

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 28, 2004

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

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

Dear Mr. Cordero:

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

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

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

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

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

By: 
Patricia Chin-Allen, Deputy Clerk

Enclosures

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



-----X

In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 04-8510

-----X

DENNIS JACOBS, Acting Chief Judge:

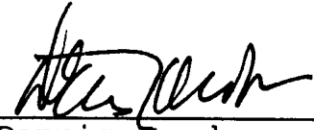
On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the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

Background and Allegations:

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

Disposition:

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



Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004

Dr. Richard Cordero

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

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

October 4, 2004

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

Re: Petition for review in judicial misconduct complaint 04-8510

Dear MacKechnie,

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

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

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

1. The first remark that follows from the paragraph above is that the initial complaint and this Complaint charge misconduct that is different and independent from each other: The former concerns a pattern of wrongdoing by Judge Ninfo; the latter the disregard for the promptness obligation and the duty to investigate a misconduct complaint by Chief Judge Walker. The dismissal of the former does not negate the misconduct of the latter and, consequently, does not render it moot. The Complaint remains to be determined on its own merits.
2. In addition, who ever heard that dismissing a case or a complaint amounts to taking “appropriate corrective action” under the Act or any other legal provision for that matter? It was Judge Jacobs himself who dismissed the initial complaint on the allegations that **a)** Dr. Cordero “has failed to provide evidence of any conduct „prejudicial to the effective and expeditious administration of the business of the courts“; **b)** Dr. Cordero's “statements...amount to a challenge to the merits...however „[t]he complaint procedure is not intended to provide a means of obtaining a review“; **c)** “the allegations of bias and prejudice are unsupported and therefore rejected as frivolous”; and **d)** “The Act applies only to judges of the United States” rather than to other parties complained-about. Since Judge Jacobs found the counts of the complaint unsubstantiated and frivolous, and its issues and other parties outside the Act's scope, how can he possibly have taken “appropriate corrective action” to correct nothing wrong and in need of no correction!?

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

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

4. The quick job dismissal of the Complaint conclusorily jumps to its mootness from the dismissal of the initial complaint without pausing to consider the elements of the doctrine of mootness. It just refers to §352(b)(2) and to “intervening events” without indicating what events those are. Presumably, the dismissal of the initial complaint is meant.
5. However, the earlier dismissal is not final because it is the subject of the petition for review of July 8 -resubmitted on the 13th- to the Judicial Council. That dismissal could be vacated and the mootness allegation would be so fatally undermined that it would fall of its own weight. Thus, it would be utterly premature to allege that the intervening dismissal of the initial complaint has rendered the Complaint moot. The initial complaint is still in play and so is this Complaint.
6. If the Judicial Council calls for an investigation of the initial complaint, it can find that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing. If so, it would have reason to investigate why Chief Judge Walker failed to conduct even a limited inquiry despite not only the abundant evidence of such wrongdoing, but also the high stakes, namely, the integrity of this circuit’s judicial system, which should have caused him as the circuit’s foremost steward to take the complaint seriously if only out of prudence.
7. The Council’s reason to investigate the Chief Judge would be strengthened by the fact that he had knowledge of the evidence of wrongdoing not only because of his duty to review the initial complaint and the many documents submitted in its support, but also because he is a member of the panel reviewing Dr. Cordero’s appeal from Judge Ninfo’s decisions and in that capacity he must have reviewed Dr. Cordero’s numerous briefs, motions, and writ of mandamus describing the pattern of wrongful acts of Judge Ninfo and others. By so investigating the Chief Judge, the Council would be proceeding in line with the Complaint’s request for relief. Since the Council could grant, whether implicitly or formally, that relief, the Complaint that asks for it is not moot.
8. Moreover, no other intervening event has changed the issues of the initial complaint and rendered a decision on the merits on this Complaint meaningless and thereby moot. Far from it, intervening events have only provided more evidence of judicial misconduct. In fact, if the Complaint had been read, it should have been noticed that it described the events that took place on March 8, 2004, seven months after the initial complaint, concerning Judge Ninfo’s handling of a different type of case, that is, not an adversary proceeding, but rather a Chapter 13 bankruptcy petition filed on January 27, 2004, over five months after the initial complaint, by David and Mary Ann DeLano, docket no. 04-20280.
9. In this vein, on August 27, 2004, Dr. Cordero sent to each member of the Judicial Council an update to the petition for review of the dismissal of the initial complaint. Its very first paragraph states that:

...recent events...raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo [out of Trustee Reiber's 3,909¹ cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383² cases].

10. Those intervening events have only strengthened the initial complaint by pointing to a powerful motive for the misconduct and bias: money, lots of it generated by *thousands* of cases that each of two trustees has before one judge. If you were a private trustee who is paid a fee percentage from the payments of bankruptcy debtors to their creditors, which means that you are not a federal employee paid by the federal government, could you possibly handle appropriately such an overwhelming workload? Similarly, with whom is it more likely that Judge Ninfo has developed a modus operandi that he would not want to disrupt: with these trustees as well as bankruptcy lawyers that have so many cases before him that they appear before him several times in a single session³, or with an out of town pro se defendant that dare demand that he apply the law and even challenge his rulings all the way to the Court of Appeals?
11. But Judge Jacobs chose not to read about these events. This is a fact based on the letter of August 30 of Clerk Patricia Chin-Allen, signing for Clerk of Court Roseann MacKechnie, that
Judge Dennis Jacobs, [sic] has forwarded your unopened letter [sic] to this office for response...Your papers are returned to you without any action taken.
12. This provides factual support to the above statement that in dismissing this Complaint, Judge Jacobs did not bother to read even his earlier order of June 8 dismissing the initial complaint. In forwarding unopened that letter, he disregarded the point made in footnote 1 of the July 8 petition for review of the dismissal of the initial complaint:
"Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant".
13. Just as Rule 8 entitles a complainant to communicate with the members of the Judicial Council, so it engenders the corresponding obligation for the members to read such communications. Those who read the August 27 update must have realized that it described relevant intervening events that raised definite and concrete facts and issues susceptible of judicial determination in their own right; they also provided further grounds for investigating the initial complaint. Thereby the intervening events precluded any allegation that the initial complaint's dismissal, which is challenged and pending review, had rendered this Complaint moot.
14. Likewise, a judicial determination of the Complaint is still appropriate because Dr. Cordero has neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

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

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

15. Nor has mootness resulted from the relief requested becoming impossible. On the contrary, the update linking judicial misconduct to a bankruptcy fraud scheme has only rendered more necessary for the Council to investigate both complaints with FBI assistance, as requested.
16. The cause for misconduct has not ceased either. Far from it, the DeLano case has provided Judge Ninfo with the need to engage in further disregard for legality and more bias against Dr. Cordero, who is one of the DeLanos' creditors and the one who showed their concealment of assets. Hence, the situation that gave rise to the initial complaint is a continuing one that has not only the probability, but also the likelihood of generating subsequent complaints. Since the same misconduct can recur, it prevents the Complaint from becoming moot; *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 120 S.Ct. 693, 528 U.S. 167, 145 L.Ed.2d 610 (2000). Thus, the Judicial Council should decide the two current complaints, just as a court would decide a case despite its apparent mootness if the dispute is ongoing and typically evades review. *Richardson v. Ramirez*, 94 S.Ct. 2655, 418 U.S. 24 41 L.Ed.2d 551 (1974).

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

17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle „promptly and expediently“ the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.
18. Judge Jacobs's unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is “capable of repetition”. The Council should not evade its review as moot precisely because the Chief Judge's violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade*, 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973).
19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Stephen Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.
20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate “conduct prejudicial to the effective and expeditious administration of the business of the courts”. What is more, mishandling complaints has severe practical consequences on the complainants and the public's perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero's case, the judges' contempt for these complaints has let him suffer for over two years Judge Ninfo's arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous

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

IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as “admitting of specific relief through a decree of conclusive character”, cf. *Aetna Life Ins. Co. v. Haworth*, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937), and that it:
- a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;
 - b. Include in their scope of investigation:
 - 1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;
 - b) what he should have known, as the circuit’s foremost judicial officer;
 - c) when he should have known it; and
 - d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and
 - 2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;
 - c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;
 - d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;
 - e. Take action on the complaints in light of the results of their investigation;
 - f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer’s Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

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

Sincerely,

Dr. Richard Cordero

**UNITED STATES COURT OF APPEALS
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Thurgood United States Courthouse
40 Centre Street
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212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 7, 2004

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

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

Dear Mr. Cordero:

We hereby acknowledge receipt of your petition for review, dated October 4, 2004 and received in this office on October 5, 2004.

Your petition for review of the September 24, 2004 Order of the Acting Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351*.

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

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

By: 
Patricia Chin-Allen, Deputy Clerk

Enclosures

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle „promptly and expediently“ the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.
18. Judge Jacobs's unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is “capable of repetition”. The Council should not evade its review as moot precisely because the Chief Judge's violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade*, 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973).
19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Steven Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.
20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate “conduct prejudicial to the effective and expeditious administration of the business of the courts”. What is more, mishandling complaints has severe practical consequences on the complainants and the public's perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero's case, the judges' contempt for these complaints has let him suffer for over two years Judge Ninfo's arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous

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

IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as “admitting of specific relief through a decree of conclusive character”, cf. *Aetna Life Ins. Co. v. Haworth*, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937), and that it:
- a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;
 - b. Include in their scope of investigation:
 - 1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;
 - b) what he should have known, as the circuit’s foremost judicial officer;
 - c) when he should have known it; and
 - d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and
 - 2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;
 - c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;
 - d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;
 - e. Take action on the complaints in light of the results of their investigation;
 - f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer’s Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

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

Sincerely, 

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



-----X

In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 04-8510

-----X

DENNIS JACOBS, Acting Chief Judge:

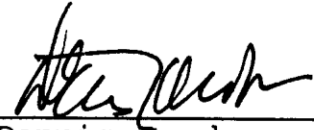
On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the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

Background and Allegations:

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

Disposition:

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



Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**MOTION TO QUASH
a bankruptcy court's order
to sever a claim from
the case on appeal in this Court
to try it in another bankruptcy case**

In re PREMIER VAN LINES, INC.,
Debtor

Case no. 03-5023

JAMES PFUNTER,

Plaintiff

Adversary Proceeding

Case no. 02-2230

-v-

KENNETH W. GORDON, as Trustee in Bankruptcy
for Premier Van Lines, Inc., RICHARD CORDERO,
ROCHESTER AMERICANS HOCKEY CLUB, INC.,
and M&T BANK,

Defendants

RICHARD CORDERO

Third party plaintiff

-v-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO,
JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

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

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.
2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfunter v. Gordon et al, dkt. no. 02-2230, an Adversary

Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole Pfunter case, moot; and makes a mockery of the appellate process.

3. Indeed, Judge Ninfo is reopening now Pfunter v. Gordon et al. to sever from it Dr. Cordero's claim against Mr. DeLano and have Dr. Cordero try it in another case, that is, Mr. and Mrs. DeLano's bankruptcy case, dkt. no. 04-20280. The foregone conclusion is that the Judge will grant the DeLanos' motion to disallow that claim, which arose from the Pfunter case, and thus eliminate Dr. Cordero from the bankruptcy case. Judge Ninfo and the DeLanos want to do this now, after treating Dr. Cordero as a creditor for six months, because he is the only creditor that analyzed the DeLanos' January 26 petition and other documents and showed in his July 9 statement evidence of fraud. Consider these few elements, cf. longer list at Exhibit E-page 88 §IV:

a) Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox machines specialist, yet they cannot account for \$291,470 earned in just the last three years!...but declared in their petition only \$535 in hand and on account; and household goods worth merely \$2,910 at the end of two lifetimes of work!, while they owe \$98,092 on 18 credit cards, but made a \$10,000 loan to their son, undated and described as "uncollectible". Does one need to be a lending industry insider, like Mr. DeLano, to recognize that these numbers do not make sense or rather to know how and with whom to pull it off?

4. Evidence that the Order's purpose is to eliminate Dr. Cordero and protect the DeLanos is that Judge Ninfo suspended all proceedings in the DeLano case until the motion to disallow Dr.

Cordero’s claim has been finally determined at an evidentiary hearing in 2005, or beyond in case of appeals! (E-155¶2) If the Judge did not suspend the DeLano case, **1)** Dr. Cordero would move for Judge Ninfo to force the DeLanos to comply with his pro-forma July 26 order of document production, which he issued at Dr. Cordero’s instigation but they disobeyed with impunity (E-95, 105, 107,109); **2)** move to force the DeLanos to comply with his discovery requests, such as production of bank and debit card account statements that can lead to the whereabouts of the concealed assets and thus prove bankruptcy fraud by the DeLanos and others, requests that the DeLanos are likely to respect even less than they did the Judge’s order; and **3)** move again for examination of the DeLanos and others under FRBkrP Rule 2004. To ensure that no such action by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!

5. By not allowing the DeLano case from moving forward concurrently with the motion to disallow, Judge Ninfo excuses the Trustee from resubmitting for confirmation the DeLanos’ debt repayment plan so that Dr. Cordero cannot oppose it by introducing any additional evidence of the DeLanos’ bankruptcy fraud that he may discover. By so preventing concurrent progress of the case, Judge Ninfo harms all the 21 creditors, who have an interest in repayment beginning immediately, as well as the public at large, who necessarily bears the cost of fraud and wants it uncovered. Hence, Judge Ninfo has issued his Order with disregard for the law and appellate process, in bad faith, and contrary to the interest of the creditors and the public.

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I. Judge Ninfo’s order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process

6. The case on appeal in this Court originates in the Adversary Proceeding Pfuntner v. Gordon et al., all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousemen, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with

impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank.

8. It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?
9. The situation would not be better at all if Dr. Cordero were found in the severed proceedings to have a claim against Mr. DeLano in the Pfuntner case on appeal here. When the Court remanded the case for trial, the other parties would try to escape liability by pointing to that finding. Either way, whatever justice could have been achieved through the appellate process

would have been intentionally thwarted in anticipation by distorting through piecemeal litigation the dynamics among multiple parties and claims within the same series of transactions.

II. Judge Ninfo has no legal basis for severing Dr. Cordero’s claim against Mr. DeLano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim

10. This is how the Bankruptcy Code, at 11 U.S.C., defines a “creditor”:

§101. Definitions

(10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;...

(15) “entity” includes person...

11. In turn, it defines “claim” thus:

(5)"claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;¹

12. These definitions easily encompass Dr. Cordero’s claim against Mr. DeLano. Moreover,

FRBkrP Rule 3001(a) provides thus:

(a) Proof of Claim

A proof of claim is a written statement setting forth a creditor’s claim. A proof of claim shall conform substantially to the appropriate Official Form.

13. Dr. Cordero’s proof of claim of May 15 was so formally correct that it was filed by the clerk

of court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the

benefit provided under FRBkrP Rule 3001(f):

(f) Evidentiary effect

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

1. _____

¹ This definition of a claim was adopted in *United States v. Connery*, 867 F.2d 929, 934 (*reh'g denied*)(6th Cir. 1989), *appeal after remand* 911 F.2d 734 (1990).

14. Dr. Cordero's claim is now legally entitled to the presumption of validity. Hence, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their January 26 petition (E-3 Schedule F). It follows that to overcome that presumption they had to invoke legal grounds on which to mount a challenge to its validity. However, just as Judge Ninfo disregards law and rules so much that he did not cite any to support his Order, so Att. Werner.

A. Mr. DeLano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection on July 19, 2004

15. This is all Att. Werner could come up with in his July 19 Objection to a Claim (E-101):

Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

16. To avoid confusion, it should be noted that neither M&T Bank, nor Mr. DeLano, nor Dr. Cordero is a party to "Premier Van Lines (01-20692)". They are parties to the Adversary Proceeding. Thus, its docket no. 02-2230, is the one relevant because that is the case pending before this Court under docket no. 03-5023. But Att. Werner's citation works as an unintended reminder to this Court that it has jurisdiction to decide this motion because the Proceeding on appeal is being disrupted by arbitrary severance of a claim in it to be dragged into the DeLano case.

17. Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero's claim against him, namely, the third party claim of Mr. DeLano's negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano's M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer's clients held in such containers, such as Dr. Cordero's, which ended up lost or

damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCP Rule 8(a) to give “a short and plain statement of the claim”. So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero’s claim, describing it as “2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.”. In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

19. It was only after Dr. Cordero’s July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). However, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that “unreasonable delay by the debtor that is prejudicial to creditors” is grounds for a party in interest, who need not even be a

creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims „to have been in this business for 28 years“, must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

B. The opinion of Mr. DeLano’s attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the \$291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero’s insistence the Judge issued on July 26 (E-107, 103).

23. In their desperation, Att. Werner denied Mr. DeLano’s liability to Dr. Cordero and even that of his employer, M&T Bank, which is not even a creditor in the DeLano case and is not represented by Att. Werner or his law firm (E-130§III). However, an attorney’s opinion on his client’s lack of liability does not constitute evidence of anything and rebuts no legal presumption, and all the more so a lay man-like opinion unsupported by any legal authority (E-138§I).

24. Then Att. Werner spuriously alleged that Dr. Cordero did not set forth any claim against Mrs. DeLano. Yet he filled out Schedule F (E-3), which requires the debtor to mark each claim thus:

If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

25. A bankruptcy claim is perfectly sufficient if only against one of the joint debtors! Att. Werner must have known that. Hence, this allegation was spurious and made in bad faith (E-131§IV).
26. With a denial of knowledge belied by the facts, an irrelevant opinion on non-liability, and a spurious allegation Att. Werner cannot do what the claim objection form in capital letters required him to do (E-101):

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR
OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f)

27. Case law has interpreted this requirement thus:

The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity. *In re Babcock & Wilcox Co.*, 2002 U.S. Dist. LEXIS 15742, at 6 (E.D.La. 2002).

28. The objector's evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim. *In re Wells*, 51 B.R. 563 (D.Colo. 1985); *Matter of Unimet Corp.*, 74 B.R. 156 (Bankr. N.D. Ohio 1987). See also Collier on Bankruptcy, 15 ed. revd., vol. 9, ¶3001.09[2]. Denial of liability as an employee is not evidence or proof of anything.

C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount

29. Dr. Cordero stated a legally sufficient claim against Mr. DeLano in a complaint that satisfied the notice pleading requirements of the FRCivP. The claim also satisfied the Bankruptcy Code, for it requires only that notice essentially of the claim's existence and amount be given. In fact, the Proof of Claim Form B10 provides in 9. Supporting Documents "...If the documents are voluminous, attach a summary." That is precisely what Dr. Cordero did when he mailed his claim against Mr. DeLano on May 15 with three pages out of the 31 pages of the complaint, including the caption page, which was labeled (E-77):

Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court

30. That only notice of the claim must be given follows from the fact that even the debtor, the trustee, a codebtor, or a surety can file the claim if the creditor fails to do so timely. None of them have to give notice of how the claim arose and what its legal basis is. Even a contingent and disputed claim is a valid claim under 11 U.S.C. §101(5); (¶11, supra). Judge Ninfo had no justification to pierce, as it were, the presumption of validity of Dr. Cordero's claim against Mr. DeLano in the case on appeal here and drag the claim out and into the DeLano case so that, as Att. Werner put it (¶15), Dr. Cordero „substantiate an obligation of Debtors“ to him. By doing so the Judge showed again his bias against Dr. Cordero and toward the local parties (E-118§IV).

D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing

31. Section 502(b) of Title 11 provides that if a claim is objected to, the judge:

...shall determine the amount of such claim...and shall allow such claim in such amount...

32. The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim, whose proof “shall constitute prima facie evidence of the validity and amount of the claim”. This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other words, drowning in debt. It is his challenge that is suspect.

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim “because such claim is contingent or unmatured”. It is obvious that a contingent claim is uncertain as to

whether it will become due and payable, and if so, in what amount. Since the section provides that a claim's contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

34. If the judge cannot determine the claim's amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

(c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case...shall be estimated.

35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim's value when liquidating the claim "would unduly delay the closing of the estate".

36. But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero's claim because Judge Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) “to ensure that the case is handled expeditiously and economically” and under §1325(a)(3), to ascertain whether the DeLanos’ plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law”. These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public’s interest in bankruptcies free of fraud, which trumps a debtor’s private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition’s good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos’ petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero’s request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909² *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as “an alleged conflict of interest” (E-151¶1) and pretend that the Trustee can conduct “a thorough investigation of the DeLano Case” (E-155)? (Cf. E-47§IV)

39. Intent can be inferred from a person’s conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be

1. _____

² As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thereby denying him access to judicial process and requiring this Court to step in

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

41. Yet, Judge Ninfo knows that the DeLanos are all but certain to fail to produce documents to Dr. Cordero because they already failed to do so pursuant to the Judge's own order of July 26, a failure complained about by Dr. Cordero at the August 25 hearing without being contradicted by Att. Werner. Likewise, the DeLanos so much failed to produce documents at the requests (E-73,82) of Trustee Reiber that on June 15 he moved to dismiss. Moreover, the DeLanos already ignored Dr. Cordero's direct requests for documents of March 30 and May 23 (E-64¶80b, 83). Through denial of judicial assistance, the mission to conduct discovery on the claim against Mr. DeLano is made an impossible one: Judge Ninfo has set up Dr. Cordero to fail!

IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero

42. Contrary to Judge Ninfo's statements, the issues that Dr. Cordero pursues in the DeLano case

are not “collateral and tangential” (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the \$291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero’s property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bankruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).

43. If Judge Ninfo „is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property“ (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September 2002, is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

...[to] address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner’s Complaint and proceeding forward....

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

45. By contrast, Judge Ninfo does have evidence to make him aware of “loss or damage to the Cordero Property” because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction...

46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero's property could also have been stolen or damaged.

47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.

48. While Judge Ninfo blames Dr. Cordero for „not taking possession and securing his property“ (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and protracting the resolution of the case enormously.

49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano...(E-151)

50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr.

Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

51. By contrast, Judge Ninfo put stock on the fact that “DeLano, through his attorney, has adamantly denied: (1) any knowledge...and (2) any...liability if there has been any loss or damage” to Dr. Cordero’s property (E-150¶2). Did Dr. Cordero have to assert “adamantly” the evidence of such loss or damage for the Judge not to cast doubt on it with his formulation “if there in fact has been any loss or damage”?; id.

52. While Dr. Cordero’s are “collateral and tangential issues” (E-153), the Judge considers that:

whether the Debtors are honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to the Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of \$15,000.00...(E-153-154)

53. Is this the way an impartial arbiter talks before having the benefit of the discovery that he is ordering Dr. Cordero to begin to undertake and who has allowed the DeLanos to conceal information by disobeying his July 26 document production order? Why does Judge Ninfo deem it “much more important” to make 21 creditors bear the loss of 4/5 of the \$185,462 in liabilities of Mr. DeLano (E-3 Summary of Schedules) than to hold him, a bank loan officer for 15 years, to a higher standard of financial responsibility because of his superior knowledge? Why does Judge Ninfo deny Dr. Cordero the protection to which he is entitled under the Code? Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor’s repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

54. Moreover, Judge Ninfo has already prejudged a key issue in controversy:

...the Court determined that:...(2) the purpose of filing the Claim Objection was not to remove Cordero from the DeLano Case, but rather it

was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (E-154-155)

- 55.** How does Judge Ninfo know that the Debtors believe anything “honestly” since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case “for unreasonable delay” in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero’s claim now?
- 56.** Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.
- 57.** Do Judge Ninfo’s statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero’s position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

V. A mechanism for many bankruptcy cases to generate money, lots of it

- 58.** The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid „a percentage fee of the payments made under the plan of each debtor“. Thus, the confirmation of a plan generates a stream of payments from

which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of the statements made in the petition would only be compensated -if at all, for there is no specific provision therefor- to the extent of “the actual, necessary expenses incurred”, §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)

59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another \$1,000 will generate a percentage fee for the trustee of \$100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let’s say, \$300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves \$700. Even if the debtor has to pay \$600 to make available money to get other officers to go along with his plan, he still comes ahead \$400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than \$1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., **1)** had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos’ petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos’.

61. There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy

petitioners from having to account for \$291,470; **2)** allows them to disobey his document production order with impunity; **3)** prejudices in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; **4)** yet shields them from further process.

VI. Relief requested

62. Therefore, Dr. Cordero respectfully requests that this Court:

- a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;
- b) Refer the Premier, the Pfunter v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:
 1. Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and
 2. Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;
 3. David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;
- c) Disqualify Judge Ninfo from the Premier, Pfunter, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.
- d) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on, September 9, 2004.
59 Crescent Street, Brooklyn, NY 11208

Dr. Richard Cordero

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

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by fax or United States Postal Service on the following parties copies of my motion to quash the Order of WBNY Judge John C. Ninfo, II, of August 30, 2004:

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

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

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

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

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor &
Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

Mr. George Schwergel
Gullace & Weld LLP
Att. for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP
Agents for eCast Settlement &
Associates National. Bank
P.O. Box 35480
Newark, NJ 07193-5480
tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin. Dept.
acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

Dr. Richard Cordero

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

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IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, on January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case"); and

WHEREAS, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692 (the "Premier Case"); and

WHEREAS, prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

WHEREAS, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

WHEREAS, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

WHEREAS, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

WHEREAS, on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

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Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

WHEREAS, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

WHEREAS, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

WHEREAS, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

WHEREAS, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

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removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

WHEREAS, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

WHEREAS, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

WHEREAS, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

WHEREAS, at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) the Claim Objection on its face is compelling, because the Cordero Claim and its attachments

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set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

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a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of \$15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

WHEREAS, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

WHEREAS, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

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to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED**, that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

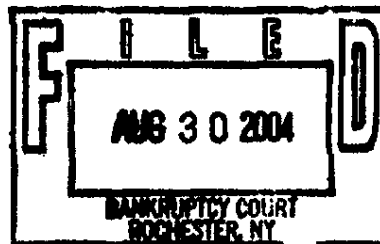
4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004



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



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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

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

Madam or Sir,

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

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

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VI. RELIEF REQUESTED53

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

1. Trustee George Reiber filed a motion of June 15, 2004, to dismiss this case and I filed a statement of July 9, 2004, to oppose it. My statement contained a detailed request for the issue of an order for production of documents by the Debtors and their attorney, Christopher Werner, Esq. The request specified which documents were to be produced as well as when, how, and by whom.
2. At the hearing of Trustee Reiber’s motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and

served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.

3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format “page # of 5”. I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.
4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER¹ already contained the description of the hearing on July 19, which included the statement in capital letters:

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

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.
6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

07/20/2004	<u>53</u>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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When one clicks on the hyperlink [53](#), only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

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

07/22/2004	<u>51</u>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <u>1</u> Proposed Order
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¹ PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

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

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.
14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:
 - a. The most egregious instance of failure to docket concerns case 02-2230, Pfunter v. Gordon et al, where Debtor David DeLano is a defendant and the bank *loan* officer who made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829

Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

- b. Even a paper concerning me but filed by another person has been withheld without docketing: The transcript that I first requested from Court Reporter Mary Dianetti on January 8, 2003, and that in violation of 28 U.S.C. §753(b) she did not deliver directly to me, was filed by her only on March 12, 2003, in violation of FRBkrP Rule 8007(a), and was not entered in docket 02-2230 until March 28, 2003, in violation of FRBkrP Rule 8007(b). Much worse yet, it was not mailed to me until March 26! Who withheld it from me, with whose authorization, and for what purpose?
- c. Moreover, the dates of docketing have been altered: I timely mailed a notice of appeal from your dismissal of my claims against Trustee Kenneth Gordon in case 02-2230, Pfuntner v. Gordon et al, on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and I timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that my motion had been timely filed on January 29, you surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! So you denied my motion. You did not want to consider the fact that Trustee Gordon had checked the docket and the filing date of my notice of appeal and had claimed with your approval in disregard of FRBkrP Rules 8001, 8002, and 9006(e) and (f) that my notice, though timely mailed, had been untimely filed. Likewise, Trustee Gordon checked the filing date of my motion to extend for the same purpose of escaping through a technicality accountability for his recklessness and negligence as a trustee. He would hardly have made a mistake in such a critical matter. For your part, you would not investigate the discrepancy. Shedding light on why you would protect him so, PACER replied on page <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl> to a query on June 26, 2004, of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". More revealing yet, in all but one of those 3,383 cases you, Judge Ninfo, have been the judge. You and Trustee Gordon go back a long way. When it came time for you to choose between protecting him and ascertaining the facts, I did not stand a chance. No wonder now the docket appears as if I had untimely filed my motion to extend on January 30, 2003.
- d. What is more, docketed papers have been withheld: To perfect my appeal to the Court of Appeals in case 02-2230, I had to comply with F.R.A.P Rule 6(b)(2)(B)(i) by submitting my Redesignation of Items on the Record and Statement of Issues on Appeal. Suspicious of another docket manipulation, I sent originals of that critical paper to both your Court and the District Court on May 5, 2003...only to be utterly shocked upon finding out on May 24 that although the District Court had transferred the record on May 19, to the Court of Appeals, the latter's docket for my appeal, no. 03-5023, showed no entry for my Redesignation and Statement. Worse still, I checked the dockets of both the Bankruptcy and the District Court and neither had entered it! The absence of this paper from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my

Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

- e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.
- f. Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:
 - 1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY
 - 2) Objection of March 29, 2004, to a Claim of Exemptions
 - 3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

However, as of April 13, docket 04-20280 read like this in pertinent part:

04/08/2004	<u>19</u>	Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # <u>1</u> Appendix)(Tacy, K.) (Entered: 04/08/2004)
04/09/2004	<u>20</u>	Deficiency Notice (RE: related document(s) <u>19</u> Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timelessness of an objection to a claim of exemptions and for a written statements on and of Local Practice, filed by Interested Party Richard Cordero) (Finucane, P.) (Entered: 04/09/2004)

These entries have many mistakes and reflected poorly on me as a filer...or as an “Interested Party” although I am a creditor listed as such in Schedule F of the DeLanos’ petition and in the Court’s Register of Creditors. Was somebody in the Court already prejudging my status after having informally gotten wind of Att. Werner’s intention to challenge it in future? I had to write to Clerk of Court Warren on April 13 to point out to him that:

- 4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:...; otherwise, the title used in 1) above, could be used.
- 5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.
- 6) For its part, entry 20 contains jarring mistakes:
 - a) it is not “timeless”, but rather “timeliness”;
 - b) it is not “exemptions”, but rather “exemptions”;
 - c) it is not “a written statements”, but rather “a written statement”.

I wrote to Mr. Warren: “I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed.” Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

- 7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano’s petition even cursorily;
- 8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;
- 9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;
- 10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,
- 11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under “local practice” and how I should have had the

courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance...*mindboggling statements indeed!*

12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:

- a) how “local practice” can invalidate federal law,
- b) how a non-local finds out reliably what “local practice” is, and
- c) why I should waste any more time, effort, and money doing legal research that will be trumped by whatever “local practice” is said to be.

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.

16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk.

17. Also inscribed in that pattern is the failure to docket my letter faxed on July 22, which is compounded by the pretense that it was never received, though acknowledged by a clerk to be in chambers and its transmission is recorded on my telephone bill.

III. Judge Ninfo’s requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the DeLanos that he requested of Dr. Cordero on July 19, 2004

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber’s motion to dismiss the DeLanos’ petition; whether your knowledge was actual or constructive is indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: “Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.” But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not issue it, actually you would not even transmit it to the clerks for docketing!

19. This is not the first time either that you ask me to prepare and submit a document that you never intended to act upon. Here are the most blatant instances:
- a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano's attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep your word it all redounded to my detriment.
 - b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.
 - c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.
20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous

amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore “local practice” (see para. 14.f.11) and 12)) and challenge your rulings on appeal.

21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, “the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004”, why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!
22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

IV. Judge Ninfo’s denial of Dr. Cordero’s proposed order on the grounds, despite their untimeliness, of Attorney for the DeLanos’ “expressed concerns” about it shows Judge Ninfo’s bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that “we believe [it] far exceeds the direction of the Court”. That is why your own order states that “to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter”. This is an unfortunate hybrid between „objections to” and „concerns about”. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.
24. How could untimely “concerns” be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).
25. By contrast, you did not dismiss as untimely Att. Werner’s objection to my status as a creditor of Mr. David DeLano, his client, although:
 - a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;
 - b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;
 - c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on

March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;

- d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and
 - e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.
26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim...but is there any point in doing so?
27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).
28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake!²

V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In addition, the longer he keeps this case in his hands, the more he risks exposure for violating his

² For other instances of your bias against me and toward the local parties and the description of other acts of disregard of the law, the rules, and the facts that form part of a pattern of non-coincidental, intentional, and coordinated wrongdoing to my detriment, see in docket 02-2230, entry 111, my motion of August 8, 2003, for you to remove that case to a presumably impartial court, such as the U.S. Bankruptcy Court in Albany, and recuse yourself from that case.

duties as trustee. This statement is based on factual evidence:

- a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.
- b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.
- c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.
- d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded \$5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to “1990 and prior credit card purchases”, reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.
- e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their “unreasonable delay” in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.
- f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them...yet he has \$3,909 *open* cases, according to PACER. Was there never a case in such a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?
- g. Whether such tremendous workload caused him to operate by dismissing cases that required investigation, or his failure to give petitions even a cursory review allowed him to rubberstamp such a huge number of cases, the fact is that he failed to detect the glaring indicia that something was wrong with the DeLanos’ petition, such as these:
 - 1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.
 - 2) While a bank officer would be expected to carry the bank’s credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any

M&T Bank card, not to mention „sticking“ their employer with a bankruptcy debt.

- 3) Mr. DeLano and his working wife declared earnings of \$291,470 in only the three years from 2001-2003.
 - 4) Nevertheless, they declared having only \$535.50 in cash or in bank accounts...with M&T and in credit, of course;
 - 5) two cars worth together merely \$6,500;
 - 6) equity in their house of only \$21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe \$78,084;
 - 7) household goods worth only \$2,910...that“s all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years...unbelievable!
 - 8) Yet, they have accumulated \$98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,...
 - 9) Wait a moment! Where did their \$291,470 go?
30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos“ earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.
 31. But if Trustee Reiber did review the DeLanos“ documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.
 32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?
 33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:
 - a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket“s electronic version the proposed order of July 19, 2004, that with

- knowledge of its contents you asked me to fax to you and I did fax;
- b. issue that order, modified by the remark that insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;
 - c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;
 - d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;
 - e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:
 - 1) Mr. Lawrence A. Friedman, Director
 - 2) Donald F. Walton, Acting General Counsel
 - 3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530
 - f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;
 - g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:
 - 1) the Debtors under 11 U.S.C. §341; and
 - 2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);
 - h. enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;
 - i. allow me to present my arguments by phone at the two upcoming hearings; not cut off the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the next scheduled public event;
 - j. reply to my motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of

local practice.

August 14, 2004

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

eCast Settlement Corporation
agent for Fleet Bank (RI) N.A. and
Associates National Bank
Becket and Lee LLP, Attorneys/Agent
P.O. Box 35480
Newark, NJ 07193-5480

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980

Mr. Erich M. Ramsey
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Finance Department
Account: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

**ORDER
FOR DOCKETING AND ISSUE,
REMOVAL, REFERRAL, AND EXAMINATION**

Having reviewed the history of the above-captioned case and the papers submitted by the several parties, and in light of the provisions of the United States Code and Rules applicable to it, the Court orders as follows:

- a. the proposed order of July 19, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 20, 2004, in entry 53 of docket 04-20280 and uploaded into the docket's electronic version to make it publicly available through it, forthwith by the clerk;
- b. said order is incorporated herein and effective immediately; and insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date of this order;
- c. the letter of July 21, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 22, 2004, in docket 04-20280 and uploaded into its electronic version to make it publicly available through it, forthwith by the clerk
- d. Trustee George Reiber is removed under 11 U.S.C. §324 forthwith from this case; James Weidman, Esq., is to terminate forthwith any and all relation to this case, whether as a professional person employed under §327 or otherwise; and any payment to them or disbursement by them of funds in connection with this case is forthwith prohibited until otherwise ordered by a competent authority;
- e. the clerk will forthwith send a copy of both this order and the above-described order of July 19, 2004, with a pertinent report by this Court to follow shortly, to the following officers:
 - 1) for review, investigation, and reconstruction of this case as appropriate, and the subsequent appointment of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the Debtors:
 - a) Mr. Lawrence A. Friedman, Director
 - b) Donald F. Walton, Acting General Counsel
 - c) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight
Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530
 - 2) under 18 U.S.C. §3057(a) for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.:
 - a) Mr. John Ashcroft
Attorney General

U.S. Department of Justice
950 Pennsylvania Av., NW
Washington, DC 20530-0001

- b) Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614
- c) Rochester Resident Agent
Federal Bureau of Investigations
300 Federal Building
100 State Street
Rochester NY 14614

f. the following persons are to produce and make themselves available for examination under FRBkrP Rule 2004 by Dr. Richard Cordero, whether as creditor or party in interest, and for the official record, in room _____ at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September _____, 2004, and, if necessary for further examination, the following day:

- 1) the Debtors, Mr. David DeLano and Mrs. Mary Ann DeLano; and
- 2) Trustee George Reiber and James Weidman, Esq.

SO ORDERED
THIS DAY OF _____

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

Today is Sun, 1 Aug 2004



Long Distance Home

Products & Services

Customer Support

About Verizon Long Distance

Directory Contact us

Online Activity Statement for all your SmartTouchSM calls and purchases

Account: 718-827-9521
Statement Period: Jul1, 2004 - Aug1, 2004

Important Numbers

If you have any questions about the long distance service provided by Verizon Long Distance, please call 1-888-599-0107.

Thank you for using SmartTouch from Verizon.

New for SmartTouch customers! Make your account even smarter with our new Rapid Recharge feature. We'll automatically "recharge" your account for you from your check card or credit card account .

International calls that terminate to wireless phones may incur [additional charges](#)

Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
Ending Balance	\$14.32cr

Purchases Activity

no.	date	Description	amount
1.	07/19/2004	SmartTouch Purchases	20.00cr

Total Purchase Activity **\$20.00cr**

Direct Dialed Calls

In-State Calls: 718-827-9521

no	date	time	place	number	min.	amount
2.	07/06/2004	15:14 PM	ROCHESTER NY	585-263-5706	23.0	1.84
3.	07/10/2004	12:53 PM	ROCHESTER NY	585-427-7804	9.0	0.72
4.	07/10/2004	13:02 PM	ROCHESTER NY	585-232-3528	9.0	0.72
5.	07/10/2004	13:12 PM	ROCHESTER NY	585-263-5862	9.0	0.72
6.	07/15/2004	11:54 AM	ROCHESTER NY	585-613-4200	6.0	0.48
7.	07/19/2004	14:25 PM	BUFFALO NY	716-841-4506	1.0	0.08
8.	07/19/2004	15:39 PM	ROCHESTER NY	585-613-4281	1.0	0.08
9.	07/20/2004	09:41 AM	ROCHESTER NY	585-613-4200	2.0	0.16
10.	07/20/2004	09:46 AM	ROCHESTER NY	585-613-4299	5.0	0.40
11.	07/20/2004	10:06 AM	ROCHESTER NY	585-427-7804	5.0	0.40
12.	07/20/2004	10:10 AM	ROCHESTER NY	585-263-5862	5.0	0.40
13.	07/20/2004	10:15 AM	ROCHESTER NY	585-232-3528	5.0	0.40
14.	07/20/2004	13:15 PM	ROCHESTER NY	585-613-4200	3.0	0.24
15.	07/21/2004	07:46 AM	BUFFALO NY	716-841-1207	13.0	1.04
16.	07/21/2004	09:47 AM	BUFFALO NY	716-841-6813	3.0	0.24
17.	07/21/2004	11:55 AM	ROCHESTER NY	585-546-1980	56.0	4.48
18.	07/21/2004	16:14 PM	ROCHESTER NY	585-613-4200	5.0	0.40
19.	07/22/2004	08:41 AM	ROCHESTER NY	585-613-4299	2.0	0.16
20.	07/22/2004	11:25 AM	BUFFALO NY	716-	4.0	0.32
21.	07/26/2004	12:02 PM	ROCHESTER NY	585-613-4200	8.0	0.64

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

July 16, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

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

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

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

Your exhibits volume is returned.

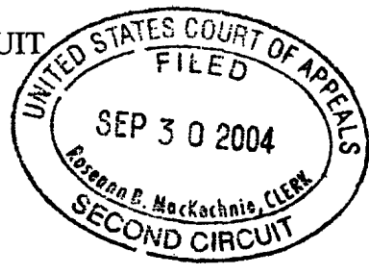
Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: 
Patricia Chin-Allen, Deputy Clerk

Enclosures

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 03-8547

Before the Judicial Council of the Second Circuit:

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

Upon consideration thereof by the Council it is

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

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

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: September 30, 2004
New York, New York

Sept 10, 2003

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

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

September 2, 2003

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

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero:

We hereby acknowledge receipt of your complaint, dated August 27, 2003, received in this office on August 28, 2003.

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.

Sincerely,

Roseann B. MacKechnie, Clerk

By: 
Patricia Chin-Allen, Deputy Clerk

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DATES OF KEY DOCUMENTS
concerning Dr. Richard Cordero's
Judicial Misconduct Complaints in the Court of Appeals
docket nos. 03-8547 and 04-8510
and Petitions for Review to the Judicial Council of the Second Circuit

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

Judicial misconduct complaint				Petition for review					
Submission	Resubmission	Acknowledgment	Dismissal	Submission	Resubmission	Acknowledgment	Letter to Jud. Council	Update to Jud. Council	Denial
August 11, 03	August 27, 03	Septem. 2, 03	June 8, 04	July 8, 04	July 13, 04	July 16, 04	July 30, 04	August 27, 04	Septem. 30, 04

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

Judicial misconduct complaint				Petition for review		
Submission	Resubmission	Acknowledgment	Dismissal	Submission	Acknowledgment	Exhibits to Jud. Council
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04

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March 19, 2004

STATEMENT OF FACTS

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

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

of the Court of Appeals for the Second Circuit

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

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

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

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

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

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

¹ 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.

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.

TABLE OF EXHIBITS
ACCOMPANYING DR. RICHARD CORDERO’S
COMPLAINT ABOUT CHIEF JUDGE JOHN M. WALKER, JR.

GROUPED IN THREE SETS
AND REFERRED TO BY:

plain number
E-number
or A-number

1. Dr. Richard Cordero’s letter of February 2, 2004, to Chief Judge John M. Walker, Jr., to inquire about the status of his complaint about WDNY Bankruptcy Judge John C. Ninfo, II	1
2. Acknowledgment by Deputy Clerk Patricia C. Allen of September 2, 2003, of receipt of the judicial complaint about Judge Ninfo, docketed as 03-8547	3
3. Chief Judge Walker’s reply of February 4, 2004 , by Deputy Clerk Allen.....	4
4. Grant of November 13, 2003 , by the Court of Appeals to Dr. Cordero of leave to file updating supplement of evidence of bias in Judge Ninfo’s denial of Dr. Cordero’s request for a trial by jury.....	5
5. Dr. Cordero’s Statement of Facts in support of a complaint under 28 U.S.C. §351 concerning Judge Ninfo and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York, of August 11, 2003 , as reformatted and resubmitted on August 27, 2003	6
6. Letter of Deputy Clerk Allen of August 25, 2003, acknowledging Dr. Cordero’s judicial conduct complaint of August 11, 2003 , and requesting resubmission with complaint form and shorter statement of facts	11
7. Notice of Chapter 13 Bankruptcy Case – In re David and Mary Ann DeLano, WDNY docket no. 04-20280–, Meeting of Creditors and Deadlines	12
8. Dr. Cordero’s Objections of March 4, 2004, to Confirmation of the Plan of Debt Repayment submitted by Debtors David and Mary Ann DeLano.....	14
9. Dr. Cordero’s Outline of his Oral Argument delivered to the Court of Appeals on December 11, 2003	19
10. Dr. Cordero’s letter of February 11 and 13, 2004 , to members of the Judicial Council of the Second Circuit	25
11. Dr. Cordero’s Statement of Facts in support of a complaint concerning Judge Ninfo , of August 11, 2003	E-1
12. Dr. Cordero’s letter of August 11, 2003 , to Clerk of Court Roseann B. MacKechnie accompanying the complaint about Judge Ninfo	E-55
13. Judge Ninfo’s Order of July 15, 2003	E-57

A. Appendix Documents Produced in appeal, docket no. 03-5023

...

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

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 7, 2004

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

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

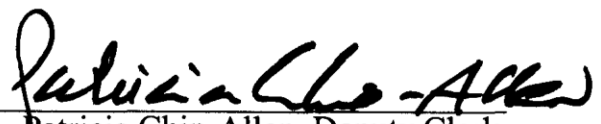
Dear Mr. Cordero:

We hereby acknowledge receipt of your petition for review, dated October 4, 2004 and received in this office on October 5, 2004.

Your petition for review of the September 24, 2004 Order of the Acting Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351*.

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

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

By: 
Patricia Chin-Allen, Deputy Clerk

Enclosures

Dr. Richard Cordero

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

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

October 14, 2004

Circuit Judge Dennis Jacobs
Member of the Judicial Council
U.S. Court of Appeals, 40 Centre St.
New York, NY 10007

Re: Exhibits for review petition concerning complaint 04-8510

Dear Judge Jacobs,

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

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

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

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

Sincerely, *Dr. Richard Cordero, Esq.*