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Complaint

to the Administrative Office of the United States Courts
about Court Administrative and Clerical Officers and
their mishandling of judicial misconduct complaints and orders
to the detriment of the public at large as well as of Dr. Richard Cordero

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I. Court administrators violated their obligation to make judicial misconduct orders publicly available by shipping them to Missouri

1. This complaint, in so far as it concerns a matter that affects the public at large, is about the Clerk

of Court of the Court of Appeals for the Second Circuit, Ms. Roseann MacKechnie, her Chief Deputy Clerk, Mr. Fernando Galindo, and in his capacity as the top administrator of that Court, the Hon. John M. Walker, Jr., Chief Judge, for their violation of their legal obligation to make publicly available both the orders issued by chief judges and those issued by the Judicial Council of the Second Circuit to dispose of judicial misconduct complaints filed under 28 U.S.C. §351 et seq. and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers thereunder (page 1, infra; collectively hereinafter the Complaint Provisions).

2. The language of the specific provisions that were violated is unequivocal and the obligation that they impose is absolute, for they provide as follows:

> §360**(b) Public availability of written orders**.-Each written order to implement any action under section 354(a)(1)(C), which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331, ***shall*** be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. *Unless contrary to the interests of justice*, each such order ***shall*** be accompanied by written reasons therefor. *(emphasis added)*
>
> RULE 17. PUBLIC AVAILABILITY OF DECISIONS
>
> (a) General Rule. *A docket-sheet record of orders* of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council *will be made public* when final action on the complaint has been taken and is no longer subject to review. *(emphasis added;* 11, infra)

3. It was despite the interest of justice in a legal system based on precedent and because of the irrelevant allegation of 'lack of space' that, in response to my request of last June 16 to access those orders, and after having been made to wait for two weeks, Chief Deputy Galindo finally told me in person on June 30 in the reading room of the In-take Room 1803 of the Court that, with the exception of three binders containing orders for 2001-03, the orders were not available because they were stored -not in the Court's basement, or in an annex to the building, or in another building in the City of New York, or even elsewhere in the State of New York, not even in another state of the circuit, but rather- in the National Archives in the State of Missouri!
4. Chief Deputy Galindo further told me that if I wanted to consult the archived orders, I would

have to file a formal request, pay a search fee of $45, and wait at least 10 days for those orders to be shipped back from the National Archives in Missouri.

5. For Chief Deputy Galindo, Clerk of Court MacKechnie, and Chief Judge Walker to have failed to keep those orders in the Court building and instead to have sent them some 1,250 miles away is a clear violation of their obligation to keep them publicly available in the Courthouse, as required under the Circuit's Complaint Rules:

> Rule 17(b) The records referred to in paragraph (a) will be made public by placing them in a **publicly accessible file** in the office of the clerk of the court of appeals at the **United States Courthouse, Foley Square, New York, New York 10007**. The clerk will send copies of the publicly available materials to the **Administrative Office of the United States Courts, office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E. Washington, DC 20544**, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published. (emphasis added; 12, infra)

A. The administrators also failed to create and keep up to date the required docket-sheet record of misconduct orders

6. Moreover, in response to my request under Rule 17(a) for "[the] docket-sheet record of [such] orders…", Chief Deputy Galindo told me on that occasion on June 30 that he could not produce it either because there was none. The non-existence of this list, which cannot possibly be explained away by alleging limited filing space, shows that the conduct of these officers is motivated, not by space management considerations, but rather by their sheer disregard for their legal obligation to make those orders publicly available.
7. Indeed, even the orders for 2001-03 that were said to be physically in the Courthouse were not made publicly available when I requested them in person on June 16 at the In-take Room. After I was referred to Chief Deputy Galindo by the Head In-taker, Ms. Harris, he told me on the phone on June 17 that he had to ask Clerk of Court MacKechnie to determine which ones he could show me since some had the names of the judge complained-about and of the complainant, which might not be disclosable. I had to call him the following day, June 18, only to find out that he and Clerk MacKechnie had decided to refer my request to Chief Judge

Walker for him to decide which orders could be made available to me given the names that they disclosed. My argument that it was not at the time of a request that such an issue was to be looked at, thereby making those orders effectively unavailable, got no better response from Chief Deputy Galindo than to tell me to address my complaint in writing to the Chief Judge. I did so by letter of June 19 (14, infra). Till this day it has not been replied to, just as my letters of June 30, July 1 and 13 remain without response (15, 19, and 23, infra). No calls that I made to Mr. Galindo were returned until Tuesday, June 29, when he told me that I could see the orders the following day and that it had taken that long to white out the names that were not supposed to be disclosed. But not even at that time did he tell me that the available orders were merely those for 2001-03.

8. This means that I had to keep pressing for two weeks my request for the orders only to be shocked with the revelation by Chief Deputy Galindo that merely the minute fraction of three years worth of orders were available out of the 24 years during which orders have been issued since the enactment of the Judicial Conduct and Disability Act of 1980. Similarly, I was kept waiting only to be astonished by the non-existence of the docket-sheet record, which rendered it impossible for me to check against it the completeness of the set of orders for each year, assuming, of course, that all orders would have been scrupulously entered in that record. Yet, one must assume that the three top administrative officers of the Court knew all along that they had shipped to Missouri either all orders or those for the more recent years and were not keeping any docket-sheet record. It follows that they could have disclosed those facts to me from the very beginning.
9. Why did these top administrative officers fail to live up to the standard of competence and honesty that the public at large is entitled to expect from public servants, especially from those heading an institution whose mission it is to dispense justice and for whose effective performance it depends on earning the public's trust? Or was it that they did not want me in particular to consult those orders; if so, what motive would they have therefor? Consider the following sections of this complaint and determine whether the conduct of the complained-about administrative and clerical officers was motivated by bias against me or was the normal manifestation of their performance of their duties and dealings with the public…then decide which case is be worse.

II. The administrators' violation in the context of my misconduct complaints, including one about Chief Judge Walker, and the Clerks' mishandling of it

10. When on June 16 I first requested access to the misconduct orders and at every opportunity thereafter, I made all Court officers aware of what they had reason to know (13, infra), namely, that I wanted to consult those orders to prepare my petition for review to the Judicial Council of the dismissal of my misconduct complaint, docket no. 03-8547 (34, 39 infra), and that time was of the essence because pursuant to the Court's letter (13, infra) I only had until July 9 to file a review petition.

11. Although I filed that complaint on August 11, 2003, Chief Judge Walker disregarded the explicit obligation imposed under §352 on the chief judge to handle such a complaint "expeditiously" and "promptly" (40, infra); he even had my statement pointing this out returned to me unfiled (42, infra). The evidence shows that he did not conduct even a §352 and Rule 4(b) "limited inquiry" (4, infra) and did not notify the complained-about judge of any judicial misconduct complaint filed against him (43-44, infra); nor did he appoint a special committee under §353 and Rule 4(e) (5, infra). Yet, it took to do nothing but dismiss that complaint until June 8, 2004, that is 10 months! (13, infra)

12. Hence, I filed a judicial misconduct complaint about Chief Judge Walker himself on March 19, 2004, docket no. 04-8510 (43, 50 infra). I also raised a motion on April 11, 2004, to complain about Clerk of Court MacKechnie and other administrative and clerical officers for repeatedly placing obstacles to my submission of that second complaint (51, infra). No action has been taken so far to dispose of that complaint; but Clerk MacKechnie immediately returned the motion unfiled on April 13, 2004 (73, infra; more in section V, below).[1]

13. Moreover, it was not even Chief Judge Walker who dismissed my complaint of August 11, 2003, but rather the Hon. Dennis Jacob, Circuit Judge (30, infra). This constituted a violation of the non-delegable obligation under §353(b) and Rule 4(f)(1) requiring the chief judge to dispose of misconduct complaints by writing a reasoned order.[2]

14. Given these violations of the Complaint Provisions and my complaints about the Chief Judge

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[1] For a discussion of how the unavailability of these orders in the context of preparing my petition for review of the dismissal of my first misconduct complaint about judicial officers in Rochester, NY, relates to my second misconduct complaint about Chief Judge Walker himself, see 25-26, infra.

[2] Id., for a discussion of Chief Judge Walker's benefit in violating his non-delegation obligation.

and his top officers, which it was easily foreseeable I would not fail to bring up in my petition, as I did, were there independent efforts by individual officers or a coordinated effort by some or all of them to prevent, hinder, or dissuade me from consulting the orders in preparation of my petition? Let's examine the facts to determine whether they provide prima facie evidence to answer this question.

III. The Head In-taker warns me that she will call in the marshals if she finds me nodding again while reading misconduct orders in the reading room

15. On June 30, the first day when the orders were made available to me, I went to the In-take Room and checked out one of the three binders of orders from Mrs. Harris, the Head In-taker, and stepped into the adjoining reading room. I sat and read for some time the…'There is no sleeping in the reading room', a clerk told me. It appears that I was nodding. I went on reading for several hours and taking notes in my…'You are sleeping and there is no sleeping in the reading room'. This time it was Head In-taker Harris. I told her that I had not gone there to sleep, but rather must have fallen asleep. She replied 'You have already been warned and if you fall asleep again, I will call the marshals.'
16. The marshals!, those security officers in charge of preventing criminals and terrorists from smuggling into the Courthouse guns and bombs to kill and maim federal employees and visitors. Mrs. Harris would call them away from manning the metal detectors in the lobby to catch me as I threatened everybody in the reading and In-take rooms with nodding!
17. Can you assure yourself, let alone others, that you will not nod while you make an effort for hours to concentrate on reading in a noisy room? And noisy that reading room is and was on that occasion. In that approximately 15' x 15' room, people were dropping coins in the copying machines to the right; air conduits vibrated loudly in a ceiling with a missing tile; people chatted while sat by the row of Court computers on the left, which are set against a partition dividing the reading room from an office where there frequently is and was a radio playing music!; and coming and going behind me were document filers talking with clerks and clerks bantering among themselves. If in that environment your brain short-circuited and you nodded, how would you feel if you, a professional and self-respecting person, were taken away in public by the marshals? I did not risk becoming the subject of Ms. Harris' abuse of power and did not go back. My letter of complaint thereabout to Chief Deputy Galindo of July 1 (19, infra) was not replied to.

18. Was Mrs. Harris indulging in such disproportionate exercise of 'discipline' on her own initiative or as an agent in a Courthouse where…madhouse, the nurse! The infamous head nurse in "One Flew over the Cuckoos' Nest"! Did she need specific instructions to apply minute rules so insensitively to mentally ill inmates or was she the product of an institution, imitating top managers that had no respect for the obligations of their profession, psychiatry, and disregarded the rights of the inmates -particularly the one faking mental illness- whose requests they repressed with electroshocks to their brains to quash any sense of self-assertion in their minds? In this lawhouse, are there in effect the laws of trickle down unlawfulness and of power unchecked is power abused? Evidence thereof is that the Head In-taker will call in the marshals to straitjacket a reader dangerously nodding everybody around, while Chief Warden electrocutes his obligation to keep misconduct orders publicly available and sends the body of those orders to the padded room of archival preservation in Missouri. Is this sound, lawful, and unbiased conduct by top officers at a Court of Appeals of the United States?

IV. Chief Deputy Galindo returned unfiled my review petition and Clerk Allen refused to file its exhibits despite no authority in the Complaint Provisions for them to do so and disregarding the Rules authorizing me to do so

19. On July 8, I filed in the Court's In-take Room a 10-page petition for review bound together with exhibits supporting my statements, just as I have done here. However, Chief Deputy Galindo returned everything unfiled with his cover letter of July 9 (22, infra). Therein he emphasized that I should "resubmit ONLY your petition letter…[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." In addition to this heavy-handed warning, his letter invoked "the long-standing practice of this court to use the authority of Rule 2(b) as a guideline and establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages [sic]". (emphasis in the original)
20. However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) (7, infra) in the context of letters of review petition, it would have stated the maximum number of pages allowed. By not doing so, it indicated that "brief" as it qualifies petition letters is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page petition letter, containing a table of contents, headings, and quotations from §351 et seq. and the Rules as well as statements by persons in relevant positions to support my arguments and facilitate their reading. Moreover, Mr. Galindo

was inconsistent in that by analogy he applied to petition letters the Rule 2(b) 5-page limit on complaints but failed to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint (2-3, infra).

21. It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the Court has failed to give petitioners notice thereof. Yet, the Court has had the opportunity to give them notice of its practice when notifying them, as it is required to do under Rule 4(f)(1), of the dismissal and their right to petition for review (5, infra). It should have given such notice in light of the public notice requirement under §358(c), not to mention that a Court that is supposed to be familiar with, and even safeguard, the constitutional requirement of notice and fair hearing should have instinctively applied that requirement to its own conduct. Instead, the Court lets petitioners waste their time, and in any event Clerk Patricia Allen, who sent me the petition notice (13, infra), let me waste my time and effort guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness, which has no place in the administration of justice, for arbitrariness is the antithesis of the rule of law.
22. Similarly, a provision of Rule 8 is directly applicable here:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant. (10, infra)

23. Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed so that they could be made available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" (9, infra). How can the clerk make documents available if she does not even accept them for filing?
24. What harm could conceivably result from filing exhibits with a petition for review? None, yet, Clerk Allen returned my exhibits a second time even though I resubmitted them on July 13 (23, infra) in a *separate bound volume* that she could have kept in file for the event that a council member might ask for any or all the exhibits (cf. 48, infra). Why would the clerk take it upon

herself to deprive me of the right to submit to the Judicial Council exhibits that can lend credence to my petition? Was her conduct motivated by the fact that in the petition I complained about Chief Judge Walker? (25-26, infra)

V. Clerks Allen, MacKechnie, and Galindo imposed arbitrary requirements for filing my complaint about Chief Judge Walker and refused to file my complaint about them

25. This is by no means the first time that Clerk Allen has engaged in arbitrary conduct without even pretending to have any authority therefor. Among the more recent instances of her arbitrariness are her refusal of February 4 to accept an update to my first complaint (42, infra), alleging subsequently that complaints cannot be updated; her refusal of March 24 to accept a whole bound volume of exhibits because it was not titled "Exhibits", but rather "Evidentiary Documents"! (48, infra); and her refusal to accept even a Table of Contents attached to my complaint about Chief Judge Walker (48, infra), which would at least have given readers the opportunity to know what documents I had submitted and select those that they wanted to request.
26. The arbitrariness shown by Clerk Allen trickled down onto her from her superior, Clerk of Court MacKechnie. The latter refused the 25 pages of exhibits attached to my complaint of March 19, 2004 about Chief Judge Walker (43, infra), alleging in her March 29 letter that they were "duplicates", but without citing any Complaint Provision prohibiting "duplicates" and instead disregarding the fact that those exhibits were documents created since my first complaint of August 11, 2003 (49, infra).
27. Likewise, Clerk of Court MacKechnie refused to accept my motion of April 11, 2004, for declaratory judgment that officers of the Court intentionally violated law and rules as part of a pattern of non-coincidental, intentional, and coordinated wrongdoing (51, infra). In her April 13 letter, she alleged without quoting any authority that "the judicial conduct complaint procedure does not allow motion practice" (73, infra) and returned my motion. My request of April 18 for her to review her decisions in light of my legal arguments supporting the conclusion that the Complaint Provisions do allow motions and that it should be judges, not a clerk, to decide such an issue of law (74, infra), was returned to me unfiled by Chief Deputy Galindo with his April 27 letter (90, infra).
28. In that letter, Mr. Galindo just repeated without invoking any authority that:

> The Rules governing the judicial conduct procedure (28 U.S.C. §351) does [sic] not allow motion practice. All [sic] supplemental documents submitted in regard to judicial complaints will not be accepted; [does that mean that 'Some' will be accepted?]. You have not been singled out for disparate [sic, meaning discriminatory, not just different] treatment.

29. If the Clerk of Court and the Chief Deputy Clerk of a U.S. Court of Appeals are unable to write and provide legally sound and unambiguous reasons for their statements and actions, rather than just 'because we say so', they should defer to the judges; (but see 32 and cf. 26, infra, for an example of perfunctory judicial written reasoning that could have trickled down as a model for other officers).
30. To avoid such arbitrary filing refusals, I submitted a motion on May 15, 2004, under the caption of my case in chief in the Court, that is, my appeal in In re Premier Van Lines, docket no. 03-5023. That motion is for judgment declaring that the legal grounds for updating opening and reply appeal briefs and for expanding upon their issues also apply to similar papers under 28 U.S.C. chapter 16, which comprises §§351-364 (91, infra). It discusses the circumstances under which federal law, FRAP, the local rules, and this Second Circuit's Complaint Rules allow the submission of letters, motions, and evidentiary documents to the court, and, consequently, empower the court to act on them. The motion has not been decided yet.
31. When it is, Chief Judge Walker will participate in deciding it as a member of the panel. Under what circumstances did he get appointed to the panel deciding my appeal in the first place? One thing is clear: His attachment to his membership in it is quite strong, for despite all the facts and arguments in my two motions of March 22 and April 18, 2004, for him to disqualify himself (107 and 119, infra), the Chief Judge refused to do so without giving a single reason, actually, without even signing the "it hereby is DENIED" form (141, infra). In the same vein, my motion of May 31, 2004, is still pending, which calls for the Chief Judge either to state his arguments for denying my disqualification motion or disqualify himself, or failing both for the Court to disqualify him.
32. The Chief Judge's refusal to recuse himself without letting a drop of a reason or his signature fall down provides an insight into his attitude toward his power and his use of it: He can disregard his conflict of interests and the obvious appearance of impropriety without having to waste a word. Through his conduct he sets an example that trickles down to other administrative

and clerical officers. The result is a house where the law is not considered the rule of conduct of its members, but rather arbitrary power provides them with the means for them to do what they want because they say so or because they say nothing.

VI. Administrative and clerical officers have participated in a pattern of non-coincidental, intentional, and coordinated acts of disregard for their obligations under the law and Rules

33. It can reasonably be asserted on the basis of the evidence that these administrative and clerical officers of the Court of Appeals have engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard for their statutory and regulatory obligations under the Misconduct Provisions. That constitutes misconduct on their part and warrants investigation by the Administrative Office under 28 U.S.C. §604(a)(1). There is all the more reason to investigate because the Office also has evidence, independent of this complaint and entitled to full credit, pointing to grave problems in the implementation of those Provisions by the courts.
34. Indeed, Chief Justice William Rehnquist has recognized systemic mishandling by judges of judicial misconduct complaints and, consequently, appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee. Last June 10, Justice Breyer held the Committee's first organizational meeting (163, infra). In this vein, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation". (165, infra)
35. The instant complaint shows how top administrators and clerks not only dismissed out of hand the orders from their shelves and banned them to the vaults of an archive half a continent away, but also engaged in a pattern of disregard of other Complaint Provisions that evinces a shared disposition toward unlawfulness and abuse of power. Therefrom follow some pregnant questions; the answers to them can have far reaching implications. Precisely for that reason, such questions should be investigated by those with the legal obligation to supervise the performance of the courts' administrative and clerical personnel, whose conduct at all times should engender public trust and operate toward dispensing justice.

VII. Action requested

36. Therefore, I respectfully request that the Administrative Office of the U.S. Courts:

a) determine whether Clerk of Court MacKechnie and Chief Deputy Galindo, be it on their own or on the instructions of the Court's top administrator, Chief Judge Walker, violated their obligation to keep the orders publicly available that are issued under the Misconduct Provisions;

b) determine whether Head In-taker Harris abused her power when she warned a reader that she would call the marshals on him if he nodded again while reading in the reading room checked-out Court materials; and whether she acted on her own or singled me out upon the instructions of her superiors in an effort to deter me from reading judicial misconduct orders;

c) determine whether Chief Deputy Galindo and Clerk Allen violated their obligation to accept papers for filing and engaged in arbitrary conduct by, among other things:

1) applying to a 10-page petition for review a 5-page limitation neither provided for in the Rules nor notified to me in advance;

2) alleging with no authority whatsoever that judicial misconduct complaints can neither be updated nor be the subject of a motion;

3) refusing to accept exhibits by disregarding the Rules that allow them as a communication to judicial council members in the context of a petition for review; and

4) imposing meaningless and arbitrary requirements devoid of any legal foundation, such as that exhibits must be expressly identified as "Exhibits", not as "Evidentiary Documents";

d) determine whether these officers have failed to fulfill their administrative duties by their self-interest in preserving their jobs or advancing their careers by assisting judges in their efforts to prevent misconduct complaints from establishing precedents that affect their peers and that one day could be applied against them as subjects of a complaint;

e) require that the complained-about officers respond in writing to the complaint and forward to me a copy of their response or, in the alternative, hold the equivalent of an administrative hearing where they and I can provide testimony in the presence of each other;

f) determine under 28 U.S.C. §604(a)(11) with what moneys the expense of shipping the

orders to, and storing them at, the National Archives in Missouri was defrayed and, if so shipped, since when the orders have actually been stored there;

g) submit a copy of this complaint to:

1) Congress as a matter relevant to the understanding of the summary that the Director is required to file under 28 U.S.C. §604(h)(2) concerning judicial misconduct complaints;

2) both the Chief Justice of the Supreme Court of the United States, who under 28 U.S.C. §601 appoints the Director, and the Judicial Conference, which under 28 U.S.C. §604(a) supervises and gives directions to the Director, as a case illustrating conduct by top court officers that detracts from both the integrity of a court of appeals and the public trust that it must elicit as it performs its mission of dispensing justice; and

3) the Judicial Conduct and Disability Act Study Committee headed by Justice Stephen Breyer for it to examine the elements therein that fall within the scope of its Study.

37. Despite my deep disappointment in the level of integrity and law-abiding zeal of court officers after dealing with them for years, I can only hope that the Administrative Office as well as the entities mentioned above have the wholehearted commitment to fairness and the rule of law to do and appear to be doing justice to this complaint about officers who should never have given grounds for complaint, but instead should have been guided by the profound conviction that their work is not simply a job to earn a paycheck, but rather consists in the lofty mission, endowed with public trust and laden with heavy responsibility, to dispense justice to others.

Respectfully submitted on

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