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

Re: Petition for review in judicial misconduct complaint 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 3,909¹ cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383² 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 session³, 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

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.

neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

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, 