

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-

¹ Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, *infra*), a copy of the document is there and here too.

2230, which was brought and is pending before Judge Ninfo. The facts underlying this 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 effort², time³, and money⁴, and inflicting upon him tremendous emotional distress⁵ 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 legality⁶ and dismiss the facts⁷ 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 Ninfo⁸, Judge Larimer⁹, court personnel¹⁰, trustees¹¹, and local attorneys and their clients¹², 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

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

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. [Opening Brief=A:1301; Reply Brief=A:1511; Mandamus Brief=A:615]

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

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, 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, Deputy Clerk

Enclosures

(as of April 17, 2007)

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cf. briefhttp://Judicial-Discipline-Reform.org/DeLano_record/brief_DeLano_CA2.pdf

II. RETRIEVAL **Bank of Hyperlinks**

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

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

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

March 30, 2004

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

Re: *Judicial Conduct Complaint*, 04-8510

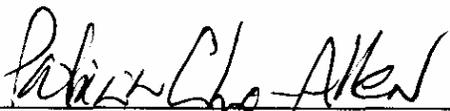
Dear Mr. Cordero:

We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351*.

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

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

By: 
Patricia Chin-Allen, Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR CHIEF JUDGE JOHN M. WALKER, JR.,
TO RECUSE HIMSELF FROM *IN RE PREMIER VAN et al.*
AND THE PENDING PETITION FOR
PANEL REHEARING AND HEARING EN BANC

In re PREMIER VAN et al.

case no. 03-5023

RICHARD CORDERO

Third party plaintiff-appellant

v.

KENNETH W. GORDON, Esq.

Trustee appellee

DAVID PALMER,

Third party defendant-appellee

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. On August 11, 2003, Dr. Cordero filed with the Clerk of this Court 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. Those wrongful and biased acts included Judge Ninfo's failure to move the case along its procedural stages, the

instances of which were identified with cites to the FRCivP. To no avail, for there has been a grave failure to act upon that complaint.

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I. The Chief Judge's failure to comply with duties imposed on him by law and rules shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts, such as deciding the petition for panel rehearing and hearing en banc

A. The Chief Judge has a duty under law and rules to handle the complaint 'promptly and expeditiously'

2. Those failures have not been cured yet and the bias has not abated either.

Hence, Judge Ninfo has engaged and continues to engage "in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Such conduct provides the basis for a complaint under 28 U.S.C. §372.

3. Dr. Cordero's complaint about Judge Ninfo relied thereupon. After being reformatted and resubmitted on August 27, 2003, it invoked the similar provisions found now at 28 U.S.C. §351.

4. Subsection (c)(1) thereof 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). The statute requires ‘prompt and expeditious’ handling of such a complaint and even imposes the obligation so to act specifically on the chief judge of the circuit.

5. Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §351 et seq., 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 of the Second Circuit is

that action will be taken expeditiously. The Circuit's chief judge is not only required to enforce those Rules, but as its foremost officer, he is also expected to do so in order to set the most visible example of conduct in accordance with the rule of law.

B. The Chief Judge has failed to take action in more than seven months and would not even keep, let alone answer, a complaint status inquiry

6. Nevertheless, over seventh months have gone by since Dr. Cordero submitted his complaint about Judge Ninfo, but the Chief Judge of the Second Circuit, the Hon. John M. Walker, Jr., has failed to take the action required of him by statute and rules in connection therewith, let alone notify Dr. Cordero of any action taken by him 'promptly and expeditiously'.
7. Far from it! Thus, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4. 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. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt

with by disregarding the law and rules requiring that it be handled ‘promptly and expeditiously’. Nobody is above the law; on the contrary, the higher one’s position, the more important it is to set the proper example of respect for the law and its objectives.

C. The Chief Judge failed to appoint a special committee

8. Likewise, there is evidence that Chief Judge Walker has failed to comply 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 members of the judicial council concerning this matter. The replies of those that have been kind enough to write back show that they did not know anything about this complaint, much less have knowledge of the Chief Judge appointing any special committee or of any committee recommendations made to them.

D. The Chief Judge is member of the panel that failed even to discuss the pattern of wrongdoing

9. There is still more. The pattern of wrongdoing and bias at the bankruptcy and district courts has materialized in more than 10 decisions adopted by either Judge Ninfo or his colleague upstairs in the same federal building, the Hon. David G. Larimer, U.S. District Judge. Dr. Cordero challenged those orders in an appeal in

this Court bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted the decisions with bias and prejudice against Dr. Cordero and denied him due process. Yet, the order of January 26, 2004, dismissing the appeal was adopted by a panel including the Chief Judge. It does not even discuss that pattern, not to mention determine how wrongdoing may have impaired the lawfulness of the orders on appeal.

10. If a judge can be disqualified for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, at 859-60 (1988), then the appearance of one of the worst forms of impropriety, that is, perverting judicial judgment through partiality, must be sufficient to at the very least be recognized and considered in any decision. Disregarding bias and prejudice in the process of judicial decision-making that vitiates any alleged substantive grounds for the resulting decision allows the process to become a farce. The Chief Judge, in addition to his responsibility as the chief steward of the integrity of that process in this Circuit, had a statutory duty to act upon a complaint that the process that issued the appealed orders was perverted through a pattern of disregard of legality and of commission of wrongdoing. Yet, the Chief Judge too disregarded the complaint.

E. The Chief Judge failed to bear his heavier responsibility arising from his superior knowledge of judicial wrongdoing and its consequences on a person, and from his role as chief steward of the integrity of the courts

11. In so disregarding his duty, the Chief Judge bears a particularly heavy responsibility, for he knows particularly through a complaint transmitted under statute and rule to him for his consideration, as well as generally through all the papers filed by Dr. Cordero and transmitted to the panel, that Judge Ninfo's and others' targeted misconduct and systemic wrongdoing have inflicted upon Dr. Cordero irreparable harm for a year and a half by causing him enormous expenditure of time, effort, and money in, among other things, legal research and writing as well as traveling, aggravated by tremendous emotional distress. Yet, the Chief Judge has knowingly allowed the case to be remanded and thereby permitted Dr. Cordero to be the target of further abuse. Worse still, such abuse is likely to be rendered harsher by a retaliatory motive and more flagrant by the Chief Judge's failure to take any action on the complaint, let alone condemn the complained-about abuse, which may be construed as his condonation of it...

12. by the Circuit's Chief Judge!, the one reasonably expected to ensure that the foremost business of Circuit courts must be the dispensation of justice through fair and just process. But instead of doing justice and being seeing doing justice, the Chief Justice is seen to be not only blind to the commission of injustice

through the disregard of laws and rules at the root of justice by those whom he is supposed to supervise, but also to be insensitive to its injurious consequences on a party...no! no! on Dr. Cordero, a person, a human being whose life has being disrupted in very practical terms by such injustice while his dignity has been trampled underfoot by so much disrespect and abuse.

13. However, if the person suffering those consequences is of no importance, for the human 'element' is not a part of the machinery of appellate decision making, where only the mechanics of judicial process matters and justice is but a by-product of it, not its paramount objective, then one is entitled to insist that at least the rules of that process be 'observed', that is, that they be applied and be seen to be applied. Chief Judge Walker has failed to apply the rules.

II. By disregarding law and rules just as have done the judges that issued the appealed orders, the Chief Judge has an interest in not condemning the prejudicial conduct that he has engaged in too, whereby he has a self-interest in the disposition of the petition that reasonably calls into question his objectivity and impartiality

14. Chief Judge Walker has failed to comply in over seven months with the duty to take specific action imposed upon him by law and rule, and that despite the insistent requirement that he act 'promptly and expeditiously'. Moreover, since he is deemed to know what the law and rules require of him, it must be conclusively stated that he has intentionally failed to comply. Thereby the Chief

Judge himself “has [knowingly] engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts.” (emphasis added) Worse still, he has caused that prejudice by engaging in the same conduct complained about Judge Ninfo, who has acted in his judicial capacity with disregard for the law, rules, and facts. Since both the Chief Judge and Judge Ninfo would hold themselves, and their positions require that they be held, to be reasonable persons, who are deemed to intend the reasonable consequences of their acts and omissions, then both of them must be deemed to have intended to inflict on Dr. Cordero the irreparable harm that would reasonably be expected to result from their failure to comply with their duties under law and rule.

15. Their having engaged in similar conduct has grave implications for the disposition of the pending motion for panel rehearing and hearing en banc as well as any further handling of this case. This is so because Dr. Cordero’s petition is predicated, among other grounds, on the unlawfulness of the appealed orders due to Judge Ninfo’s and Judge Larimer’s participation in a pattern of disregard of the rule of law and the facts in evidence. Therefore, the Chief Judge can reasonably be expected to base his decision, not on law and rules, which he has shown to be capable of disregarding even when they charge him with specific duties, but rather on the extra-judicial consideration of not condemning his own conduct. That constitutes a self interest that compromises

his objectivity. Consequently, the Chief Judge cannot be reasonably expected to be qualified to examine impartially, let alone zealously, and eventually find fault with, conduct that he himself has engaged in.

III. Relief requested

16. Therefore, Dr. Cordero respectfully requests that the Chief Judge, the Hon. John M. Walker, Jr., recuse himself from any direct or indirect participation in any current or future disposition of *In re Premier Van Lines*, docket no. 03-5023, beginning with the pending petition for panel rehearing and hearing en banc.

Respectfully submitted on,

March 22, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
Petitioner Pro Se
tel. (718) 827-9521

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Premier Van et al.

case no. 03-5023

MOTION FOR Leave to Update the Motion for
the Hon. Chief Judge John M. Walker, Jr., to recuse
himself from this case with recent evidence of a
tolerated pattern of disregard for law and rules
further calling into question the Chief Judge's
objectivity and impartiality
to judge similar conduct on appeal

1. "The bucket stops with me" is short for taking responsibility for what subordinates do. Herein is evidence of how clerks all the way to the top have made so many mistakes and repeatedly disregarded the law and rules with the consistent effect of hindering the submission of a complaint about the Hon. John M. Walker, Chief Judge. Their conduct forms a pattern of non-coincidental, intentional, and coordinated wrongful activity that is being engaged in under the Chief Judge's stewardship of this Court. He must take responsibility for having at the very least tolerated the formation of such pattern and its injurious effect on the Court's business and claim on public trust. Disregard for legality and facts by the lower courts is precisely the attitude that has determined their orders on appeal. Thus, by his own tolerance of disregard for legality among his subordinates, the Chief Judge can reasonably be expected to lack objectivity and impartiality to assess the facts and eventually find and condemn the same conduct that the lower courts have tolerated, encouraged, and participated in. Hence, he should recuse himself.

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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 receiving clerk in In-Take Room 1803 a misconduct complaint about Chief Judge Walker under 28 U.S.C. §351 and this Circuit’s Rules Governing Complaints thereunder (referred to hereinafter as Rule #); (i-25, below; see the Table of Contents, M-22, below). He also submitted a separate volume titled “Evidentiary Documents” (26, below). He asked to speak

with Deputy Clerk Patricia Chin Allen. After the clerk phoned her, she told him 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 request 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 presupposes 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 Documents”...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 than §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 difference, 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 complaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accompanying 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 accompanying 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 'confused' 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 wrongdoing? How much commonality of interests and conduct permit to infer coordination 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:

- a) Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing

- and hearing en banc or any future proceeding in this case;
- b) the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;
- c) the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:
1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
 2. caused Dr. Cordero to waste his time, effort, and money, and inflicted 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 18, 2004

59 Crescent Street
Brooklyn, NY 11208; tel. (718) 827-9521



Dr. Richard Cordero
Movant Pro Se

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 of the Motion of April 18, 2004
 for Leave to Update the Motion of March 22, 2004
 for C.J. Walker to Recuse Himself from *In re Premier Van et al.*
 by
Dr. Richard Cordero

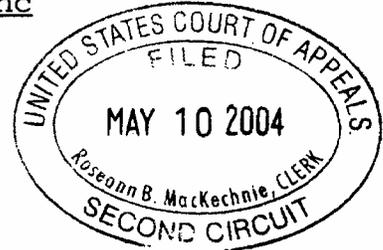
1. Motion Information Sheet.....	119	[C:337]
2. Motion of April 18, 2004	120	[C:338]
3. This Table of Exhibits.....	140	[C:358]
4. Complaint Form accompanying the judicial misconduct complaint of March 19, 2004, indicating its basis as §372(c), and removed as required by Clerk Allen (cf. entry 8.b, below)	M-23	[C:276]
5. Letter of Clerk Patricia Chin Allen of March 24, 2004, to Dr. Cordero	M-26	[C:315]
6. Letter of Clerk of Court Roseann B. MacKechnie of March 29, 2004, to Dr. Cordero	M-27	[C:325]
7. Letter of Clerk Patricia Chin Allen of March 30, 2004, to Dr. Cordero	M-28	[C:326]
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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d. 1-25 pages of documents created since the original complaint about the Hon. John C. Ninfo, II, of August 11, 2003.....	1	[C:279§I]
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc

AMENDED ORDER



In re: Premier Van Lines

Docket No. 03-5023

Movant:

Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	<input type="checkbox"/>	<input type="checkbox"/>
Consent obtained from adversary (ies)?	<input type="checkbox"/>	<input type="checkbox"/>
Is oral argument desired?	<input type="checkbox"/>	<input type="checkbox"/>

ORDER

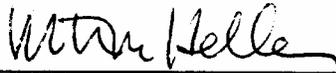
Before: Hon. John M. Walker, Jr., *Chief Judge*, Hon. James L. Oakes,
Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

MAY 10 2004

Date

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by



Arthur M. Heller
Motions Staff Attorney

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re PREMIER VAN et al.

case no. 03-5023

**Motion For The Hon. John M. Walker, Jr., Chief Judge,
Either To State His Arguments For Denying The Motions
That He Disqualify Himself From Considering The Pending
Petition For Panel Rehearing And Hearing En Banc And From
Having Anything Else To Do With This Case
Or Disqualify Himself
And Failing That
For This Court To Disqualify The Chief Judge Therefrom**

Dr. Richard Cordero states under penalty of perjury as follows:

1. Last March 22 and subsequently on April 18, Dr. Cordero filed two related motions, namely:
 1. Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc (21, infra)
 2. Motion for leave to Update the motion for the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case with Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules further Calling into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal (33, infra)
2. These motions were predicated on 28 U.S.C. §455(a) and laid forth reasons based on facts and law why the Hon. John M. Walker, Jr., Chief Judge of this

Court, should recuse himself from the pending rehearing and hearing an banc and from considering any other matter therein.

3. Nevertheless, on May 4, an order captioned “Recusal of Chief Judge Walker from petition for rehearing and petition for rehearing en banc”, signed by Motions Staff Attorney Arthur M. Heller, and amended on May 10, stated merely that “It is hereby ordered that the motion be and it hereby is denied”. (55 and 56, *infra*).

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I. Why the Chief Judge has a duty either to disqualify himself upon the reasonable questioning of his impartiality or to state his arguments why the questioning is not reasonable so that the self-disqualification obligation has not attached

4. Section 455(a) provides that a federal judge “**shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” (emphasis added). Thus, the law lays on judges a statutory obligation to disqualify themselves if the stated condition is met.
5. That condition is that “his impartiality might **reasonably** be questioned.” (emphasis added). Hence, it suffices that reasons –not evidence, let alone proof-questioning the judge’s impartiality be presented for the self-disqualification obligation to attach.
6. This means that §455(a) relies on a rule of reason. The standard by which that rule is to be applied is implicit in the section’s language, for it requires only the possibility that the judge’s impartiality “**might** reason-ably be questioned”. The verb “might” lies, of course, at the bottom of the modal continuum of might>may>could>can>must>ought to. This grammatical choice of the §455(a) legislators conveys their choice of the legal standard by which the sufficiency of the reasons is to be assessed: as it were, by a preponderance of persuasiveness.
7. Applying the rule of reason under this standard, the questioning is “evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its

appearance”, *Liteky v. United States*, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994); not how it appears from the subjective standpoint of the judge internally assessing his feelings toward a litigant or her legal position, but rather “from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances” enabling her to conduct an ‘objective inquiry’, *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1309 (2d Cir. 1988).

8. “Objective” here means that what matters in the impartiality inquiry is how the judge, as its object, appears to the reasonable observer, rather than how the judge, as a subject, assesses it personally. This follows from the Supreme Court’s statement that, “The goal of 28 USC §455(a)...is to avoid even the appearance of partiality...created even though no actual partiality exists because the judge (1) does not recall the facts, (2) actually has no interest in the case, or (3) is pure in heart and incorruptible.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847; 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988).

9. Hence, the rule of reason is applied to a §455(a) questioning to preserve the appearance of the judge’s impartiality, rather than to ascertain the reality of his lack of it. Since the section’s purpose calls for a low threshold for the rule’s application, it follows that the questioning is reasonable when it is more likely than not to persuade of the judge’s lack of impartiality. Hence, the section’s

language and purpose support the correctness of the standard of preponderance of persuasiveness to assess the sufficiency of the reasons for questioning the judge's impartiality. It is a standard easy to satisfy that cuts in favor of the reasonableness of the questioning.

10. Section 455(a) is so phrased as to allow the questioning to be done by the judge himself to begin with. This Court recognized that in *United States v. Wolfson*, 558 F.2d 59; 1977 U.S. App. LEXIS 13096 (2d Cir. 1977), note 11, where it stated that "Section 455 is a self-enforcing provision that is directed towards the judge, but may be raised by a party." The judge's foremost obligation is no longer a "duty to sit" on an assignment, *In Re: International Business Machines*, 618 F.2d 923, at 929 (2d Cir. 1980); rather, it is to preserve even the appearance of impartiality for the "purpose of promoting public confidence in the integrity of the judicial system"; id. *Liljeberg*.

11. If by a preponderance of persuasiveness the facts and circumstances available to the judge yield reasons that persuaded him of the possibility that his impartiality "**might** reasonably be questioned", the consequence is inescapable: he "shall disqualify himself", for the self-disqualification obligation has attached.

12. Once that obligation attaches, the judge must not wait until a litigant or another person actually questions his impartiality. If he has reasons that persuade him that it might be, then, even though his impartiality has not yet been questioned

by another person, the judge has the obligation to disqualify himself sua sponte.

13. It follows that the self-disqualification obligation attaches with even more strength when an observer is the person who questions the judge's impartiality, for the questioning has evidently proceeded from a possibility that might occur to a fact that has occurred. Consequently, once an observer has questioned the judge's impartiality, the only concern left is whether the questioning might persuade a reasonable person of the judge's likely lack of impartiality. If no inquiry is conducted or no determination is made, the easily met standard of preponderance of persuasiveness weighs in favor of a reasonable questioning that attaches the self-disqualification obligation. The judge has no discretion but he "**shall** disqualify himself" and "his failure to disqualify himself [is] a plain violation of § 455(a)", *id. Liljeberg*.

14. The only way for the judge not to find himself under such obligation is for him to argue that the questioning of his impartiality is not reasonable and that, as a result, the self-disqualification obligation has not attached. That he can only do, of course, by stating his arguments therefor.

15. The obligation to state those arguments is all the more evident the more prominent the judge is whose impartiality has been questioned, lest he claim that the higher the judge's visibility or station in the judicial hierarchy, the higher above the law he is so that not even a statute can place on him the obligation to

disqualify himself despite his impartiality having in fact been questioned. A judge that shows such contempt for the law as to put below his feet an obligation that the law places on him, despite the obligation being unambiguous and critically important for the judicial systems that he serves and the public that must trust it and him, breaches his oath of office to “administer justice without respect to persons...and...faithfully and impartially **discharge** and perform **all duties** incumbent upon me as [judge] **under the** Constitution and **laws** of the United States”, 28 U.S.C. §453, (emphasis added). He thereby forfeits his right to apply the law just as he loses any right to require others to show respect for the law and him.

II. The reasons presented in the motions to question the Chief Judge’s impartiality satisfied the standard of preponderance of persuasiveness and caused the self-disqualification obligation to attach

16. Among the reasons on which the motions of March 22 and April 18 (21 and 33, *infra*) urged the Chief Judge to disqualify himself are these:

- a) On August 11, 2003, a judicial misconduct complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, as well as District Judge David Larimer and their administrative staff in their courts in Rochester, was filed with Chief Judge Walker under 28 U.S.C. §351 et seq. and this Circuit’s Rules Governing such complaints. (57 and 62, *infra*) Those law and rules impose on the chief

judge of the circuit the obligation to handle the complaint “promptly” and “expeditiously”. (63, infra) The promptness obligation is all the more categorical and non-discretionary because both §351 and the Governing Rules state that the gravamen of the complaint is that the complained-about judge “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts”. (emphasis added) That statement unequivocally makes expeditious action an essential obligation of the conduct of judges as well as a key element of the application of the law. For its part, the promptness obligation is justified by the need both to protect the complainant from a judge’s misconduct and to safeguard the trust of the public at large in the integrity of the judicial system. But disregarding their welfare and general interest, to date, ten months later!, Chief Judge Walker has still not dealt with the complaint at all. Not even additional grounds for complaint arising in the meantime and expectedly brought to his attention have made him aware of the urgency of the situation enough to cause him to comply with his statutory and regulatory obligations. (67-69, infra) The Chief Judge’s failure to discharge them shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts. Thus, his conduct provides the basis for the well-grounded fear that in his participation in deciding the pending petition in this case for panel rehearing and hearing en banc the Chief Judge

can likewise disregard legality so as to apply extrajudicial considerations, including personal interests, and, given his preeminent position not only in this Court, but also in the Circuit, influence others to do the same.

b) Through such disregard of his obligations under §351 and the Rules, and by at least tolerating his own administrative staff to engage in a pattern of non-coincidental, intentional, and coordinated disregard of law and rules (33, *infra*), the Chief Judge engaged in the same conduct, namely, a pattern of non-coincidental, intentional, and coordinated disregard of law, rules, and facts that Judges Ninfo and Larimer together with their administrative staff engaged in. Thereby the Chief Judge condoned their conduct and called into question his impartiality to condemn the very disregard for legality in which he engaged. Such questioning is all the more reasonable in light of the fact that the Chief Judge is a member of the panel that dismissed the appeal from those judges' orders without even discussing how their pattern of disregard for legality and bias for the local parties and against Dr. Cordero, the only non-local, tainted their orders and rendered them null and void.

c) By disregarding the precise statutory and regulatory obligation to deal with the misconduct complaint "promptly" and "expeditiously", the Chief Judge intentionality subjected the complainant to the reasonable consequences of his acts, that is, to suffering at the hands of the complained-about judges and

administrative staff further loss of effort, time, and money, as well as additional emotional distress (cf. 69-70, *infra*) and deprivation of his constitutional right to due process before an unbiased judge. (Cf. *William Bracy v. Richard B. Gramley, Warden*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (noting that due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case). In order to avoid providing a basis for his own liability, the Chief Judge now has a personal interest in neither condemning their prejudicial conduct nor referring the case to the FBI. Such referral has been requested for the FBI to investigate, among other things, how bankruptcy fees in *thousands of open cases per trustee*, including cases obviously undeserving of relief under the Bankruptcy Code, may be driving the pattern of wrongdoing among judges and their administrative staff. (70 and 71, *infra*) Evidence obtained by the FBI could reveal the motive for bias and support the claim of its resulting harm. Consequently, Chief Judge Walker's self-interest in the disposition of every aspect of this case reasonably calls into question his objectivity and impartiality and causes his self-disqualification obligation to attach.

17. Applying the standard of preponderance of persuasiveness to the above-stated reasons upon which Chief Judge Walker's impartiality 'might be questioned',

those reasons appear persuasive enough to cause “an objective, disinterested observer fully informed of the[se] underlying facts [to] entertain significant doubt that justice would be done absent recusal”, *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992). Hence, the self-disqualification obligation has attached upon the Chief Judge.

18. These impartiality-questioning reasons and the obligation deriving from the “shall disqualify himself” command would spur a judge respectful of the law to disqualify himself or state his arguments why the obligation has not attached. But the Chief Judge slapped this reasonable questioning away with the hand of a staffer penning a mere “denied”. It cannot honestly be said that by merely doing that, the Chief Judge was paying respect in action to the principle that “Justice should not only be done, but should manifestly and undoubtedly be seen to be done”; *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923).

19. The only thing that such “denied” undoubtedly did and may have been intended to do was slap Dr. Cordero’s face. Indeed, he complained in his appeal precisely that District Judge Larimer, in his first two orders, made gross and numerous mistakes of fact and disregarded his obligation to provide a legal basis for the onerous requirements that he imposed on Dr. Cordero without making even a passing reference to the latter’s legal and factual arguments for the relief requested, whereby Judge Larimer showed that he had not even read Dr.

Cordero's motions and thus, had responded ex parte to Judge Ninfo's recommendations. Then in his subsequent two orders, Judge Larimer disregarded his obligation as a judge to be seen doing justice through the application and explanation of the law and instead gave two offhand and lazy strokes of the pen to write a mere "The motion is in all respects denied", for which he did not have to even see the motions...though at least he signed his own orders. (cf. paras. 9-11, Rehearing petition of March 10, 2004)

20. The Chief Judge did not do even that, limiting himself contemptuously to a mere "denied" penned by a staffer to slap away the reasons for his disqualification presented in two motions that he did not even have to see. That the only error corrected by the amended denial order was precisely in the name of one of the judges is not reassuring as to who saw, read, and decided what. (55 and 56, infra) Such slap does no justice where arguments for not abiding by the "shall disqualify himself" command are required. That mere "denied" also slaps in the face the Supreme Court's principle of "preserving both the appearance and reality of fairness," which "generat[es] the feeling, so important to a popular government, that justice has been done"; *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980).

III. The Court must disqualify the Chief Judge upon his failure to disqualify himself or state his arguments that the obligation to do so has not attached

21. A reasonably prudent and disinterested person faced with the criticism of lacking impartiality would naturally want to dispel it by providing reasons why it is unfounded. The urge to do so would be greater if the person is a judge charged with lack of impartiality, for then what is at stake is not only his fairness, but also his professional integrity and effectiveness. Section 455(a) still raises the stakes because it automatically attaches on the judge the obligation that he “**shall** disqualify himself” upon his impartiality being reasonably questioned. The section does not accord him any margin of discretion to determine any other appropriate reaction. The judge can only argue the non-attachment of the obligation because the questioning is so unreasonable that it does not meet even the low threshold of the preponderance of persuasiveness standard.
22. The above-stated reasonable questioning of Chief Judge Walker’s impartiality caused that obligation to attach to him. Therefore, for the Chief Judge to slap away that obligation without bothering to provide any arguments demonstrates that he has neither factual nor legal grounds to rebut such questioning, but instead puts himself above the law to escape that obligation.
23. However, if the Chief Judge did have such arguments, he could not skip stating them just to save his effort and time or out of contempt for a pro se movant or

one who dared question his impartiality. By the preponderance of persuasiveness standard the questioning was reasonable and the self-disqualification obligation attached. The Chief Judge could not merely have the motions “denied”: He had to argue against the obligation ever attaching. He owed to the law, to the Movant, and to the public at large a statement of arguments why he would stay on the case, not despite the self-disqualification obligation, but because of its absence; otherwise, he had to disqualify himself, for “Quite simply and quite universally, recusal [i]s required whenever ‘impartiality might reasonably be questioned’”, *id*, *Liteky*, 510 U.S. 540.

24. The Chief Judge also owed those arguments to the Supreme Court so as to enable it to assess on appeal the legal basis and analysis that he relied upon in deciding not to recuse himself. From nothing but a “denied” slapped by a staffer, how are the Justices to determine whether Chief Judge Walker meant that the he did not want to read the motions, had no time to waste writing a memorandum, has a cavalier attitude toward his statutory obligations, treated dismissively a mere pro se litigant, or clearly abused his discretion by failing to recognize that a fiat does not rise above the level of arbitrariness to appear as an act of justice until it ascends from a controversy on a stable platform of precedent and sound reasoning?

A. Justice Scalia's law-abiding reactions to motions for his recusal

25. In this context, it is illustrative to contrast the Chief Judge's slapped denial and Justice Scalia's two examples of respect for the law and his duty as a judge to promote public confidence in both his integrity and the judicial process. In one instance, Justice Scalia was confronted with a motion filed by Sierra Club for his self-disqualification because the Justice had spent several days duck hunting with Vice President Cheney, who was a named party in a case asking the Supreme Court whether broad discovery is authorized under the Federal Advisory Committee Act (FACA), 5 U. S. C. App. 1, §§1 *et seq.*, so as to determine whether the Vice President, as the head of the Task Force gathering information to advise the President on the formulation of a national energy policy, was responsible for the involvement of energy industry executives in the Task Force's operations. Justice Scalia denied the motion, but only after stating his arguments in detail in a memorandum; *Cheney v. U.S. District Court for the District of Columbia*, 541 U.S. ____ (2004).

26. Justice Scalia showed equal respect for his obligation to avoid even the appearance of lack of impartiality in another case, which challenged the "one nation under God" phrase in the Pledge of Allegiance as a violation of the Establishment Clause of the 1st Amendment. There Appellant Michael Newdow moved for the Justice to recuse himself because his impartiality might

reasonably be questioned after the Justice commented at a Religious Freedom Day event, before reading the briefs and knowing the facts in a case that he would likely hear, that the Ninth Circuit's decision finding a violation was based on a flawed reading of the Establishment Clause; *Newdow v. United States*, App. No. 03-7 in the Supreme Court, September 5, 2003. In that case, Justice Scalia, before writing any argument concerning the questioning of his impartiality, immediately announced his self-disqualification; *Elk Grove Unified School District v. Newdow*, 540 U. S. ____ (cert. granted, Oct. 14, 2003).

27. When the Chief Judge of this Circuit, the preeminent judicial officer herein, has his impartiality questioned, he too has the obligation either to put forth his arguments why the questioning thereof is not reasonable or to disqualify himself. If he fails to acquit himself of either obligation, those judges of this Court who still hold sufficient respect for the law not to put themselves above it or allow anybody else to do so, regardless of his station in the judiciary or in society at large, must enforce the obligation that has attached to the Chief Judge by disqualifying him from the case. Only by taking such action can those judges attest to their belief that "Justice must satisfy the appearance of justice", *Offutt v. United States*, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954), and that having a mere "denied" slapped on two reasonable disqualification motions satisfies neither justice nor them. Either they believe in those words and act to

fulfill their lofty mission as judges dispensing justice according to law or they must admit that they simply administer another system for disposing of vested interests, theirs and others, where justice and respect for the law do not just appear, but rather are mere shams.

IV. Relief requested

28. Therefore, Dr. Cordero respectfully requests that:

- a) Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
- b) in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
- c) this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

Respectfully submitted on,

May 31, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
Movant Pro Se
tel. (718) 827-9521

V. Table of Exhibits

accompanying the motion of May 31, 2004,
for Chief Judge Walker either to state his arguments for denying
the motions that he disqualify himself from considering
the pending petition for panel rehearing and hearing en banc
or disqualify himself
and failing that for the Court of Appeals to disqualify him therefrom
by
Dr. Richard Cordero

1. Dr. Cordero's **motion** of **March 22**, 2004, for the Hon. Chief Judge John M. Walker, Jr., to **recuse** himself from this case and from considering the pending petition for panel rehearing and hearing en banc19 [C:303]
2. Dr. Cordero's **motion** of **April 18**, 2004, for leave to **update** the motion for Chief Judge Walker to **recuse** himself from *In re Premier Van Lines*, no. 03-5023, with recent **evidence** of a tolerated **pattern of disregard** for law and rules further calling into question the Chief Judge's objectivity and impartiality to judge similar conduct on appeal33 [C:337]
3. CA2's **order** of **May 4**, 2004, **denying** the motion for **recusal** of Chief Judge Walker from petition for rehearing and petition for rehearing en banc55 [C:359]
4. CA2's **amended order** of **May 10**, 2004, **denying** the motion for **recusal** of Chief Judge Walker from petition for rehearing and petition for rehearing en banc56 [C:360]
5. Dr. Cordero's Statement of Facts of **August 11**, 2003, 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 York57 [C:63]
6. **Letter** of Clerk Patricia Chin **Allen** of **September 2**, 2003, acknowledging receipt and **filing** of Dr. Cordero's **complaint** about Judge **Ninfo**, under docket no. 03-854762 [C:73]
7. Dr. Cordero's **letter** of **February 2**, 2004, to Chief Judge Walker **inquiring** about the **status** of the **complaint** and updating its supporting evidence63 [C:105]
- a) CA2 **order** of **November 13**, 2003, **granting** Dr. Cordero's **motion** of October 31, 2003, for leave to **introduce** in the record of his appeal in *Premier Van et al.*, no. 03-5023, CA2, an **updating supplement** on the issue of Judge **Ninfo's bias**65 [C:108]

- 8. Dr. **Cordero's** Statement of Facts of **March 19, 2004**, setting forth a **complaint** under 28 U.S.C. §351 against Chief Judge **Walker** 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.....66 [C:271]
- 9. **Excerpt** from the **Request** that the **FBI** open an **investigation** into the link between the **pattern** of non-coincidental, **intentional, and coordinated disregard** for the **law**, rules, and facts in the U.S. **Bankruptcy and District Courts** for the Western District of New York and the **money generated** by the concentration **in** the hands of individual trustees of **thousands** of open **cases**, including cases patently undeserving of relief under the Bankruptcy Code71 [C:382]

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by USPS on the following parties copies of my motion for a statement of arguments from the Chief Judge of the Court of Appeals for the Second Circuit or for his disqualification from the case.

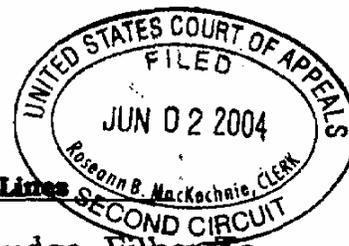
<p>Kenneth W. Gordon, Esq. Chapter 7 Trustee Gordon & Schaal, LLP 100 Meridian Centre Blvd., Suite 120 Rochester, New York 14618 tel. (585) 244-1070; fax (585) 244-1085</p> <p>David D. MacKnight, Esq. Lacy, Katzen, Ryan & Mittleman, LLP 130 East Main Street Rochester, New York 14604-1686 tel. (585) 454-5650; fax (585) 454-6525</p> <p>Michael J. Beyma, Esq. Underberg & Kessler, LLP 1800 Chase Square Rochester, NY 14604 tel. (585) 258-2890; fax (585) 258-2821</p>	<p>Karl S. Essler, Esq. Fix Spindelman Brovitz & Goldman, P.C. 2 State Street, Suite 1400 Rochester, NY 14614 tel. (585) 232-1660; fax (585) 232-4791</p> <p>Kathleen Dunivin Schmitt, Esq. Federal Office Building Assistant U.S. Trustee 100 State Street, Room 6090 Rochester, New York 14614 tel. (585) 263-5812; fax (585) 263-5862</p>
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May 31, 2004
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
Movant Pro Se
tel. (718) 827-9521

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT



Docket Number(s): 03-5023

In re: Premier Van Lines

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Has service been effected? Yes; proof is attached

Dr. Richard Cordero

ORDER

Before: Hon. John M. Walker, Jr., *Chief Judge*, Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004

Date



FOR THE COURT:
Roseann B. MacKechnie, Clerk

by

Arthur M. Heller
Arthur M. Heller
Motions Staff Attorney.



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

ORIGINAL

Doc. No. (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

OPPOSING 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:

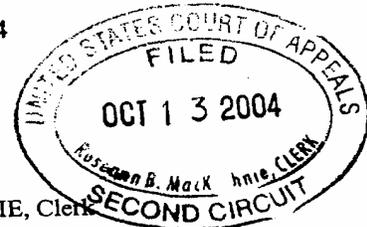
Has service been effected? Yes; proof is attached

Dr. Richard Cordero

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
Arthur M. Heller, Motions Staff Attorney

OCT 13 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.

