that she was making for Dr. Cordero.

13. Dr. Cordero asked Attendant Parkhurst to sign as witness the list that Ms. Dianetti had made and signed (pg. 31, supra), but she declined to do so, showed him her list on her own notepad, and said that she had made a note of all the packs and folds and that would be enough. Dr. Cordero thanked her and Ms. Dianetti, went to his table and began to gather his book, exhibits, and his portable computer. What could possibly have triggered such confusion in Reporter Dianetti and caused her to become so nervous?

14. Interestingly enough, the attorney for Mr. DeLano, Christopher Werner, Esq., burst half way through the hearing with a protest to Judge Ninfo because he suspected that Dr. Cordero was recording the hearing on his computer. Did they have an understanding that there would be no independent recording of the hearing, nothing other than what Ms. Dianetti would record or rather, what a vetted transcript would contain? This question finds support in the fact that at the examination of the DeLanos under 11 U.S.C. §§341 and 343 on February 1, 2005, at the office of Chapter 13 Trustee George Reiber, the latter had made an official recording on audio tapes, a reporter had also stenographically recorded the meeting, and still Dr. Cordero had made his own recording using a tape recorder. This experience in conjunction with a hearing that was not going as well for Att. Werner as he could have expected in light of Judge Ninfo‟s undisguised bias toward his client, Mr. DeLano, before and during the hearing, could have suggested to Att. Werner, perhaps a bit too late, that Dr. Cordero might likewise have come prepared to make his

own recording of the hearing, which would frustrate any other arrangement for a different type of recording. Did it?

15. Was something going on between Court Reporter Dianetti, Att. Werner, and Judge Ninfo with regard to the transcript? Interestingly enough, as of February 28, 2005, PACER[1] showed that Att. Werner appeared as attorney in 575 cases, and in 525 the judge was Judge Ninfo. They have worked together on so many cases for so long that they have developed a special relationship. This relationship helps to understand not only why Att. Werner was so upset at the possibility that the benefit of the relationship could be diminished by Dr. Cordero making his own recording of the hearing, but also why Att. Werner took a back seat and let Judge Ninfo be so unashamedly biased as to become the advocate of Mr. DeLano while the latter was being examined by Dr. Cordero.

### C. Judge Ninfo manifested such undisguised bias before and during the hearing as to become the chief advocate for Mr. DeLano and counsel opposing Dr. Cordero

16. The evidentiary hearing was triggered by the untimely motion of July 19, 2004, to disallow Dr. Cordero‟s claim against Mr. DeLano, that is, after the DeLanos and Att. Werner had treated Dr. Cordero as a creditor for six months since the filing of the bankruptcy petition in which the DeLanos listed Dr. Cordero among their creditors. Mr. DeLano had known of that claim since Dr. Cordero served him with his third-party complaint of November 21, 2002, in the Pfuntner case. Therein the claim for compensation was predicated on the negligent and reckless way in which Mr. DeLano, as a bank loan officer of M&T Bank, had exercised the Bank‟s security interest in the storage boxes that Premier Van Lines, a moving and storage company, had bought with a loan. Premier was storing Dr. Cordero‟s property and went bankrupt too, like Mr. DeLano, a 32-year veteran of the banking and lending industry and as such an expert in managing borrowed money…and he went bankrupt? How suspicious!

17. Interestingly enough, the motion to disallow was raised on July 19, the day of the hearing of Trustee Reiber‟s motion to dismiss the petition due to the DeLanos‟ “unreasonable delay” in producing requested documents. At that hearing, Dr. Cordero presented evidence that the

[1] PACER is the system for **P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords. To corroborate the PACER statistics cited here go to https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>PACER>Query and write in the query box the name of the attorney or trustee in question.

DeLanos had engaged in bankruptcy fraud, particularly concealment of assets.

18. The DeLanos‟ motion to disallow was heard on August 25. By order of August 30, 2004, Judge Ninfo required Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him and present it at an evidentiary hearing. Dr. Cordero requested documents from Mr. DeLano, who denied every single one of them. Dr. Cordero moved to compel production, but Judge Ninfo denied every single one of them too! It was a set up! The motion to disallow was a subterfuge to eliminate from the bankruptcy case Dr. Cordero, the only creditor that had presented evidence of the DeLanos‟ bankruptcy fraud. Even documents that Dr. Cordero requested to defend against the motion and show that it had been raised in bad faith were denied by Judge Ninfo, who simply disregarded the broad scope of discovery under FRCivP Rule 26.

19. So Dr. Cordero arrived at the evidentiary hearing on March 1, 2005, without a single additional document having been produced by Mr. DeLano. However, he had prepared a set of questions. But very soon the most extraordinary fact became apparent: Mr. DeLano did not have any idea of the nature of Dr. Cordero‟s claim against him, the very one that he had moved to disallow. What is more, Att. Werner did not have any idea either! So much so that during the first recess in the hearing, he and Mr. DeLano walked out of the courtroom with the attorney for M&T Bank, Michael Beyma, Esq., and then Att. Werner and Mr. DeLano came back in and asked Court Attendant Larraine Parkhurst whether she had a copy of Dr. Cordero‟s complaint of November 2002 against Mr. DeLano! He was told that it had been filed with the court. Then Mr. Werner turned around and asked Dr. Cordero whether he had a copy. Dr. Cordero said that he had and Att. Werner asked him for a copy!

20. Att. Werner had come to the evidentiary hearing to have a claim disallowed of which he did not even have a copy. Not only that, but he also did not have even the pertinent parts of the complaint that Dr. Cordero had attached to the proof of his claim against Mr. DeLano, a copy of which Dr. Cordero had served on Att. Werner on May 15, 2004. As a result, Att. Werner did not have a clue either what the claim was all about. Therefore, how could he possibly have overcome the presumption of validity that under FRBkrP Rule 3001(f) attached to Dr. Cordero‟s claim upon its being filed on May 19, 2004? He could not. He was simply relying on his relationship with Judge Ninfo and their denial of Dr. Cordero‟s request for documents.

21. Dr. Cordero declined to provide Att. Werner with a copy of the complaint. Instead, he asked Att.

Werner not to leave the courtroom to get a copy of it in the records office only to come back in and pretend that he and Mr. DeLano knew all along what the claim was that they were trying to disallow. Att. Werner retorted that Dr. Cordero could not tell him, who has been in this business for over 28 years, how to practice law. Thereupon Dr. Cordero asked Ms. Parkhurst and Law Clerk Megan Dorr to call in Judge Ninfo before Att. Werner and Mr. DeLano could leave the courtroom.

22. When the Judge came in and the hearing was back on the record, Dr. Cordero related the whole incident. The Judge found nothing objectionable in such irrefutable proof that Att. Werner had not had before and did no have then any idea of the nature of the claim that he had moved to disallow. Nor did he find reprehensible that during an ongoing examination, Att. Werner had attempted to take advantage of a recess to feed Mr. DeLano answers to critically important questions. On the contrary, when Dr. Cordero moved to dismiss the motion to disallow because raised in bad faith as a subterfuge to eliminate him from the case and as abuse of process, Judge Ninfo denied his motion out of hand and said that it was Dr. Cordero who was making a motion in bad faith!

23. The hearing went on. Under examination, Mr. DeLano not only admitted facts asked of him about his handling of the storage boxes containing Dr. Cordero‟s property, but also volunteered others. Thus, he said that:

    a) Premier Van Lines had used the Jefferson-Henrietta warehouse to store the storage boxes bought with the loan from M&T Bank and containing the stored property of its clients, such as Dr. Cordero;

    b) Mr. DeLano had seen boxes there with Dr. Cordero‟s name and told Dr. Cordero so;

    c) Mr. DeLano was under pressure to have the storage boxes moved out of the Jefferson-Henrietta warehouse because the latter was going to put a lien on the boxes to secure unpaid warehousing fees, an action that would have delayed the sale and diminished Mr. DeLano‟s net recovery from liquidating M&T Bank‟s security interest in the boxes;

    d) So Mr. DeLano hired an auctioneer, John Renolds, to sell the storage boxes and the auctioneer sold them in a private auction to the single warehouser that he contacted;

e) Mr. DeLano did not check and did not know whether the auctioneer had checked the capacity of the buying warehouser, whose name he did not remember, to store property safely from damage or loss due to pests, water, humidity, extreme temperature, fire, and theft;

f) Mr. DeLano did not notify the owners of the property in the boxes to let them know how he intended to dispose of the boxes and find out from them how they wanted their property handled, such as by having it inspected before being removed, or moving it to a place of their choice, or finding out in advance the fees and terms and conditions of the buying warehouser;

g) After the sale, Mr. DeLano directed Dr. Cordero to the buying warehouser to deal with it about his property;

h) Dr. Cordero contacted that buying warehouser and its owner –neither of whose names and address Dr. Cordero use at the hearing but he did use them in the complaint containing the claim against Mr. DeLano- but the owner told him that he had no boxes bearing Dr. Cordero‟s name and that Mr. DeLano had sent him an acknowledgment of receipt that included Dr. Cordero‟s name, but that he would not sign it because he did not have any boxes holding Dr. Cordero‟s property;

i) Mr. DeLano admitted that he had sent the owner such acknowledgment of receipt but that the owner had turned out to be right because the boxes with Dr. Cordero‟s property had not been delivered to him given that they had not been in the Jefferson-Henrietta warehouse at all and that Mr. DeLano had made another mistake when he checked the slips in the business records that Premier had in its office in the Jefferson-Henrietta warehouse before including Dr. Cordero‟s name in that receipt;

j) Mr. DeLano admitted that his mistakes could have caused Dr. Cordero confusion and anxiety and cost him a lot of effort, time, and money as Dr. Cordero tried to find out where his property could be, which eventually was found in part lost or damaged in yet another warehouse, namely, that of Plaintiff Pfuntner; and that it was reasonable for Dr. Cordero to claim therefor compensation from him and M&T Bank and for Mr. DeLano and the Bank to compensate Dr. Cordero to a degree.

24. Upon Mr. DeLano making that frank admission, Dr. Cordero said that the degree of compensation was what had to be determined at trial where all the parties and issues could be tried as a whole. Mr. DeLano further admitted that at trial M&T Bank would call upon him to represent it since he was the officer who had handled the defaulted loan to Premier.

### D. Judge Ninfo disregarded the law and rules of Congress and abdicated his position as a neutral arbiter in order to apply the law of relationships with the local parties

25. During the examination, Judge Ninfo intervened repeatedly and consistently as the advocate of Mr. DeLano, either answering questions put to Mr. DeLano; spinning Mr. DeLano"s answers away from any admission of mistakes or liability; providing explanations for Mr. DeLano to escape difficult questions leading to the admission of the reasonableness of compensation; and finding fault with Dr. Cordero"s conduct at the time of the events in question or at the hearing. It is by listening to his own words conveyed in an accurate and complete transcript that the indisputable proof of Judge Ninfo"s shocking bias can be obtained. It is for that reason that it is so important that the transcript be requested from Reporter Dianetti and that it be checked against the number of packs and folds in her signed statement and that their authenticity be determined.

26. Where was Att. Werner during Judge Ninfo"s advocacy of his client"s interests? He was seated in his lower chair from which he would stand up at times to object to questions asked by Dr. Cordero, but not once did he object to any ruling of Judge Ninfo. What a remarkable deferential attitude throughout an examination that lasted from 1:31 p.m. to 7:00 p.m.!

27. Failure to preserve any objection for appeal has to be suspicious in itself, unless Att. Werner knew that there would be no need for him to appeal because he could take a favorable outcome for granted. This explains why he not only did not have to read Dr. Cordero"s claim before or after moving to disallow it, but why he also stated several times that he did not have to prepare himself or Mr. DeLano for the hearing. In what impartial court where the outcome of a proceeding is uncertain would a lawyer volunteer a statement that he and his client are unprepared? The fear of a malpractice suit would deter the lawyer from making such a statement. But there would be no cause for fear if the lawyer had the assurance that, however unprepared, he would deliver the desired outcome to his client thanks to having made the best preparation possible: a well developed positive relation to the judge that made both teammates. Att. Werner

has had the necessary deferential attitude and opportunity to develop such relation: 525 cases before Judge Ninfo, according to PACER.

28. In return, Judge Ninfo takes care of him. Indeed, what judge who respects his office and is considerate of the effort, time, and money of others would hear with indifference and allow a lawyer to say with impunity that he came to his courtroom so awfully unprepared and brought a witness totally unprepared? By not making any comment, let alone rebuking Att. Werner for his utter unpreparedness, Judge Ninfo showed his disregard for FRBkrP Rule 1, which provides that "[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"; a statement of purpose that is repeated in FRCivP Rule 1.

29. It is no wonder that, in the assurance of his protective relationship with Judge Ninfo, Att. Werner showed up at the hearing, not only without a copy of the claim that he was trying to disallow, but also without a single law book. After all, what need would he have for such books since he did not cite any rule to support his objections at the hearing, just as he has not cited, let alone discussed, any rule or law, forget about citing a case, in any of his papers submitted to the court. In so doing, he follows the example of Judge Ninfo, who does not cite any authority -unless he cites back what Dr. Cordero after painstaking legal research has cited and discussed- but only states or adds his conclusory statements without any discussion to support what in fact are rulings and decisions by fiat, not by legal reasoning, whether it be in any of his 15 orders or 15 hearings in the Pfuntner and DeLano cases. This is not the way a judge administers justice in a court of law deserving the public"s trust, but rather this is how a lord runs the private affairs of his fiefdom in his and his loyal vassals" interest. Hence, they need not cite authorities to derive or buttress a persuasive argument since they can simply send or have received the signal of a win.

### E. Judge Ninfo looked on in complicit silence while Atts. Werner and Beyma signaled answers to Mr. DeLano during his examination under oath

30. The transcript of that hearing will also show another shocking manifestation of bias that demonstrates Judge Ninfo"s contempt for due process: During the examination, Dr. Cordero remained at his table. To his right were Mr. DeLano, sitting in the witness stand; Att. Werner, at his table five feet away; and Att. Beyma, the lawyer for M&T Bank, in the first bench behind the bar, some nine feet away. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look

away from him and toward where the two attorneys were seated and as Dr. Cordero looked at them he caught them signaling to him with their arms!

31. Dr. Cordero protested such utterly unacceptable conduct to Judge Ninfo. He was sitting some 25 feet in front and between Att. Werner and Dr. Cordero and some 30 feet from Att. Beyma. Yet, Judge Ninfo found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything.

32. However, from the distance and higher level of his bench he had an unobstructed view of the two attorneys and Dr. Cordero, who were in his central field of vision so that it was all but impossible for him not to catch the distraction of either of them flailing his arm. Nevertheless, what he said was belied more patently by precisely what he did not say than by their relative physical positions: Not only did he not say that such conduct, intended to suborn perjury, would not be tolerated in his courtroom, but he also did not even ask either of the attorneys on any of those occasions whether they had signaled an answer to Mr. DeLano. Even if, assuming arguendo, he had not seen them signaling, he did no care to find out either. Yet, he had every reason to ask, precisely because of the same revealing nature of what neither of the attorneys said: Neither protested Dr. Cordero‟s accusation, which they reflexively would have done had it not been true that they had signaled to Mr. DeLano how to answer.

33. Judge Ninfo‟s reaction to such unlawful and unethical conduct shows that he runs a court tilted by bias that prevents progress toward a just and fair resolution of cases and controversies, swerving instead toward his own interests. He proceeds, not on the strength of the law or procedural rules, which he does not cite or discuss, but rather by the power of relationships developed with local parties. The opportunity to develop those relationships is ample. Thus, while Att. Werner has appeared before Judge Ninfo in 525 cases, Trustee Gordon has appeared before him in 3,382 out of 3,383 cases as of June 26, 2004; and Trustee Reiber in 3,907 out of 3,909 as of April 2, 2004, according to PACER. As to Att. Beyma, he is a partner in the same firm in which Judge Ninfo was a partner at the time of his appointment, that is, Underberg & Kessler.

34. These locals appear before him so frequently as to become dependent on his goodwill for the distribution of favorable and unfavorable decisions. What a lawyer or trustee may not get in one case, he may get 15 minutes later when he stands up again before Judge Ninfo for the next case…that is, if he has not shown disrespect by objecting to his rulings and dragging it up on

appeal, for the Lord of the Fiefdom grants rewards to those vassals who show deference, but he also meets out punishment to those who challenge him and show rebelliousness. As a result, the law of relationships is the basis on which Judge Ninfo runs his court, rather than a Court of the United States ruled by the law of Congress.

35. Bias is the device for implementing that law. It motivated Judge Ninfo‟s protection of Trustee Gordon by disregarding Congressional law and rules in order to dismiss out of hand Dr. Cordero‟s cross-claims against the Trustee at the first hearing on December 18, 2002. Dr. Cordero, a non-local appearing pro se, was expected to accept the ruling and leave it at that. But he didn‟t. He went on appeal. *The horror of it!* Ever since Judge Ninfo has treated Dr. Cordero as an enemy, not as a litigant exercising his rights and entitled to due process.

36. Then the DeLanos filed their bankruptcy petition and Dr. Cordero presented evidence of their bankruptcy fraud. But Mr. DeLano has been a bank officer for 32 years and as a *loan* officer, he has handled defaulting borrowers, some of whom have ended filing for bankruptcy, as did the owner of Premier, Mr. David Palmer. Mr. DeLano knows too much to be left outside the castle of the Fiefdom, the courtroom where Lord Ninfo protects deserving vassals.

37. The chronicler of the Fiefdom is Court Reporter Dianetti. What will she report in her chronicle of the campaign that Lord Ninfo mounted against the Diverse Citizen of the City of New York, Dr. Cordero, at the hearing on March 1, 2005? Did she become so confused and nervous when asked for a count of the stenographic packs and folds that she had barely finished using because she felt under attack by the Enemy of the Fiefdom and torn in her loyalty to her Lord and the truth?

## F. The transcript can allow the peers of Judge Ninfo to hear his bias from his own mouth, but its authenticity must first be ascertained by unrelated investigators, who should then investigate those related to him and these cases

38. There are so many interesting questions posed by circumstances in these cases that reinforce each other to impress a bias to their outcomes. They are enough to eliminate coincidences as the phenomenon that explains them away. Instead, when the totality of circumstances are assessed as a whole in terms of the law and common sense, they indicate intentional conduct supported by coordination in furtherance of a wrongful scheme. Its nature and extent can only be ascertained by an investigation.

39. The investigators must be experienced because the persons to be investigated are capable of concealing their unlawful coordination under the cover of their frequent or even daily work contacts. This also provides reasonable grounds to exclude the peers of Judge Ninfo from acting as the investigators of his conduct and that of the people around him. Hence, the investigation should be conducted by U.S. attorneys and FBI agents.

40. However, for their work to have a chance to be trustworthy rather than a whitewash, the investigators must not even know any of the persons that they may investigate. So they must not come from the DoJ or FBI offices in Rochester or Buffalo, who are housed in the same federal building as the courts. By way of example, the U.S. Attorney‟s Office in the six story federal building in Rochester is the next door neighbor of the U.S. Trustees Office. Of necessity, these officers see each other every day and the relationship that has developed among them is most likely to cloud their objectivity and influence their thoroughness and zeal when investigating their building acquaintances, let alone friends. In brief, they must not be subject to the law of relationships that gave rise to the wrongdoing under investigation in the first place.

41. By the same token, the first element of the investigation should be the transcript itself that Reporter Dianetti may provide. It must be checked against the original stenographic packs and folds and the statement of their count that she signed off on. Likewise, the authenticity of those claimed to be the originals must be ascertained as well as their untampered-with condition. If this preliminary work establishes that they are the basis for an accurate and complete transcript, the latter will also be the basis from which to gain a first view of Judge Ninfo acting as a biased advocate for local parties rather than an impartial arbiter.

42. If you would not treat a litigant before you, much less allow to be treated as a litigant, the way Judge Ninfo treated Dr. Cordero, then it is respectfully submitted here that you have a professional and moral duty to call for a more comprehensive and independent investigation to determine the extent to which Judge Ninfo‟s pattern of bias and disregard for legality is motivated by his participation in non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.

March 12, 2005

Dr. Richard Cordero

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

BLANK

# Dr. Richard Cordero

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

**59 Crescent Street**
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March 26, 2005

Hon. Pasco M. Bowman
Member of the Committee to Review
Circuit Council Conduct and Disability Orders
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
St. Louis, MO 63102

Dear Judge Bowman,

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, infra) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

By letter of December 9, 2004, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised (3§II). As part of my efforts to have the petition submitted to the Conference to let it decide the issue of its jurisdiction, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chair of the Committee to Review Circuit Council Conduct and Disability Orders (43; 51). Judge Winter answered on February 15 (25). I am submitting to you my reply (28; 29) to his letter because under 28 U.S.C. §331 the Committee as a whole must review all petitions.

For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

Dr. Richard Cordero

JC:413

**Dr. Richard Cordero**

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March 26, 2005

Hon. Carolyn R. Dimmick
Member of the Committee to Review
Circuit Council Conduct and Disability Orders
U. S. District Court, Western District of Washington
700 Stewart Street
Seattle, WA 98101

Dear Judge Dimmick,

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, infra) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

By letter of December 9, 2004, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised (3§II). As part of my efforts to have the petition submitted to the Conference to let it decide the issue of its jurisdiction, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chair of the Committee to Review Circuit Council Conduct and Disability Orders (43; 51). Judge Winter answered on February 15 (25). I am submitting to you my reply (28; 29) to his letter because under 28 U.S.C. §331 the Committee as a whole must review all petitions.

For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

Dr. Richard Cordero

JC:414

**Dr. Richard Cordero**

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

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

March 26, 2005

Hon. Barefoot Sanders
Member of the Committee to Review
Circuit Council Conduct and Disability Orders
U. S. District Court, Northern District of Texas
1100 Commerce Street, Room 1504
Dallas, Texas 75242-1003

Dear Judge Sanders,

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, infra) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

By letter of December 9, 2004, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised (3§II). As part of my efforts to have the petition submitted to the Conference to let it decide the issue of its jurisdiction, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chair of the Committee to Review Circuit Council Conduct and Disability Orders (43; 51). Judge Winter answered on February 15 (25). I am submitting to you my reply (28; 29) to his letter because under 28 U.S.C. §331 the Committee as a whole must review all petitions.

For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

Dr. Richard Cordero

JC:415

**Dr. Richard Cordero**

**Ph.D., University of Cambridge, England**
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March 26, 2005

Hon. Dolores K. Sloviter
Member of the Committee to Review
Circuit Council Conduct and Disability Orders
U. S. Court of Appeals for the Third Circuit
18614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sloviter

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, infra) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

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For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

Dr. Richard Cordero

JC:416

# TABLE OF EXHIBITS

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LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

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

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel

United States Court of Appeals
SECOND CIRCUIT

CHAMBERS OF
RALPH K. WINTER
U.S. CIRCUIT JUDGE
U.S. COURTHOUSE
141 CHURCH STREET
NEW HAVEN, CT 06510

(203) 782-3682

February 15, 2005

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

Dear Dr. Cordero:

Thank you for your two letters, dated January 8 and February 9, 2005, regarding your November 20, 2004 request for review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit. Those orders denied review of the dismissals by the Chief Judge of the Second Circuit of two judicial conduct complaints: your August 11, 2003 complaint against United States Bankruptcy Judge John C. Ninfo, II, and your March 19, 2004 complaint against Chief Judge John W. Walker, Jr.

Please note that I am also aware of your nearly identical letters to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, to Judge Carolyn King, Chair of the Executive Committee of the Judicial Conference, and to members of the Judicial Conference. My response in this letter will eliminate any need for their further responses to your correspondence.

Your January 8th letter requested several actions, and I will address your requests in the order they appear.

First, you suggest that the December 9, 2004 letter you received from Assistant General Counsel Robert P. Deyling should be declared "devoid of any effect as ultra vires" and withdrawn. Having reviewed the material you sent me as well as the December 9th letter, I can confirm for you that Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act ("the Judicial Conference Rules").

As Mr. Deyling's letter correctly noted, the Judicial Conference does not have jurisdiction for further review of your complaint. The process for addressing complaints against judges is specified at 28 U.S.C. §§ 351 - 364. You correctly followed the statutory complaint process to its final conclusion when you obtained the orders from the Judicial Council of the Second Circuit denying your petition to review the dismissal of your complaints. A careful reading of the statute makes this very clear.

Under 28 U.S.C. § 352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed. As permitted by 28 U.S.C. § 352(c), you then petitioned to the judicial council for review of the chief judge's dismissal. The judicial council unequivocally denied your petitions. Those two denials, both taken under § 352(c), are "final and conclusive and shall not be judicially reviewable on appeal or otherwise."

The Judicial Conference review you seek is only available in certain extremely limited circumstances, and your request for review does not meet the statutory standard. Again, a careful reading of the statute leads inexorably to this conclusion, as Mr. Deyling's letter correctly explained. Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by a judicial council under § 354. A judicial council may take action under § 354 only following receipt of the report of a "special investigating committee" convened pursuant to § 353.

The chief judge did not appoint a special investigating committee under § 353 in your case. The judicial council denied your petition for review under § 352, not under § 354. Accordingly, it is clear that the only review available in your case was the review you already obtained from the Judicial Council of the Second Circuit.

This analysis, which confirms the conclusions Mr. Deyling reached in his letter to you, leads me to your second request. You ask me to forward your materials to the Judicial Conference and/or to the Committee to Review Circuit Council Conduct and Disability Orders ("the Committee"). As the Chair of the Committee, I must deny your request. Under the controlling statute, and under the Judicial Conference Rules for processing petitions for review, neither the Committee nor the Judicial Conference has jurisdiction or authority to act upon your request for review.

I also note your various references to the Judicial Conference Rules, and your arguments that the rules provide some independent basis for jurisdiction, or require the Committee or the Judicial Conference itself to take various actions with respect to your request for review. You have misinterpreted the scope and applicability of the Judicial Conference Rules. By their express terms, the rules apply to *"petitions for review submitted to the Conference under 28 U.S.C. § 357 [former 28 U.S.C. § 372(c)(10)], seeking review of circuit council actions taken under 28 U.S.C. § 354 [former 28 U.S.C. § 372(c)(6)] upon complaints of judicial conduct or disability"* (emphasis added). As I explained above, your petition seeks review of a judicial council action taken under 28 U.S.C. § 352(c). The governing statute does not provide you with any entitlement to review, by the Committee or by the Judicial Conference itself, of an action taken under § 352(c).

My answer to your first two requests implicitly addresses your remaining two requests.

Namely, you asked me to "consider and take action on the accompanying Statement of Facts and Request for an Investigation." You appear to request this action under Rule 12 of the Judicial Conference Rules. Again, I emphasize that neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review, because it is not reviewable under the statutory scheme noted above. Accordingly, I cannot take any of the actions you request. For similar reasons, I cannot report the alleged judicial misconduct to the U.S. Attorney General.

I hope that you find this letter helpful to explain why no further action will be taken on your request for review. Thank you.

Sincerely,

Ralph K. Winter
United States Circuit Judge

RKW/mrd

cc: Hon. Pasco M. Bowman II
Hon. Carolyn R. Dimmick
Hon. Barefoot Sanders
Hon. Dolores K. Sloviter
Robert P. Deyling, Assistant General Counsel

**Dr. Richard Cordero**

**Ph.D., University of Cambridge, England**
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**59 Crescent Street**
**Brooklyn, NY 11208-1515**
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March 24, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re petition for review by the Judicial Conference

Dear Judge Winter,

Thank you for your letter of February 15 concerning my letters of last February 7 and January 8, and my petition of November 18, 2004, to the Judicial Conference for review under the Judicial Conduct and Disability Act. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue. I requested that you cause my petition to be forwarded to the Conference for it to determine the issue of jurisdiction and eventually the petition itself.

I have prepared a reply to your letter and for the reasons stated therein, I respectfully request that you formally submit it to the other members of the Committee as well as to the Judicial Conference.

sincerely,

Dr. Richard Cordero

# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

**CA2 dockets no. 03-8547**
**and no. 04-8510**

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

---

## REPLY
## to the Chairman of the Committee to Review Circuit Council Conduct and Disability Orders on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions for review to the Judicial Conference and on the need for the Conference to decide the issue of jurisdiction

---

Dr. Richard Cordero, Pro se Petitioner, affirms under penalty of perjury the following:

1. Under the Judicial Conduct and Disability Act, 28 U.S.C. §351 et seq., (hereinafter the Act), Dr. Richard Cordero filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, to the Judicial Conference (page 1, supra) for review of two orders of the Judicial Council of the Second Circuit denying (Exhibits page 37=E-37; E-55, infra) his petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) dismissed by the Circuit"s acting chief judge (E-11; E-45).
2. By letter of December 9, 2004, the Assistant General Counsel of the Administrative Office, Robert P. Deyling, Esq., (23, supra) informed Dr. Cordero that "no jurisdiction lies for further review by the Judicial Conference of the United States" and failed to forward the petition to the Conference.
3. Dr. Cordero contends that Mr. Deyling and the Administrative Office only render clerical work for the Conference and have no authority either under the Act or the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (hereinafter the Conference Rules), to pass judgment on any issue, much less on the threshold issue of jurisdiction, and thereby prevent the Conference from even receiving a petition for review, let alone determining by itself the issue of its jurisdiction to entertain the petition.

4. Hence, on January 8 and February 7, 2005, (43; 51, infra) Dr. Cordero wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders (hereinafter the Committee), to request that he declare or cause the Conference to declare Mr. Deyling‟s letter to be devoid of any effect as ultra vires and withdraw it and have his petition forwarded to the Conference for review. Judge Winter answered by letter dated February 15, 2005 (23, supra). Dr. Cordero submits this reply to that letter (cf. 28, supra).

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**I. 28 U.S.C. §331 requires that "*all* petitions for review *shall* be reviewed by that committee [to review circuit orders]", so while its chairman can cause it to review a petition, he cannot prevent it or the Judicial Conference from engaging in such review, which should be undertaken by the Conference given the far reaching impact of a decision on the scope of its jurisdiction.....31**

**II. The petition to the Judicial Conference explicitly seeks review under §357(a), which is not excluded by action allegedly taken under §352(c) by the Council, although it never even pretended to have acted thereunder.....32**

A. Subsection 352(c) only states the prerequisite of being "aggrieved" for petitioning a council and the effect of a council's denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council's action .....34

B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is "aggrieved" .....37

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**IV. The request for a report under18 U.S.C. 3057(a) to the U.S. Attorney General for an investigation into bankruptcy fraud called on the judges to abide by their obligation thereunder, which is totally independent from any issue of jurisdiction of the Conference or the Committee under the Act .....40**

**V. Relief requested .....41**


**********

## I. 28 U.S.C. §331 requires that "*all* petitions for review *shall* be reviewed by that committee [to review circuit orders]", so while its chairman can cause it to review a petition, he cannot prevent it or the Judicial Conference from engaging in such review, which should be undertaken by the Conference given the far reaching impact of a decision on the scope of its jurisdiction

5. In his letter Judge Winter stated that "Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules" (23, supra). However, Judge Winter failed to cite any Conference Rule or provision of law that gives either Mr. Deyling or the Administrative Office authority to pass judgment on any issue, much less on the threshold issue of jurisdiction. Therefore, his conclusory statement is insufficient to dispose of Dr. Cordero's contention that neither Mr. Deyling nor the Office is authorized under the Act or the Rules to do anything other than clerical work, such as receiving a petition and distributing it to the Conference, which is the only entity that can pass judgment on whether it has jurisdiction to review a petition. "A careful reading of the statute makes this very clear" (23, supra).

6. Thus, Conference Rule 9 states the limited scope of clerical work that either can perform:

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

In turn, 28 U.S.C. §331, 4th paragraph, provides as follows:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and ***all*** petitions for review ***shall*** be reviewed by that committee. (emphasis added)

7. This provision is authority for the proposition that the Committee has the legal obligation to act and do so with respect to "all petitions for review", such as Dr. Cordero's and not just such as in the judgment of the Administrative Office or a clerk thereof can be forwarded to the Conference. *"All"* of them "shall be reviewed by that committee", which means that not even the chairman of that Committee, in this case Judge Winter, has the legal authority to decide in lieu of the whole Committee to deny review.

8. In this case, however, it should be the Judicial Conference itself to undertake such review. This is so because the issue of jurisdiction goes to the essence of its power to function in the context of the Act and because the argument made in Dr. Cordero's petition in favor of its jurisdiction is

novel. The basis for calling it novel is that in the 25 years since the Act was adopted in 1980, the Conference has only issued 15 orders and Dr. Cordero read all of them after managing to have the Administrative Office send them to him. None of them contains an argument for jurisdiction based on an analysis of the Act. As an issue on first impression that requires the interpretation of the Act to determine the interrelationship between its provisions, as shown below, and that will have an impact far beyond this petition by affecting the availability of review under the Act for all other complainants, the scope of the Conference‟s jurisdiction should be determined by the whole Conference, not the Committee.

9. It is the Conference that has the necessary power to depart, if need be, from a narrow interpretation of its jurisdiction that has rendered the Act a useless mechanism for processing judicial misconduct complaints and eliminating the underlying causes for such complaints. This has frustrated Congress‟ purpose in enacting it and even led Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair a committee to study its misapplication. Therefore, for the Conference to decide this petition‟s arguments for its jurisdiction and eventually decide the petition will be a step toward correcting the profound, long-standing problem of the Act‟s evisceration as well as one consistent with the action taken to that end by the Conference‟s president and the top officer of the Judicial Branch. Under these circumstances, the Committee should defer to the Conference, from which it derives its jurisdiction, and the Conference should take the opportunity to deal in depth with the Act through this petition (1, supra).

## II. The petition to the Judicial Conference explicitly seeks review under §357(a), which is not excluded by action allegedly taken under §352(c) by the Council, although it never even pretended to have acted thereunder

10. Judge Winter stated in his letter that "your petition seeks review of a judicial council action taken under 28 U.S.C. §352(c)" (24, supra). That statement is inaccurate both as a matter of fact and of law.

11. To begin with, Dr. Cordero‟s petition for review to the Conference explicitly states what basis of jurisdiction it invokes. Its first substantive section after the statement of the questions presented for review is this: "II. The Judicial Conference has jurisdiction over this appeal because the complainant was "aggrieved" by the Judicial Council" (3, supra). The term "aggrieved" appears in §357(a), which reads thus:

> **28 U.S.C. §357. Review of orders and actions**
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved

> by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

12. It is on the basis of §357(a) that Dr. Cordero invoked the Conference"s jurisdiction to review his petition. By its own terms, that section is broad enough to encompass his petition because he was "aggrieved" by the Council when without any investigation it denied his two petitions for review of the orders of the acting chief judge, who dismissed his two complaints without any investigation either, thereby leaving him to continue to suffer the misconduct of the complained-about judges (E-83; E-109).
13. Moreover and as a matter of fact, the Council did not even pretend to have denied the petition under §352(c). Anybody who is familiar with the way the Council systematically discards petitions for review, knows that it only issues a form that none of its members bothers to sign and that by hand of the circuit executive states that:

> Upon consideration thereof [of the chief judge's order dismissing the complaint and the complainant's petition for review]
>
> ORDERED that the petition for review is DENIED for the reasons stated in the order dated [and the date of the chief judge's order].

14. That is the stated basis on which the Judicial Council of the Second Circuit denied on September 30 and November 10, 2004 (E-37; E-55) each of Dr. Cordero"s two petitions for review of the acting chief judge"s orders of dismissal (E-11; E-45). Since the acting chief judge dismissed each of the complaints with disregard for his obligations under §§351-353 with respect to those complaints and as part of a pattern of systematic dismissal of judicial misconduct complaints (18§IV, supra; E-52), the Council only further "aggrieved" Dr. Cordero for having lent its support to such disregard for the Act.
15. By its own words, the Council could not have taken action under §352(c). Its own *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §351 et seq.* (hereinafter JC2nd Rules), do not even mention §352(c). Neither the members of a review panel nor those of a whole council are afforded the opportunity or have the means of expressing whether they are taking action under §352(c), or for that matter any other provision, such as §354. Their options for action are these:

> **JC2nd Rule 8. Review by the Judicial Council of a Chief Judge's Order**
>
> **…**
>
> **(b) Mail ballot.** Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form

> will provide opportunities to vote to (1) ***deny*** the petition for review, or (2) ***refer*** the petition to the full membership of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.
>
> Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council ***member voting to place the petition on the agenda*** of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.
>
> The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be **placed on the agenda** of a council meeting upon the **votes** of at least **two members** of the council; **otherwise**, the petition for review will be **denied**. (emphasis added)

16. Panel members have nothing more to do than to put a check mark in a denial or referral box. But if any of them or any other member of the council writes anything else, it is to explain why the council as a whole should consider the petition, rather than why it should deny it. Denial comes by default, due to the failure of any other judge to second a judge's initial vote for consideration. Furthermore, even if the whole council takes a decision, it does not have to state whether it was under §352(c) or §354. Actually, it does not even have to explain its decision in a memorandum:

> **JC2nd Rule 8. (f) Notice of Council Decision.**
> (1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

### A. Subsection 352(c) only states the prerequisite of being "aggrieved" for petitioning a council and the effect of a council's denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council's action

17. This is what subsection §352(c) provides:

> **§352(c) Review of orders of chief judge.** –A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

18. The first sentence of this subsection shows that if a complainant can be "aggrieved" by a chief judge's final order, then he can be equally "aggrieved" when a council denies his petition expressly on the basis of that very same order. That reason for being "aggrieved" falls within the very broad scope of the term, which the Act does not limit by reference either to the order's

content or circumstances of issue. (4§A, supra)

19. No analysis of that sentence or the whole subsection, let alone a gloss over it, can possibly conclude that if a council denies a petition allegedly under §352(c), then the complainant cannot legally be "aggrieved" by its denial or that he cannot be so much so as to qualify within the purview of the very same term "aggrieved" under §357(a). A basic rule of construction provides that a word in a legal instrument has the same meaning everywhere it is used with no differentiating qualifier. Both §352(c) and §357(a) use the term the same way: „An aggrieved complainant or judge".

20. Not only that key term links those two provisions, but also the Act's structure and workings link §352(c) to §354. Indeed, the second sentence of §352(c), by its own terms only states the **effect** of a council's denial of a petition for review. It does not state how a council can review a petition, let alone deny it. That cannot mean that §352(c) constitutes an unbounded grant of power to a council to do whatever it wants. It should be axiomatic that in a government subject to the rule of law no entity of any of its branches, such as a council is within the Judicial Branch, can act or refuse to act arbitrarily, just because it feels like it or it suits the interest of the class of persons that compose it, which in this case would be the interest of protecting complained-about peer judges and the public image of the class. Therefore, even a council constrained or permitted to take action must do so within the bounds set down by law or rule.

21. Section 354 is where the Act imposes on a council the duty and grants it the power to act. This is expressed unequivocally by its title:

    **§354. Action by judicial council**

22. By contrast, §352 provides for a different type of action by a different actor and at an earlier stage, so it is titled thus:

    **§352. Review of complaint by chief judge**

23. It is not in the latter section dealing with action by a chief judge, let alone in a subsidiary sentence of a subsection therein, where the council would reasonably go to find out what it is that it can do under the Act. Legislative drafting is assumed to be carried out by as reasonable people as the reasonable man and woman who provide the standard of conduct against which the conduct of the addressees of the law is measured. Hence, it is untenable to assume that Congress was so unreasonable as to nest in a sub-sub level of a section concerned with a chief judge a grant to a council of its largest measure of power: Power to deny a petition for any

reason and no reason without any procedural requirements.

24. Reasoning by opposite also leads to the conclusion that §352(c) is not a stand alone provision that grants a council unbounded power to act and not to act without regard for the rest of the Act: Suppose that instead of denying the petition for review of the chief judge‟s order, a council were to grant it. Could the mere fact that no special committee was appointed and that the council lacked the information that its report would have contained constitute the grounds for the council to claim authority to take any action whatsoever that it fancied, including any action that the complainant requested as relief in his petition? *"Of course not!",* the complained-about judge would scream and any person of sound judgment would have to agree with him. By the same token, the complainant would argue, the complained-about judge could not, just because of those circumstances, be the one to set bounds on what the council could do. Rather, a conscientious council striving to avoid even the appearance of taking arbitrary and biased action and to demonstrate its respect for the rule of law would have to look to §354 to determine what action it had the duty to take, what powers it had to discharge it, and the bounds for their exercise. It follows that even if a council took action under §352(c), it would still have to look to §354 to determine what actions it had to take to achieve the purpose of the Act and could take to remain within its bounds.

25. Section 354 opens by setting a bound thus:

> **§354. Action by judicial council**
> **(a) Actions upon receipt of report.-**
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-…

26. To take action under §354(a), the council must have received a report. The Judicial Council of the Second Circuit could not have remained within that bound when it denied Dr. Cordero‟s petition for review because the Council could not have received a report since no special committee was ever appointed so that no committee conducted any investigation on which a report could have been submitted.

27. Just because the Council was deprived of the benefit of a special committee report it was not constrained to take action under §352(c) and deny any and all petitions. Section 354(b) empowered it to conduct its own investigation. It provides thus:

> **§354. (b) Referral to Judicial Conference.-**
> **(1) In general.**- In addition to the authority granted under subsection (a), the judicial council may, ***in its discretion***, refer any complaint under section 351,

> together with the record of ***any*** associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States. (emphasis added)

28. This subsection endows a council with discretionary power to forward a complaint on its own to the Conference, and if "any associated proceedings" have taken place, then it must join them to the complaint upon forwarding it to the Conference. The terms "any complaint under section 351" and "any associated proceedings" are sufficiently broad to allow a council „to conduct any investigation which it considers to be necessary", cf. §354(a)(1)(A), of any complaint regardless of how the chief judge disposed of it. This grant of power encourages referral to the Conference precisely where the chief judge has failed to undertake proceedings that he should have associated to his handling of the complaint, such as „conducting a limited inquiry" under §352(a) or „appointing a special committee" under §353.
29. Both the chief judge and the council failed to investigate. Yet, they should have investigated because of the strength of the evidence of judicial misconduct presented in the complaint (E-1; E-40-42) and of the harm that the misconduct did to Dr. Cordero in particular and to the administration of justice by the courts for the public benefit in general. Their failure to investigate constituted abuse of discretion. Worse still, their failure was part of their systematic dismissal of complaints and denials of petitions. It constituted dereliction of duty, the intentional disregard of their duty to achieve the purpose of the Act by eliminating judicial misconduct "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)). On both counts the chief judge and the council "aggrieved" Dr. Cordero and afforded him the basis for petitioning the Conference.

### B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is "aggrieved"

30. A chief judge cannot insulate himself from review by the Judicial Conference by the simple maneuver of not appointing a special committee to investigate whether a judge's conduct has been "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)). To do so would only allow the business of the courts to continue being administered ineffectively and sluggishly, thereby defeating the Act's purpose, which is not to protect the

chief from embarrassment, but rather to eliminate such prejudice. Hence, such non-appointment is a particularly perverse maneuver because it covers for the chief judge‟s interest in not having instances of bad administration exposed during his term in office and associated with him.

31. In the same vein, a council, precisely when it is least informed because it lacks the report of an investigation by a §353 special committee, cannot spare itself any investigation under §354(b) of the complaint and, by merely pretending to have denied under §352(c) a petition for review of a chief judge‟s uninformed and likely self-serving order, insulate itself from review by the Judicial Conference. Such expediency only compounds the prejudice to the Act‟s purpose and aggravates the deleterious effect of the perverse maneuver on the courts‟ business.
32. If the chief judge looks after himself, and the council of his peers looks only at his order, and the Conference never even sees a petition, who ever reviews the causes for complaint in the business of the courts? No wonder the Conference has issued only 15 orders in the 25 years since the Act was passed in 1980. Such a self-defeating construction of the Act cannot be the way Congress intended the Act to be read. This is particularly so when there is an alternative and reasonable construction of the second sentence of §352(c): A judicial council‟s denial of a petition is final unless the complainant or the judge is "aggrieved" under the terms of §357(a) and §354, such as by their failure to investigate a complaint, but if so, an appeal lies only in the Judicial Conference, not in an appeal to the courts.

## III. Although both the chief judge and the Council are required by the Act to handle complaints "expeditiously" and "promptly", they failed so to handle the complaints of Dr. Cordero, whereby they also "aggrieved" him and provided further basis for his petition to the Conference

33. Judge Winter also wrote that "Under 28 U.S.C. §352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed" (24, supra). This statement is contrary to the facts.
34. Dr. Cordero‟s complaint against Bankruptcy Judge John C. Ninfo, II, WBNY, docket no. 03-8547, was filed on August 11, and reformatted and resubmitted on August 27, 2003 (E-1). It was dismissed only on June 8, 2004 (E-11). Under what conceivable notion of "expeditious" is action taken 10 months later "expeditious"!? Ten months despite the evidence (E-39-42) that neither Chief Judge John M. Walker, Jr., nor Acting Chief Judge Dennis Jacobs used the time to "conduct a limited inquiry", as required under §352(a), and the fact that neither appointed a special

committee. Ten months without taking action while a pro se and non-local litigant was being abused by a biased judge! (E-121§IV) Ten months even though on February 2, 2004, Dr. Cordero wrote to the Chief Judge to expressly bring to his attention the requirement that the Act laid upon him to handle a judicial misconduct complaint "promptly" and "expeditiously". (E-7)

35. Ten months despite the fact that on March 19, 2004, Dr. Cordero filed a complaint against the Chief Judge himself precisely for his failure to act "promptly" and "expeditiously" (E-39), whereby he was unlawfully and insensitively tolerating further injury to Dr. Cordero at the hands of one of his peers, Judge Ninfo. For its part, that complaint, docket no. 04-8510, was not dismissed until September 24, 2004, (E-45), that is, more than half a year later again without even a limited inquiry or the appointment of a special committee. What is more, it was dismissed on the allegation that it had become moot by the dismissal of the earlier complaint (E-48§II). So why did Acting Chief Judge Jacobs fail to state so "promptly" and "expeditiously" (E-50§III) since he was the one who dismissed the earlier complaint rather than inconsiderately make Dr. Cordero wait for months in vain during which he could have engaged the petition process?

36. Consequently, when the Judicial Council of the Second Circuit failed to exercise its discretionary power under §354(b)(1) to conduct the investigation that Chief Judge Walker and Acting Chief Judge Jacobs should have undertaken and that could have allowed them to corroborate Dr. Cordero‟s contention of judicial misconduct and caused them to take corrective action, the Council disregarded the purpose of the Act and its duty thereunder to attain it. By so doing, the Council left undisturbed the complained-about Judge Ninfo and other court officers (E-86§II) who have engaged in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the benefit of the local parties (9§1, supra; E-92§IV) and to the detriment of Dr. Cordero, the only non-local and pro se party (E-90§III), as to constitute a pattern of non-coincidental, intentional, and coordinated wrongdoing (8§III, supra) in support of a bankruptcy fraud scheme (11§§2-3, 15§B, supra; E-31). Through such disregard for legality and bias Judge Ninfo has caused Dr. Cordero since 2002 an enormous waste of effort, time, and money and inflicted upon him tremendous aggravation. By their inaction, the Chief Judge, the Acting Chief Judge, and the Council have condoned Judge Ninfo‟s misconduct and thus encouraged him to further engage in it, which he has done since Dr. Cordero filed his complaint in 2003, and as recently as March 1, 2005 (53, infra). Through dereliction of their duty under the Act, Chief Judge Walker, Acting Chief Judge Jacobs, and the Council of the Second Circuit

have insensitively and wrongfully failed to protect a complainant. What is more, they have condoned the denial by Judge Ninfo and thereby engaged themselves in the denial to Dr. Cordero of due process of law under the Constitution (E-128§I). By so doing, they have "aggrieved" Dr. Cordero. As an "aggrieved" complainant under §357(a), Dr. Cordero now has the right to have his petition reviewed by the Judicial Conference.

## IV. The request for a report under18 U.S.C. 3057(a) to the U.S. Attorney General for an investigation into bankruptcy fraud called on the judges to abide by their obligation thereunder, which is totally independent from any issue of jurisdiction of the Conference or the Committee under the Act

37. Judge Winter also stated that he "cannot report the alleged judicial misconduct to the U.S. Attorney General [because] neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review" (24, supra).

38. To make that request, Dr. Cordero explicitly invoked 18 U.S.C. 3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…(emphasis added)

39. By its own terms, this provision has absolutely nothing to do with the Conference or the Committee, much less with whether either has jurisdiction under the Act to review a petition. It has to do only with whether a person is a "judge, receiver, or trustee" and has, not even evidence or certainty, but rather just "any reasonable grounds for believing" that any provision of Title 18, Chapter 9 on bankruptcy, has been violated, such as that at §152(6) prohibiting the „offer or receipt of a benefit for acting or forbearing to act in a bankruptcy case" or at §152(8) prohibiting „the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor". If so, he "***shall*** report to the appropriate United States attorney". This is not an option; it is an obligation to act. That is what the law imposes on such a judge.

40. Hence, when judges shirk that obligation by mixing it with something totally extraneous to it, what confidence do they instill in the public that they in fact abide by their oath of office at 28 U.S.C. §453 to "administer justice without respect to persons", that is, even if for the sake of the integrity of judicial process, the law must be applied to investigate one of their peers? Do judges

apply the law because a moral duty compels them to fulfill by their professional obligation to do so or do they apply it only when it suits them and their peers because, after all, who is there to complain successfully against them? These are legitimate questions justified by the facts, the same that caused Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair the committee to study the misapplication of the Act.

## V. Relief requested

41. Therefore, Dr. Cordero respectfully requests:

a) that Judge Winter reconsider the position that he expressed in his February 15 letter and in light of the statutory requirement of 28 U.S.C. §331, 4th paragraph, that "***all*** petitions for review ***shall*** be reviewed by that committee", not just its chairman, submit to the Committee this statement together with Dr. Cordero‟s letters of February 7 and January 8, and his petition for review of November 18, 2004, to the Judicial Conference;

b) that Judge Winter cause the Committee to submit to the Judicial Conference Dr. Cordero‟s petition and arguments for the Conferences‟ jurisdiction;

c) that the Conference decide that issue of jurisdiction and, if it decides to exercise it, that it determine the petition itself;

d) that the judges in the Committee and the Conference, individually and collectively, make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in Dr. Cordero‟s petition (E-124§V), subsequent writings, and their exhibits, and request that the ensuing investigation be conducted by U.S. attorneys and FBI agents (E-93§V) that are neither acquainted nor friends with any of the court and bankruptcy officers that may be investigated and that to that end neither the DoJ or FBI offices in Rochester or Buffalo, NY, be involved. (E-137; E-146)

Respectfully submitted on March 25, 2005

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January 8, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit"s Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

## I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of

jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized „argument" for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdic-

tion, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his actions.

Therefore, I respectfully request that you, as Chair of the Judicial Conference Misconduct Committee:

1. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
2. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
    a. forwarded to the Conference for review;
    b. otherwise, provide me with the names and addresses of the other members of the Committee to Review Circuit Council Conduct and Disability Orders;
3. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
4. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

## II. Accompanying Document and Exhibits

[for reference only; documents not included herewith]

1. Dr. Richard Cordero's Statement of facts of December 18, 2004, and Request for an Investigation into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero .....5
2. Dr. Cordero's Petition of November 18, 2004, to the Judicial Conference of the United States for review of the actions of the Judicial Council of the Second Circuit In re: Judicial Misconduct Complaints CA2 docket no. 03-8547 and no. 04-8510, .....E-1
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# STATEMENT OF FACTS
# of December 18, 2004

## Accompanying the letter of January 8, 2005, to

## The Hon. Judge Ralph K. Winter, Jr.

### Chair of the Committee to Review Circuit Council Conduct and Disability Orders
### of the Judicial Conference of the United States

## and

# REQUEST FOR AN INVESTIGATION
## into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero

It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to „dispose" of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling"s boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office"s normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks" misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let"s call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel"s Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel"s Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel"s Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".

I called Ms. Bryson in Mr. Mecham"s Office and told her what had happened, but it was to no avail, for she said that the GC"s Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that

asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC‟s Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC‟s Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel‟s Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he „processing‟ it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office‟s website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What‟s wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single

me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel"s Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel"s Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director"s and the GC"s Office.

Therefore, I respectfully request that you, as the Chair of the Misconduct Committee, and the Conference itself:

1. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office"s handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and

2. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),

   a. consider it hereby resubmitted;

   b. and cause its original, which is both bound with a file of supporting documents (cf. E-xlv), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on
January 8, 2005

Dr. Richard Cordero

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February 7, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

Dr. Richard Cordero

3/1/05

1 pk – 6 – 158½ – Numbered.
2 pk – 3 – 181 – Numbered.
3 pk – 188 folds.
4 pk – 99½ folds.

Mary Dianetti

Statement by Bankruptcy Court Reporter Mary Dianetti of the number of stenographic tapes and folds comprising her recording of the evidentiary hearing in the DeLano case held on March 1, 2005

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

**********

**Judge Ninfo's bias and disregard for legality can be heard from his own mouth through the transcript of the evidentiary hearing held on March 1, 2005, and can be read about in a caveat on ascertaining its authenticity that illustrates his tolerance for wrongdoing**

1. The transcript in question concerns an evidentiary hearing that Judge John C. Ninfo, II, WBNY, ordered in connection with the DeLano Debtors‟ motion to disallow Dr. Richard Cordero‟s claim against Mr. David DeLano, which claim the latter and his wife, Ms. Mary Ann DeLano, had taken the initiative to include in their bankruptcy petition of January 26, 2004. The hearing took

place on March 1, 2005, and was recorded by Reporter Mary Dianetti. She also recorded the very first hearing before Judge Ninfo in which Dr. Cordero participated. What happened with the transcript of that earlier hearing illustrates the kind of bias and disregard for the law, the rules, and the facts that occur when Judge Ninfo is in the background. Knowing it will help to understand the circumstances surrounding the above statement by Ms. Dianetti and the need to ascertain the authenticity of the transcript of the recent hearing so that through it the peers of Judge Ninfo can witness the blatant bias and disregard for legality that he engages in when he is very much in the foreground.

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### A. Court Reporter Dianetti participated in the manipulation of a trans-cript of a hearing before Judge Ninfo, which she failed to deliver to Dr. Cordero in more than two and a half months after he requested it

2. On December 18, 2002, the hearing was held of motion of Chapter 7 Trustee Kenneth Gordon to

dismiss Dr. Cordero‟s cross-claims in Pfuntner v. Gordon et al., docket no. 02-2230, WBNY. Dr. Cordero appeared by telephone. Judge Ninfo dismissed his cross-claims for negligence, recklessness, and defamation in the context of the Trustee‟s liquidation of Premier Van Lines, a moving and storage company. The Judge did so despite the legitimate issues of material fact that Dr. Cordero had raised and although the Trustee had provided no disclosure and there had been no discovery under FRCivP Rule 26. At the end of the hearing, Dr. Cordero stated that he would appeal.

3. After Judge Ninfo‟s order of December 30, 2002, was sent from Rochester and arrived in New York City, where Dr. Cordero lives, he called Reporter Dianetti on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Yet, weeks went by without hearing from her. Dr. Cordero had to call her on several occasions to ask why he had not received it. She screened part of another message that he was leaving on her answering machine and finally picked up the phone on Monday 10, 2003. She said that the transcript would be ready in two days.

4. As attested to by her certificate, Ms. Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after she was first requested it, whereby she violated FRBkrP Rule 8007(a). Moreover, in violation of 28 U.S.C. §753(b), Ms. Dianetti did not deliver the transcript directly to Dr. Cordero. Much worse yet, although the date on Ms. Dianetti‟s certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero‟s motion for rehearing for relief from Judge Ninfo‟s denial of his motion to extend time to file the notice of appeal from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26, in violation of FRBkrP Rule 8007(b). Interestingly enough, after Dr. Cordero made a statement at the March 26 hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. This reasonably suggests that the transcript was unlawfully withheld from Dr. Cordero until it could be found out what he would say at the hearing.

5. The transcript turned out to consist, not of 27 pages, but only of 15 pages of transcription! Were

pages left out containing what was said between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after Judge Ninfo cut him off at the December 18 hearing? That would constitute an ex parte communication between them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP Rule 9003.

6. Interestingly enough, when Ms. Dianetti finally picked up the phone on March 10, she said to Dr. Cordero „you want it [the transcript] from the moment you came in on the phone", that is, speakerphone. This implies that something had been said before or after Dr. Cordero was on the phone and that she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said „Good morning, Dr. Cordero." He said no, that he wanted everything from the moment the Judge had said „Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

7. Was Reporter Dianetti told to leave exchanges between Judge Ninfo and Trustee Gordon while Dr. Cordero could not hear them and, if so, who told her so and why? Was the mailing of the transcript to Dr. Cordero delayed so that it could first be vetted for compliance with those instructions? Have transcripts in other cases been manipulated to alter their contents or delay or even prevent their transmission either to the clerk or the party who ordered it? Was a benefit offered or received to participate in such manipulation? None of these and many other questions have been answered through any investigation. Yet, they arouse suspicion that transcripts may not be reliable. This experience prompted Dr. Cordero to ask certain questions of Reporter Dianetti at the recent hearing.

### B. Reporter Dianetti suffered a most strange attack of confusion and nervousness when at the end of the hearing on March 1, 2005, Dr. Cordero asked for a count of stenographic packs and folds

8. When the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim against

Mr. DeLano began at 1:31 p.m. on March 1, 2005, Dr. Cordero asked Reporter Dianetti whether there was any marker for the point where she was beginning to record. She said that she was beginning a new pack, that is, a pack of folds of stenographic tape.

9. After the hearing ended at 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Larraine Parkhurst was still by her side. He asked the Reporter how many packs she had used. That question spun Ms. Dianetti into an astonishing state of confusion and nervousness, all the more astonishing since she was still gathering the materials that she had just finished using to record the single hearing that afternoon.

10. First she said that there were two, but then she said that there was also a third pack that she had made by taping two sections together. Dr. Cordero asked her that she count the folds in each pack. She said that the estimate of pages was difficult to make because it could be three or four…He told her that he was not asking for an estimate of pages but for a simple count of folds in each pack. That only heightened her nervousness. She said that she needed a pencil. He asked what for. She said to count them. He asked what a pencil had to do with counting folds. She said she needed the head, that is, the head of the pencil, the eraser at the head, then she dropped that and began to show him the numbers on the back of the folds to try to determine the range, but that only made her confusion more pronounced and she said that it depended where she had began in pack the pack fold 1 to this is 159 then she no it is begun she began on fold it is 3 to 159 said that she rather it is 6 in one to 158 and a half she jumped to pack three that she had not marked pack 3 said came back to the issue of the estimate the pages of estimating the how many pages per fold she protested that nobody ever had asked her to do so why you are asking me to do counting what for you don‟t trust you think that when the pages come more pages but last time there were the number of the pages what she would send and the cost what had happened before that she had asked another person because she had not understood some words and it doesn‟t pay to be honest and this counting the pack is that it depende…„Ms. Dianetti, please, I just want to know the number of the packs and folds used today.‟

11. Dr. Cordero noticed the date on two packs that she had said belonged among those used for that hearing. He asked Court Attendant Parkhurst to look at them, she did, and he pointed out that they had been dated 2/1/05! Ms. Dianetti protested and asked Dr. Cordero whether he never made mistakes. Then she wrote on them the correct date of March 1.

12. Ms. Dianetti‟s state of confusion was such that Dr. Cordero asked Ms. Parkhurst whether she would count the folds. She agreed to do so but Ms. Dianetti protested because it was not fair to keep Ms. Parkhurst in the courtroom that she had to go to the house to stay here when she should be so late that it was…„Ms. Parkhurst, asked Dr. Cordero, do you mind staying here a while longer to count the folds? If we do not know exactly how many packs and folds were used, all that was said today and all the effort in preparing and attending this hearing will have been in vain‟. Ms. Parkhurst said that she did not mind and with Dr. Cordero at her side, she counted aloud the folds of the three packs and made a note for herself of what she had counted. Then he asked Ms. Dianetti to copy the numbers on his notepad so that she could sign it. She protested but went ahead and did it…„and this pack too I used today‟. Unbelievable! There was a fourth pack! It had been right there on her table all along. Dr. Cordero asked Ms. Parkhurst to count its folds, she did, and then added her count to her list; Reporter Dianetti also added it to the list that she was making for Dr. Cordero.

13. Dr. Cordero asked Attendant Parkhurst to sign as witness the list that Ms. Dianetti had made and signed (pg. 31, supra), but she declined to do so, showed him her list on her own notepad, and said that she had made a note of all the packs and folds and that would be enough. Dr. Cordero thanked her and Ms. Dianetti, went to his table and began to gather his book, exhibits, and his portable computer. What could possibly have triggered such confusion in Reporter Dianetti and caused her to become so nervous?

14. Interestingly enough, the attorney for Mr. DeLano, Christopher Werner, Esq., burst half way through the hearing with a protest to Judge Ninfo because he suspected that Dr. Cordero was recording the hearing on his computer. Did they have an understanding that there would be no independent recording of the hearing, nothing other than what Ms. Dianetti would record or rather, what a vetted transcript would contain? This question finds support in the fact that at the examination of the DeLanos under 11 U.S.C. §§341 and 343 on February 1, 2005, at the office of Chapter 13 Trustee George Reiber, the latter had made an official recording on audio tapes, a reporter had also stenographically recorded the meeting, and still Dr. Cordero had made his own recording using a tape recorder. This experience in conjunction with a hearing that was not going as well for Att. Werner as he could have expected in light of Judge Ninfo‟s undisguised bias toward his client, Mr. DeLano, before and during the hearing, could have suggested to Att. Werner, perhaps a bit too late, that Dr. Cordero might likewise have come prepared to make his

own recording of the hearing, which would frustrate any other arrangement for a different type of recording. Did it?

15. Was something going on between Court Reporter Dianetti, Att. Werner, and Judge Ninfo with regard to the transcript? Interestingly enough, as of February 28, 2005, PACER[1] showed that Att. Werner appeared as attorney in 575 cases, and in 525 the judge was Judge Ninfo. They have worked together on so many cases for so long that they have developed a special relationship. This relationship helps to understand not only why Att. Werner was so upset at the possibility that the benefit of the relationship could be diminished by Dr. Cordero making his own recording of the hearing, but also why Att. Werner took a back seat and let Judge Ninfo be so unashamedly biased as to become the advocate of Mr. DeLano while the latter was being examined by Dr. Cordero.

### C. Judge Ninfo manifested such undisguised bias before and during the hearing as to become the chief advocate for Mr. DeLano and counsel opposing Dr. Cordero

16. The evidentiary hearing was triggered by the untimely motion of July 19, 2004, to disallow Dr. Cordero‟s claim against Mr. DeLano, that is, after the DeLanos and Att. Werner had treated Dr. Cordero as a creditor for six months since the filing of the bankruptcy petition in which the DeLanos listed Dr. Cordero among their creditors. Mr. DeLano had known of that claim since Dr. Cordero served him with his third-party complaint of November 21, 2002, in the Pfuntner case. Therein the claim for compensation was predicated on the negligent and reckless way in which Mr. DeLano, as a bank loan officer of M&T Bank, had exercised the Bank‟s security interest in the storage boxes that Premier Van Lines, a moving and storage company, had bought with a loan. Premier was storing Dr. Cordero‟s property and went bankrupt too, like Mr. DeLano, a 32-year veteran of the banking and lending industry and as such an expert in managing borrowed money…and he went bankrupt? How suspicious!

17. Interestingly enough, the motion to disallow was raised on July 19, the day of the hearing of Trustee Reiber‟s motion to dismiss the petition due to the DeLanos‟ “unreasonable delay” in producing requested documents. At that hearing, Dr. Cordero presented evidence that the

[1] PACER is the system for **P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords. To corroborate the PACER statistics cited here go to https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>PACER>Query and write in the query box the name of the attorney or trustee in question.

DeLanos had engaged in bankruptcy fraud, particularly concealment of assets.

18. The DeLanos‟ motion to disallow was heard on August 25. By order of August 30, 2004, Judge Ninfo required Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him and present it at an evidentiary hearing. Dr. Cordero requested documents from Mr. DeLano, who denied every single one of them. Dr. Cordero moved to compel production, but Judge Ninfo denied every single one of them too! It was a set up! The motion to disallow was a subterfuge to eliminate from the bankruptcy case Dr. Cordero, the only creditor that had presented evidence of the DeLanos‟ bankruptcy fraud. Even documents that Dr. Cordero requested to defend against the motion and show that it had been raised in bad faith were denied by Judge Ninfo, who simply disregarded the broad scope of discovery under FRCivP Rule 26.

19. So Dr. Cordero arrived at the evidentiary hearing on March 1, 2005, without a single additional document having been produced by Mr. DeLano. However, he had prepared a set of questions. But very soon the most extraordinary fact became apparent: Mr. DeLano did not have any idea of the nature of Dr. Cordero‟s claim against him, the very one that he had moved to disallow. What is more, Att. Werner did not have any idea either! So much so that during the first recess in the hearing, he and Mr. DeLano walked out of the courtroom with the attorney for M&T Bank, Michael Beyma, Esq., and then Att. Werner and Mr. DeLano came back in and asked Court Attendant Larraine Parkhurst whether she had a copy of Dr. Cordero‟s complaint of November 2002 against Mr. DeLano! He was told that it had been filed with the court. Then Mr. Werner turned around and asked Dr. Cordero whether he had a copy. Dr. Cordero said that he had and Att. Werner asked him for a copy!

20. Att. Werner had come to the evidentiary hearing to have a claim disallowed of which he did not even have a copy. Not only that, but he also did not have even the pertinent parts of the complaint that Dr. Cordero had attached to the proof of his claim against Mr. DeLano, a copy of which Dr. Cordero had served on Att. Werner on May 15, 2004. As a result, Att. Werner did not have a clue either what the claim was all about. Therefore, how could he possibly have overcome the presumption of validity that under FRBkrP Rule 3001(f) attached to Dr. Cordero‟s claim upon its being filed on May 19, 2004? He could not. He was simply relying on his relationship with Judge Ninfo and their denial of Dr. Cordero‟s request for documents.

21. Dr. Cordero declined to provide Att. Werner with a copy of the complaint. Instead, he asked Att.

Werner not to leave the courtroom to get a copy of it in the records office only to come back in and pretend that he and Mr. DeLano knew all along what the claim was that they were trying to disallow. Att. Werner retorted that Dr. Cordero could not tell him, who has been in this business for over 28 years, how to practice law. Thereupon Dr. Cordero asked Ms. Parkhurst and Law Clerk Megan Dorr to call in Judge Ninfo before Att. Werner and Mr. DeLano could leave the courtroom.

22. When the Judge came in and the hearing was back on the record, Dr. Cordero related the whole incident. The Judge found nothing objectionable in such irrefutable proof that Att. Werner had not had before and did no have then any idea of the nature of the claim that he had moved to disallow. Nor did he find reprehensible that during an ongoing examination, Att. Werner had attempted to take advantage of a recess to feed Mr. DeLano answers to critically important questions. On the contrary, when Dr. Cordero moved to dismiss the motion to disallow because raised in bad faith as a subterfuge to eliminate him from the case and as abuse of process, Judge Ninfo denied his motion out of hand and said that it was Dr. Cordero who was making a motion in bad faith!

23. The hearing went on. Under examination, Mr. DeLano not only admitted facts asked of him about his handling of the storage boxes containing Dr. Cordero"s property, but also volunteered others. Thus, he said that:

    a) Premier Van Lines had used the Jefferson-Henrietta warehouse to store the storage boxes bought with the loan from M&T Bank and containing the stored property of its clients, such as Dr. Cordero;

    b) Mr. DeLano had seen boxes there with Dr. Cordero"s name and told Dr. Cordero so;

    c) Mr. DeLano was under pressure to have the storage boxes moved out of the Jefferson-Henrietta warehouse because the latter was going to put a lien on the boxes to secure unpaid warehousing fees, an action that would have delayed the sale and diminished Mr. DeLano"s net recovery from liquidating M&T Bank"s security interest in the boxes;

    d) So Mr. DeLano hired an auctioneer, John Renolds, to sell the storage boxes and the auctioneer sold them in a private auction to the single warehouser that he contacted;

e) Mr. DeLano did not check and did not know whether the auctioneer had checked the capacity of the buying warehouser, whose name he did not remember, to store property safely from damage or loss due to pests, water, humidity, extreme temperature, fire, and theft;

f) Mr. DeLano did not notify the owners of the property in the boxes to let them know how he intended to dispose of the boxes and find out from them how they wanted their property handled, such as by having it inspected before being removed, or moving it to a place of their choice, or finding out in advance the fees and terms and conditions of the buying warehouser;

g) After the sale, Mr. DeLano directed Dr. Cordero to the buying warehouser to deal with it about his property;

h) Dr. Cordero contacted that buying warehouser and its owner –neither of whose names and address Dr. Cordero use at the hearing but he did use them in the complaint containing the claim against Mr. DeLano- but the owner told him that he had no boxes bearing Dr. Cordero‟s name and that Mr. DeLano had sent him an acknowledgment of receipt that included Dr. Cordero‟s name, but that he would not sign it because he did not have any boxes holding Dr. Cordero‟s property;

i) Mr. DeLano admitted that he had sent the owner such acknowledgment of receipt but that the owner had turned out to be right because the boxes with Dr. Cordero‟s property had not been delivered to him given that they had not been in the Jefferson-Henrietta warehouse at all and that Mr. DeLano had made another mistake when he checked the slips in the business records that Premier had in its office in the Jefferson-Henrietta warehouse before including Dr. Cordero‟s name in that receipt;

j) Mr. DeLano admitted that his mistakes could have caused Dr. Cordero confusion and anxiety and cost him a lot of effort, time, and money as Dr. Cordero tried to find out where his property could be, which eventually was found in part lost or damaged in yet another warehouse, namely, that of Plaintiff Pfuntner; and that it was reasonable for Dr. Cordero to claim therefor compensation from him and M&T Bank and for Mr. DeLano and the Bank to compensate Dr. Cordero to a degree.

24. Upon Mr. DeLano making that frank admission, Dr. Cordero said that the degree of compensation was what had to be determined at trial where all the parties and issues could be tried as a whole. Mr. DeLano further admitted that at trial M&T Bank would call upon him to represent it since he was the officer who had handled the defaulted loan to Premier.

## D. Judge Ninfo disregarded the law and rules of Congress and abdicated his position as a neutral arbiter in order to apply the law of relationships with the local parties

25. During the examination, Judge Ninfo intervened repeatedly and consistently as the advocate of Mr. DeLano, either answering questions put to Mr. DeLano; spinning Mr. DeLano"s answers away from any admission of mistakes or liability; providing explanations for Mr. DeLano to escape difficult questions leading to the admission of the reasonableness of compensation; and finding fault with Dr. Cordero"s conduct at the time of the events in question or at the hearing. It is by listening to his own words conveyed in an accurate and complete transcript that the indisputable proof of Judge Ninfo"s shocking bias can be obtained. It is for that reason that it is so important that the transcript be requested from Reporter Dianetti and that it be checked against the number of packs and folds in her signed statement and that their authenticity be determined.

26. Where was Att. Werner during Judge Ninfo"s advocacy of his client"s interests? He was seated in his lower chair from which he would stand up at times to object to questions asked by Dr. Cordero, but not once did he object to any ruling of Judge Ninfo. What a remarkable deferential attitude throughout an examination that lasted from 1:31 p.m. to 7:00 p.m.!

27. Failure to preserve any objection for appeal has to be suspicious in itself, unless Att. Werner knew that there would be no need for him to appeal because he could take a favorable outcome for granted. This explains why he not only did not have to read Dr. Cordero"s claim before or after moving to disallow it, but why he also stated several times that he did not have to prepare himself or Mr. DeLano for the hearing. In what impartial court where the outcome of a proceeding is uncertain would a lawyer volunteer a statement that he and his client are unprepared? The fear of a malpractice suit would deter the lawyer from making such a statement. But there would be no cause for fear if the lawyer had the assurance that, however unprepared, he would deliver the desired outcome to his client thanks to having made the best preparation possible: a well developed positive relation to the judge that made both teammates. Att. Werner

has had the necessary deferential attitude and opportunity to develop such relation: 525 cases before Judge Ninfo, according to PACER.

28. In return, Judge Ninfo takes care of him. Indeed, what judge who respects his office and is considerate of the effort, time, and money of others would hear with indifference and allow a lawyer to say with impunity that he came to his courtroom so awfully unprepared and brought a witness totally unprepared? By not making any comment, let alone rebuking Att. Werner for his utter unpreparedness, Judge Ninfo showed his disregard for FRBkrP Rule 1, which provides that "[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"; a statement of purpose that is repeated in FRCivP Rule 1.

29. It is no wonder that, in the assurance of his protective relationship with Judge Ninfo, Att. Werner showed up at the hearing, not only without a copy of the claim that he was trying to disallow, but also without a single law book. After all, what need would he have for such books since he did not cite any rule to support his objections at the hearing, just as he has not cited, let alone discussed, any rule or law, forget about citing a case, in any of his papers submitted to the court. In so doing, he follows the example of Judge Ninfo, who does not cite any authority -unless he cites back what Dr. Cordero after painstaking legal research has cited and discussed- but only states or adds his conclusory statements without any discussion to support what in fact are rulings and decisions by fiat, not by legal reasoning, whether it be in any of his 15 orders or 15 hearings in the Pfuntner and DeLano cases. This is not the way a judge administers justice in a court of law deserving the public‟s trust, but rather this is how a lord runs the private affairs of his fiefdom in his and his loyal vassals‟ interest. Hence, they need not cite authorities to derive or buttress a persuasive argument since they can simply send or have received the signal of a win.

### E. Judge Ninfo looked on in complicit silence while Atts. Werner and Beyma signaled answers to Mr. DeLano during his examination under oath

30. The transcript of that hearing will also show another shocking manifestation of bias that demonstrates Judge Ninfo‟s contempt for due process: During the examination, Dr. Cordero remained at his table. To his right were Mr. DeLano, sitting in the witness stand; Att. Werner, at his table five feet away; and Att. Beyma, the lawyer for M&T Bank, in the first bench behind the bar, some nine feet away. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look

away from him and toward where the two attorneys were seated and as Dr. Cordero looked at them he caught them signaling to him with their arms!

31. Dr. Cordero protested such utterly unacceptable conduct to Judge Ninfo. He was sitting some 25 feet in front and between Att. Werner and Dr. Cordero and some 30 feet from Att. Beyma. Yet, Judge Ninfo found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything.

32. However, from the distance and higher level of his bench he had an unobstructed view of the two attorneys and Dr. Cordero, who were in his central field of vision so that it was all but impossible for him not to catch the distraction of either of them flailing his arm. Nevertheless, what he said was belied more patently by precisely what he did not say than by their relative physical positions: Not only did he not say that such conduct, intended to suborn perjury, would not be tolerated in his courtroom, but he also did not even ask either of the attorneys on any of those occasions whether they had signaled an answer to Mr. DeLano. Even if, assuming arguendo, he had not seen them signaling, he did no care to find out either. Yet, he had every reason to ask, precisely because of the same revealing nature of what neither of the attorneys said: Neither protested Dr. Cordero‟s accusation, which they reflexively would have done had it not been true that they had signaled to Mr. DeLano how to answer.

33. Judge Ninfo‟s reaction to such unlawful and unethical conduct shows that he runs a court tilted by bias that prevents progress toward a just and fair resolution of cases and controversies, swerving instead toward his own interests. He proceeds, not on the strength of the law or procedural rules, which he does not cite or discuss, but rather by the power of relationships developed with local parties. The opportunity to develop those relationships is ample. Thus, while Att. Werner has appeared before Judge Ninfo in 525 cases, Trustee Gordon has appeared before him in 3,382 out of 3,383 cases as of June 26, 2004; and Trustee Reiber in 3,907 out of 3,909 as of April 2, 2004, according to PACER. As to Att. Beyma, he is a partner in the same firm in which Judge Ninfo was a partner at the time of his appointment, that is, Underberg & Kessler.

34. These locals appear before him so frequently as to become dependent on his goodwill for the distribution of favorable and unfavorable decisions. What a lawyer or trustee may not get in one case, he may get 15 minutes later when he stands up again before Judge Ninfo for the next case…that is, if he has not shown disrespect by objecting to his rulings and dragging it up on

appeal, for the Lord of the Fiefdom grants rewards to those vassals who show deference, but he also meets out punishment to those who challenge him and show rebelliousness. As a result, the law of relationships is the basis on which Judge Ninfo runs his court, rather than a Court of the United States ruled by the law of Congress.

35. Bias is the device for implementing that law. It motivated Judge Ninfo‟s protection of Trustee Gordon by disregarding Congressional law and rules in order to dismiss out of hand Dr. Cordero‟s cross-claims against the Trustee at the first hearing on December 18, 2002. Dr. Cordero, a non-local appearing pro se, was expected to accept the ruling and leave it at that. But he didn‟t. He went on appeal. *The horror of it!* Ever since Judge Ninfo has treated Dr. Cordero as an enemy, not as a litigant exercising his rights and entitled to due process.

36. Then the DeLanos filed their bankruptcy petition and Dr. Cordero presented evidence of their bankruptcy fraud. But Mr. DeLano has been a bank officer for 32 years and as a *loan* officer, he has handled defaulting borrowers, some of whom have ended filing for bankruptcy, as did the owner of Premier, Mr. David Palmer. Mr. DeLano knows too much to be left outside the castle of the Fiefdom, the courtroom where Lord Ninfo protects deserving vassals.

37. The chronicler of the Fiefdom is Court Reporter Dianetti. What will she report in her chronicle of the campaign that Lord Ninfo mounted against the Diverse Citizen of the City of New York, Dr. Cordero, at the hearing on March 1, 2005? Did she become so confused and nervous when asked for a count of the stenographic packs and folds that she had barely finished using because she felt under attack by the Enemy of the Fiefdom and torn in her loyalty to her Lord and the truth?

### F. The transcript can allow the peers of Judge Ninfo to hear his bias from his own mouth, but its authenticity must first be ascertained by unrelated investigators, who should then investigate those related to him and these cases

38. There are so many interesting questions posed by circumstances in these cases that reinforce each other to impress a bias to their outcomes. They are enough to eliminate coincidences as the phenomenon that explains them away. Instead, when the totality of circumstances are assessed as a whole in terms of the law and common sense, they indicate intentional conduct supported by coordination in furtherance of a wrongful scheme. Its nature and extent can only be ascertained by an investigation.

39. The investigators must be experienced because the persons to be investigated are capable of concealing their unlawful coordination under the cover of their frequent or even daily work contacts. This also provides reasonable grounds to exclude the peers of Judge Ninfo from acting as the investigators of his conduct and that of the people around him. Hence, the investigation should be conducted by U.S. attorneys and FBI agents.

40. However, for their work to have a chance to be trustworthy rather than a whitewash, the investigators must not even know any of the persons that they may investigate. So they must not come from the DoJ or FBI offices in Rochester or Buffalo, who are housed in the same federal building as the courts. By way of example, the U.S. Attorney‟s Office in the six story federal building in Rochester is the next door neighbor of the U.S. Trustees Office. Of necessity, these officers see each other every day and the relationship that has developed among them is most likely to cloud their objectivity and influence their thoroughness and zeal when investigating their building acquaintances, let alone friends. In brief, they must not be subject to the law of relationships that gave rise to the wrongdoing under investigation in the first place.

41. By the same token, the first element of the investigation should be the transcript itself that Reporter Dianetti may provide. It must be checked against the original stenographic packs and folds and the statement of their count that she signed off on. Likewise, the authenticity of those claimed to be the originals must be ascertained as well as their untampered-with condition. If this preliminary work establishes that they are the basis for an accurate and complete transcript, the latter will also be the basis from which to gain a first view of Judge Ninfo acting as a biased advocate for local parties rather than an impartial arbiter.

42. If you would not treat a litigant before you, much less allow to be treated as a litigant, the way Judge Ninfo treated Dr. Cordero, then it is respectfully submitted here that you have a professional and moral duty to call for a more comprehensive and independent investigation to determine the extent to which Judge Ninfo‟s pattern of bias and disregard for legality is motivated by his participation in non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.

March 12, 2005

Dr. Richard Cordero

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tel. (718) 827-9521

OFFICE OF THE CLERK

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April 26, 2005

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

Re: March 15, 2005 Letter and Attachment

Dear Dr. Cordero:

The enclosed submission to a judge of this Court has been referred to this office for response. Any submissions to the Judicial Conference of the United States, or a committee thereof, must be made to the appropriate individual in the Administrative Office of the U.S. Courts.

The judges of this Court will not consider, or take any action in regard to, materials addressed to Judicial Conference materials sent to them directly. No purpose is served by sending papers directly to the judges of this Court.

Very truly yours,

Marcia M. Waldron, Clerk

By:
/s/ Bradford A. Baldus
Bradford A. Baldus
Senior Legal Advisor to the Clerk

Enclosure

JC:461

**Dr. Richard Cordero**

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March 28, 2005

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Chief Justice,

As stated in my letters to you of 7 instant and November 20 and December 18, 2004, last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55)[♣] of two petitions for review (E-23; E-47) concerning two related judicial misconduct complaints (E-1; E-39), one about Bankruptcy Judge John C. Ninfo, II, WBNY, and the other about Chief Judge John M. Walker, Jr., CA2.

By letter of December 9, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (page 23, infra), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised in the petition (3§II, infra). As part of my efforts to have the petition submitted to the Conference to let it decide that issue, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders. Judge Winter answered by letter of February 15 (25) where he states that neither he nor the Conference has jurisdiction to act on my petition. I am submitting to you, as the Conference's presiding officer, my reply (28; 29) to his letter. Therein I argue, among other things, that under 28 U.S.C. §331 the Review Committee must review all petitions so that the Committee as a whole, not just he as its chairman, should consider mine; and that since the Review Committee derives its jurisdiction from that of the Conference, it should forward my petition to the latter with the request that it be the one to determine the jurisdictional issue that I raised.

I respectfully request that you have the Conference decide that issue or bring to the attention of Judge Winter and the Review Committee the need to let the Conference decide it. By so doing, the Conference would have the opportunity to consider whether too narrow an interpretation of the jurisdictional provisions of the Judicial Misconduct Act accounts for the fact that since March 2002 not a single petition has been submitted to it. Thus, the Conference has not had occasion to consider petitions and provide guidance to judicial councils and chief judges on the proper application of the Act. As a result, the Act has become as useless as the impeachment process as a mechanism for judicial control and discipline. Instead of it being interpreted to protect individuals who suffer abuse and bias through judicial misconduct (53) or the public at large who must bear the loss of access to justice and the material cost caused by judges involved in wrongdoing (E-83; E-109), the Act has been interpreted as a means for judges to take care of their own and protect their class image. Has the Conference not been aware of this disregard for the Act's purpose for the past 25 years during which it issued only 15 misconduct orders?

sincerely, Dr. Richard Cordero

[♣] These Exhibits were submitted to you and the Conference together with a copy of the petition last November 26. The Exhibits are not reproduced below, but reference to their page numbers is made hereinafter using the format (E-#).