

(23apr9)

Can the New Code of Conduct for U.S. Judges Introduce Self-discipline in the Federal Judiciary?¹

“Violation of the Code of Conduct for U.S. Judges by even giving the appearance of impropriety diminishes public confidence in the judiciary and injures our system of government under law”, Canons 1 and 2

On March 17, 2009, the Chief Justice of the U.S. Supreme Court and all the chief judges of the circuit and national courts together with representative district judges meeting in the Judicial Conference of the U.S. agreed that the notion of “appearance of impropriety” contained in the [Code of Conduct for U.S. Judges²](#) had to be reinvigorated together with others aimed at achieving one objective, which it expressed thus in Canon 1 and emphasized by rephrasing it as a recurrent theme throughout the Code:

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

So in “the first substantial Code revision since 1992”^{1a} the Conference provided thus:

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

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

Judges have engaged in a "pattern of violations of law and court rules" to protect themselves from incrimination in coordinated wrongdoing, such as a bankruptcy fraud scheme³, for they have the power to self-exempt from any discipline⁴. This renders

¹ Excerpts from an example of the application of its provisions to a case before the Supreme Court; http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCt_rehear_23apr9.pdf

² http://Judicial-Discipline-Reform.org/docs/Code_Conduct_Judges_09.pdf, with newsrelease of Judicial Conference that adopted the new rules.

³ How A Bankruptcy Fraud Scheme Works Its basis in the corruptive power of the lots of money available through the provisions of the Bankruptcy Code and unaccountable judicial power; http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf

“disciplinary action appropriate” (Commentary on Canon 1) through the grant of certiorari.

I. WHY APPLY THE CODE TO A BANKRUPTCY CASE

‘During these times when bankruptcy cases increased’ to 1,043,993 in FY08, bankruptcy appeals in the court of appeals have instead decreased to only 773. Comparatively speaking, only 0.07% of all bankruptcy cases went to the appeals courts or only 1 in every 1,351 cases.⁵ So the Supreme Court must ‘address the challenge’ of ‘absence of effective oversight’⁶ over bankruptcy courts that has led their judges to take advantage of the inability of millions of debtors and creditors to seek review of their rulings.

The bankruptcy fraud scheme can be “disclosed by a reasonable inquiry”. After conducting it, one can conclude that the scheme extends to \$hundreds of millions or billions unlawfully unaccounted for, allowed, or disallowed in any number of thousands of bankruptcy cases that a single trustee is allowed to amass before the same judge. That such a caseload is unmanageable⁷ can be realized in light of the many duties that a trustee is required to perform personally with respect to each case. (11 U.S.C. §§341, 343, 704, 1106, 1202, 1302⁸; 28 U.S.C. §586(a)(7)⁹; C.F.R. §58.6(10))¹⁰ This gives rise to abusive coordinated rubberstamping by the trustee and the judge of whatever suits their interests given that the chances of appellate review are in practice zero.

Indeed, a co-scheming judge can allow a trustee to systematically rubberstamp petitions so as to collect effortlessly his 10% fee under a Chapter 12 or 13 debt repayment plan (11 U.S.C. §586(e)(1)(B)(ii)(I)) or bracketed percentage fees under Chapter 7 and/or

⁴ The Supreme Court Justices and the Chief Judges Have Semi-annually Received Official Information About the Self-immunizing Systematic Dismissal of Judicial Conduct Complaints, But Have Tolerated It With Disregard for the Consequent Abuse of Power and Corruption; http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf

⁵ Collected Statistical Tables of Judicial Misconduct and Disability Complaints Produced By The Administrative Office of The U.S. Courts and Graphical Representation of Judicial Caseloads; http://Judicial-Discipline-Reform.org/statistics&tables/judicial_misconduct_complaints.pdf

⁶ http://Judicial-Discipline-Reform.org/docs/ineffective_oversight.pdf >1:§I: The Bankruptcy Abuse Prevention and Consumer Protection Act’s finding of “absence of effective oversight to eliminate abuse in the system”

⁷ Cf. “Beginning in December 2001, the definition of a judicial emergency [is] any vacancy in a district court where weighted filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship, or any court with more than one authorized judgeship and only one active judge.” Federal Judicial Caseload, Recent Developments, 2001, prepared by the Office of Human Resources and Statistics of the Administrative Office of the U.S. Courts (AO), p. 13, fn. 15; <http://www.uscourts.gov/caseloadstatistics.html>; also at http://Judicial-Discipline-Reform.org/docs/FedJud_Caseload_2001.pdf >p. 13, fn.15.

⁸ http://Judicial-Discipline-Reform.org/docs/11usc_Bkr-Code_09.pdf

⁹ http://Judicial-Discipline-Reform.org/28usc586_trustees_duties.pdf

¹⁰ http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf

11 (11 U.S.C. §§326(a) and 330(b)). If not in on the scheme, creditors are deprived of their rights and the assets due them; similarly, debtors can become victims by both the judge and the trustee together with his co-scheming §327 professional persons imposing upon them unlawful conditions in exchange for rubberstamping their petitions.

The “appearance of impropriety” is destined to become ever more glaring because “these times [of] pressing economic problems” has led to a steady increase in bankruptcies. So the 1,043,993 new bankruptcy cases filed in FY08 represented a 30% increase over the 801,269 in FY07. By year-end, CY08 had registered 1,117,771 new cases, up 31% from the 850,912 bankruptcies in CY07. By contrast, only 267,257 civil cases were filed in the district courts in FY08. The fact that the overwhelming majority of civil cases filed in the federal courts are bankruptcy cases, whose numbers keep rising substantially, strengthens the justification for the Court to take up *DeLano*, 08-8382, SCt¹¹ because bankruptcy cases are in dire need of oversight and the oversight provided therein would impact the largest number of cases.

Moreover, the nature of *DeLano* offers the Court the opportunity to have the farthest reaching impact given that what is at stake is not an esoteric provision of the Bankruptcy Code, but rather fundamental principles affecting the exercise of judicial power, to wit, “the judge’s honesty, integrity, [and] impartiality” and thereby “public confidence in the judiciary”. (Commentary on Canon 2A)

II. THE CODE COMPARED WITH THE ACT AND RULES ON JUDICIAL MISCONDUCT COMPLAINTS

The Court should "maintain and enforce [the] high standards of conduct" of the Code by setting a clear example of its application; otherwise, the Code is destined to be treated with the same contemptuous disregard as the Rules for Judicial Conduct and Disability Proceedings. The analogy is particularly pertinent because the Code “may provide standards of conduct for application in proceedings under the...Judicial Conduct and Disability Act”¹² (Commentary on Canon 1)

To deal with problems in its application, the Chief Justice and his other colleagues in the Judicial Conference adopted the new Rules for Judicial Conduct and Disability Proceedings¹³ on March 11, 2008. The official 07-08 statistics have been published by the Administrative Office of the U.S. Courts (AO). They show that of the 1,163 complaints filed only 2 were on order of a chief judge. This followed the same pattern as that revealed by the AO statistics reported for the previous 11 years from 1oct96-30sep07.

Likewise, chief judges and judicial councils systematically dismissed complaints as they had done in the past. So only two special investigating committees were appointed and only two complaints were referred to such a committee...for no good

¹¹ http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCt_petition_3oct8.pdf

¹² http://Judicial-Discipline-Reform.org/docs/28usc351_Conduct_complaints.pdf

¹³ http://Judicial-Discipline-Reform.org/docs/Rules_complaints.pdf

purpose given that no committee report was received by any judicial council so that no action was taken on any such report. Moreover, only one single judge was disciplined at all, despite the fact that there were 2,132 judges in FY09.¹⁴

Concerted abuse is illustrated by the successive 2nd Circuit chief judges' and judicial council members' self-interested mishandling of complaints against their colleagues. During the 96-08 12-year reported period, they adopted and applied the unlawful [policy of denying 100% of all petitions for review](#)¹⁵ of complaint dismissals. Such abusive practice of theirs and their peers in the other circuits shows that in their "minds" judges can do no wrong. They have set themselves up as 'Judges Above the Law'.¹⁶ In the process, they have injured all those left unprotected in the hands of their protégés: their disciplined-exempted misconducting and disable judges complained against. Can it be reasonably or honestly disputed that such "irresponsible and improper conduct by judges has eroded public confidence in the judiciary"? (Com. on Canon 2A)

III. USING THE CODE TO EXPOSED A BANKRUPTCY FRAUD SCHEME

Hence, "reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, [and] impartiality" in their handling of complaints filed against them are not just "impaired". Rather, they would agree that the inquiry reveals the concerted unlawful practice among the judges to systematically exempt themselves from any discipline. It follows that judges have abused for their own benefit their judicial power and abrogated in practice an Act of Congress, which mistakenly trusted them with the system of judicial self-discipline under the Act and its procedural Rules.

If the Code is not to become, as the complaint Rules have, a showy public pretense at self-discipline that was never meant to be applied, the Court should take this opportunity to apply it to the *DeLano* case by granting certiorari. It can take up the challenge of exercising its "supervisory authority" over what a "reasonable inquiry" into the long procedural history of *DeLano* and its source case, *Pfuntner*¹⁷, has disclosed: a "pattern of actual improprieties consisting of serious and intentional violations of law, court rules and other specific provisions of this Code" by judges running and covering up a bankruptcy fraud scheme. (Commentary on Canons 1 and 2A)

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¹⁴ http://Judicial-Discipline-Reform.org/statistics&tables/num_jud_officers.pdf

¹⁵ http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf, ¶¶1-4

¹⁶ The Absence of Accountability in the Federal Judiciary Has Led to Above the Law Judges and The Consequent Abuse of Power and Corruption; http://Judicial-Discipline-Reform.org/Follow_money/Unaccountable_judges.pdf

¹⁷ *James Pfuntner v. Chapter 7 Trustee Kenneth W. Gordon et al.*, 02-2230, WBNY; petition for certiorari to the Supreme Court sub nom. *Cordero v. Gordon*, 04-8371, SCt; http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCt.pdf