JUDICIAL CONFERENCE OF THE UNITED STATES

PETITION FOR REVIEW

under 28 U.S.C. §357(a)

of the actions of

the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

submitted on

November 18, 2004

by

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	Last name	Members of the Judicial Conference of the United States to whom of copy of the petition of 11/18/4 for review was sent•
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2.	Boudin	Chief Judge Michael Boudin, U.S. Court of Appeals for the **First** Circuit
3.	Edmondson	Chief Judge J. L. Edmondson, U.S. Court of Appeals for the **Eleventh** Circuit
4.	Ezra	Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii
5.	Feldman	Judge Martin L. C. Feldman, U.S. Dis. Court for the Eastern District of Louisiana
6.	Flaum	Chief Judge Joel M. Flaum, U.S. Court of Appeals for the **Seventh** Circuit
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26.	Zatkoff	Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan

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JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

I. Questions Presented for Review

1. On August 11, 2003, Dr. Richard Cordero submitted a judicial misconduct complaint under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351-364. (hereinafter the Misconduct Act or the Act) about WBNY U.S. Bankruptcy Judge John C. Ninfo, II, concerning his participation together with other court officers and parties in a series of acts of disregard for the law, the rules, and the facts so numerous and consistently detrimental to Dr. Cordero, the only non-local party as well as the only pro se one, and favorable to the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias against Dr. Cordero. During the following year, Dr. Cordero addressed to the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., and then the Judicial Council of that Circuit, updating evidence showing how that pattern of illegality and bias continued to develop and was linked to a bankruptcy fraud scheme that generated the most powerful drive for wrongdoing: money, lots of money! (see infra Exhibit, page 31=E-31)
2. Nevertheless, the Chief Judge did not conduct even a limited inquiry of the complaint under §352(a), let alone appoint a special committee under §353 to investigate it, and even refused updating evidence (E-7; E-9), exhibits (E-28), and even a table of exhibits! (E-29-30) As a result, no report by a special committee was filed under §353(c) with the Judicial Council of the Second Circuit. Yet, it took 10 months for the complaint to be dismissed by Acting Chief Judge Dennis Jacobs on June 8, 2004 (E-10, 11). Dr. Cordero submitted on July 8 his petition for review and resubmitted it reformatted on July 13 (E-23). The Council denied it on September 30. (E-36-37; Table of Key Documents and Dates in the Procedural History, page i after this brief)
3. Dr. Cordero filed a misconduct complaint about Chief Judge Walker on March 19, 2004, reformatted and resubmitted on March 29 (E-39). It was dismissed also belatedly six months later on September 24 (E-44-45) and without any investigation, as was the petition for review of October 4 (47), dismissed by the Judicial Council on November 10, 2004 (E-54-55).

a) Since action by a judicial council under §354 is expressly predicated "upon receipt of a report filed under section 353(c)", did the Judicial Council lack jurisdiction to deny and dismiss the complaint under §354(a)(1)(B)?;

b) Did it fail to discharge its duty under §354(a)(1)(C) requiring that it "shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit" by failing to take either of the two actions otherwise open to it, namely, to conduct an investigation of its own or to refer the complaint together with the record and its recommendations to the Judicial Conference under §354(b)(1)?;

c) Did the Judicial Council show dereliction of its duty, generally, by failing to investigate as part of a pattern of systematic dismissals of complaints and denials of petitions without investigation (E-24), and in particular, by failing to remove a bankruptcy judge for misconduct under §354(a)(3)(B) and 28 U.S.C. §152(e), whereby it showed partiality toward one of its peers to the detriment of a complainant and the integrity of the business of the courts in its circuit? (E-128-I);

d) Did the Chief Judge and the Acting Chief Judge err by not handling the complaint 'promptly and expeditiously' (E-39), as required by the Misconduct Act (cf. E-7) and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (E-16-18; hereinafter the Complaint Rules or the Rules)?

e) Did the Chief Judge show lack of good judgment and due diligence in informing himself of the 'totality of circumstances' as they continued to develop in the complained-about court during the long period of inaction on his part when he refused updates although not required by law to do so (E-52, E-53), thus forcing complainants to file them as successive complaints and making it easier for himself and the Judicial Council to dismiss them piecemeal?

f) Did he thereby fail both to render justice to a complainant that was being denied due process of law and to safeguard the integrity of the business of the Court and the courts in his circuit?

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II. The Judicial Conference has jurisdiction over this appeal because the complainant was "aggrieved" by the Judicial Council

4. The Misconduct Act's jurisdictional provision for the Judicial Conference applicable to this petition provides as follows:

> **28 U.S.C. §357. Review of orders and actions**
>
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.
>
> **(b) Action of Judicial Conference.**- The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

5. In turn, section 354 provides as follows:

> **§354. Action by judicial council**
>
> **(a) Actions upon receipt of report.-**
>
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-
>
> **(A)** may conduct any additional investigation which it considers to be necessary;
>
> **(B)** may dismiss the complaint; and
>
> **(C)** if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

6. Dr. Cordero was aggrieved by the Judicial Council because it dismissed his petition for review:

a) without jurisdiction for the reason that it had not received any report of a special committee under §353(c) given that the chief judge of the Court of Appeals for the Second Circuit failed

to appoint any such committee under §353(a) or even conduct a §352(a) "limited inquiry";

b) conducted no investigation of its own and since the chief judge had conducted none either, it was not in a position to determine the merits of his complaint and in light thereof, what action could be considered necessary;

c) by dismissing his complaint without any investigation having been conducted at all, it failed its legal obligation under §354(a)(1)(C) that it "**shall** take…action…to assure the effective and expeditious administration of the business of the courts" (emphasis added) intended for the benefit of the public at large, including Complainant Dr. Cordero; and

d) thereby, it has further aggrieved Dr. Cordero by knowingly and indifferently leaving him at the mercy of the complained-about Judge Ninfo and other court officers and parties that have engaged in a series of acts of disregard for legality so long, for more than two years!, and so consistently against Dr. Cordero, the only non-local and the only pro se party, and to the benefit of the local parties that no reasonable observer informed of the facts could deem them coincidental and unbiased, but instead a responsible Council would have discharged its duty to investigate whether, as claimed, they were intentional and coordinated and formed part of a bankruptcy fraud scheme involving judicial misconduct.

7. The CA2 Judicial Council considered that Dr. Cordero was "a complainant…aggrieved by a final order of the chief judge" under §352(c) so that it took jurisdiction of his petitions for review and affirmed the chief judge's dismissals (E-37, E-55). The Judicial Conference can likewise consider Dr. Cordero "a complainant…aggrieved by an action of the judicial council" under §357(a) since the grounds for this petition contain, among others, the same grounds as the petition to the Council, namely, a dismissal of the complaint without any investigation in disregard of the Council's duty under the Misconduct Act and the Complaint Rules and knowing that by so proceeding it was leaving Dr. Cordero exposed to the same abuse and bias at the hands of the same judge and other court officers and parties.

A. The reasonable construction of "aggrieved" in light of the statutory purpose of the Misconduct Act

8. The appointment last May 25, by U.S. Supreme Court Chief Justice William Rehnquist of Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee because of the history of disfunctionality of its complaint mechanism supports the likelihood that the chief judge and the Judicial Council also failed to deal with the instant complaint properly.

Indeed, when applauding this appointment, the Chairman of the Judiciary Committee of the House of Representative, F. James Sensenbrenner, Jr., stated that:

> Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation.[1]

9. At the Committee's first organizational meeting on June 10, 2004, Justice Breyer stated when commenting on the importance of the Misconduct Act that:

> The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability.[2]

10. It follows that the integrity of the judiciary is a public good and in safeguarding it Justice Breyer puts the Act at a par with the Constitution. When its complaint procedures and remedies are rendered ineffective by the failure of those charged with investigating whether there is an instance of judicial misconduct, it is reasonable to hold that a complainant is aggrieved just as he is aggrieved when deprived of his constitutional right to judicial process independent from interference from officers of either of the other two branches of government.

11. In going about his task of fixing a broken complaint mechanism, it is likely that Justice Breyer will steer the Committee to examine the Misconduct Act by applying the same principles of statutory construction that he advocated in a 2001 speech and that are applicable here to determine the meaning that Congress intended for the term "aggrieved" as an element of the jurisdictional basis for the Judicial Conference:

> How are courts, which must find answers, to interpret these silences [in statutes]? Of course, courts will first look to a statute's language, struc-ture, and history to help determine the statute's purpose, and then use that purpose, along with its determining factors, to help find the answer. [3]

12. Justice Breyer applied such principles even to the construction of the Constitution. In its First Amendment the Constitution enshrines the right of 'the people to petition the government for a redress of grievances'. Similarly, the Misconduct Act gives the right to petition one branch of government, the judiciary, to "any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". The purpose of the petition is to obtain relief through disciplinary action. This is reflected in the non-fortuitous fact, even if not legally compelling, that the Act appears in Title 28, enacted into law by Congress, of the

U.S. Code under the Chapter 16 title, "Complaints Against Judges and Judicial Discipline".

13. The key means for achieving that purpose is the investigation of complaints. Such investigation is conducted by each of the three levels of the judiciary charged with the duty to achieve such purpose, namely, the chief judges, the judicial councils, and the Judicial Conference. Whether they appoint special committees or investigate themselves, they have the manpower and subpoena power to go behind what the complainant at the receiving end of the misconduct can ever find out and state in his complaint. Hence, the investigation of complaints is the indispensable means to achieve the Congressional purpose of ascertaining judicial misconduct and taking disciplinary action.
14. Only through the investigation of complaints can the Misconduct Act ensure the accomplishment of "the business of the courts", which is to "administer justice without respect to persons …under the Constitution and laws of the United States", 28 U.S.C. §453. When the law is disregarded, justice is not administered, but is rather denied, especially where the law is systematically disregarded, whether by judges complained-about or by chief judges, judicial councils, or the Judicial Conference who systematically fail to investigate judicial misconduct complaints.
15. It is reasonable to assume that when Congress drafted and passed the Misconduct Act it did not want the Act to become dead letter: useless to curb misconduct on the part of judges and ineffective as a source of judicial discipline for the protection of complainants and the public. It is also reasonable to conclude that any complainant denied such protection would be aggrieved by the failure of a chief judge or a judicial council, not to mention by the failure of both, to investigate his complaint. His grievance would not only consist in the frustration of his legitimate expectation that judges, of all people, would "faithfully and impartially discharge and perform all [their] duties…under the Constitution and laws", §453. The complainant would also be aggrieved by the practical consequence that by so disregarding their duties, those judges would knowingly and indifferently leave him exposed to further abuse and bias at the hands of the judge complained-about. Such grievance renders the complainant an "aggrieved" one within the meaning of §357(a) and provides the basis for the Judicial Conference to take jurisdiction of his complaint.
16. Indeed, it is only reasonable to assume that Congress did not want to see its Act eviscerated by the failure to investigate of all those to whom it entrusted its application upon considering them capable of self-policing. Consequently, where the chief judge and the judicial council have failed to discharge their duty to investigate a complaint as a prerequisite to disposing of it,

Congress would expect at least the Judicial Conference to rise to its self-policing duty by taking the opportunity of a petition by a complainant aggrieved by such failure and investigate the judge and the acts complained about.

17. This expectation is particularly reasonable with respect to the instant complaint because its gravamen is not only that one judge misconducted himself in his dealings with one litigant – which in any event should constitute enough ground for the Judicial Conference to take jurisdiction and investigate the complaint-. It is also that the available evidence shows that the judge is participating with others in a bankruptcy fraud scheme motivated by the most powerful driver of wrongdoing: money! Hence, Congress would expect the purpose of the Act to be pursued in the final instance by the Judicial Conference especially where the aggrieved complainant stands for the general public that can reasonably be deemed aggrieved by widespread judicial and extra-judicial misconduct that undermines the integrity of the process of law and the bankruptcy system. (E-128I-II)
18. Such stakes are large enough to justify the Judicial Conference in taking jurisdiction and conducting an investigation where none has been conducted. To do so it is entitled to give §357 an expansive interpretation, for the alternative to doing so is for the Judicial Conference to join the chief judge and the judicial council in their failure to discharge their duty to give effect to the Misconduct Act. That cannot be what Congress intended. Whatever different interpretation was given to §357 in the past was wrong, as shown by the fact that "the practical tendency" of dismissing complaints without investigation has been to insulate peer judges from responsibility for their misconduct to the detriment of complainants. That constitutes a breach per se of the duty to "administer justice without respect to persons". The need to appoint the Breyer Commit-tee is confirmation that such dismissals are tendentious and contrary to the Act's purpose.
19. The defeat so far of the Act's purpose warrants that now §357 be interpreted differently, if need be. The reinterpretation can be justified by the principle illustrated by Justice Breyer when he stated in the context of the Fourteenth Amendment that it "uses the word "reasonable," -- a word that permits different results in different circumstances"[4]. Likewise, terms such as "aggrieved" and "action" in §357 can be given a different construction so that the Judicial Conference may breathe life into the dead letter of the Act in order to achieve its Congressional purpose: to ascertain misconduct and enforce discipline for the protection of the complainant and the public's confidence in the judiciary.

20. Just as in *Brown v. Board of Education*, "the Court began to enforce a law that strives to treat every citizen with equal respect", as Justice Breyer stated in a speech[5], the Judicial Conference can take jurisdiction of this petition to send a clear message that instead of systematically giving peer judges the benefit of the doubt, thus holding in practice that a judge can do no harm, it will 'do equal right by judges and any other person', cf. §453, because in practice judges are just as susceptible to human frailties as anybody else. Hence, they will not be spared investigation when the evidence reasonably expected from and submitted by a complainant casts suspicion of their having engaged in wrongdoing.

21. The instant complaints contain enough evidence to cast reasonable suspicion over Judge Ninfo and other court officers and parties of having engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing as part of a bankruptcy fraud scheme. Therefore, they should have investigated. Chief Judge Walker should have done so 'promptly and expeditiously'. Despite his failure to do so, the Judicial Council too failed to investigate both and left Dr. Cordero to suffer more abuse and bias. How could the Complainant not be aggrieved by their actions and the Judicial Conference not have the duty to step in to investigate?

III. Statement of facts

A. The categories of evidence that raise reasonable suspicion of wrongdoing that should be investigated

22. The evidence of judicial misconduct linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been attached as exhibits, though all others referred to therein are available on request. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to pursue that evidence to collect more and evaluate it under the standard of the preponderance of the evidence applied by the Judicial Conference, as it stated in its misconduct Memorandum and Order No. 98-372-001, at 18. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, a trustee sued for negligence and recklessness who had before him some 3,000

cases! –how many do you have?-; an already defaulted bankrupt defendant against whom an application for default judgment was brought; parties who have disobeyed his orders, even those that they sought or agreed to; and debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the scheme.

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

1) Judge Ninfo and others have protected parties from incriminating discovery and trial

23. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (E-1) in *Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al*, WBNY dkt. no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

24. By that time Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2:II)

a) Indeed, the statistics on PACER as of November 3, 2003[6,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[7] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

25. Could you handle competently such an overwhelming number of cases, increasing at the rate of

1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3:B-E; E-86:II).

26. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY dkt. no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Mr. Pfuntner!

    a) Judge Ninfo would not compel Mr. Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4:C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4:C-D).

27. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet,

for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5:E; E-90:III)

28. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

2) The DeLano Debtors have engaged in bankruptcy fraud

29. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; docket no. 04-20280, WBNY (E-153). The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

b) The DeLanos incurred scores of thousands of dollars in credit card debt;

c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

f) owe also a mortgage of $77,084;

g) but have near the end of their work lives equity in their house of only $21,415;

h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-185);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65:III).

30. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64:II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underre-porting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64:III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117:B) How extraordinary! given that:

a) The DeLanos had treated Dr. Cordero as a creditor for six months;

b) They were the ones who listed Dr. Cordero's claim in Schedule F…for good reason because

c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into the Pfuntner case as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115:A)

31. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33:II)

32. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr.

Cordero's claim is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; E-185) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69:¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92:IV), he refused to even docket it (E-80; E-84:I; 90:III) and only issued a watered down version of Dr. Cordero's proposed order on July 26 (E-76; E-81) that he then allowed the DeLanos to disobey! If not for leverage, what was it issued for?

33. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (E-107; E-121:III) That could take years! during which the other 20 creditors are prejudiced because they cannot begin to receive payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interest of creditors and the public so as to protect the DeLanos needs to be investigated.

34. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, 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. To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121:III-IV) The stakes must be very high indeed!…and all the trustees know it.

3) Trustee Reiber & Att. James Weidman have violated bankruptcy law

35. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-149). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[8] *open* cases! He cannot be all the time where he should be. This raises questions:

36. Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? (E-68:V) They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamp petitions? Something is not right here.

37. Actually, nothing is right. Thus, at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-41)

38. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65:III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64-II) and perfunctorily (E-65:III).

39. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their

financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66:IV)

40. Trustee Reiber has refused to hold an adjourned meeting of creditors. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo.
41. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini (E-71:¶32; E-93:III), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate and all have countenanced his failure to investigate needs to be investigated.

B. How a bankruptcy fraud scheme works

42. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.
43. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have

imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

44. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

45. As for a standing trustee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, after the trustee receives a petition, she is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that the debtor deserves bankruptcy relief from his debt burden, the trustee approves his debt repayment plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

46. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

47. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of the 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 her three times as much as if she had sweated over the petition 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 $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

48. 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:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;
    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document;
    c) chose to dismiss the case rather than subpoena the documents requested but not produced;
    d) has refused to trace the substantial earnings of the DeLanos'; and
    e) after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.
49. Moreover, there is something fundamentally suspicious when:
    a) a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for $291,470;
    b) allows the local parties to disobey his orders with impunity;
    c) before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud (E-121:IV); and
    d) yet shields them from discovery by suspending all further process until their motion to disallow is finally determined.
50. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That warrants an investigation.
51. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building or live in the same small community in Rochester or Buffalo, NY. (E-135-147) They too may fear the consequences of admitting that right under their noses such a scheme developed. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation…starting by subpoenaing the bank account

and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

IV. The actions by the Chief Judge and the Judicial Council

52. The Judicial Council limited itself to responding to Dr. Cordero's petitions (E-23; E-47) with forms dated September 30 (E-37) and November 10 (E-55) that carry the boilerplate DENIED for the reasons stated in the order dated June 8 (E-11) and September 24, 2004 (E-45). By so doing, not only did it fail to give even the appearance that justice was being done, but it also did not provide any reasons for its action that could be discussed here.

53. As for the dismissals, both by Acting Chief Judge Jacobs, whereby the Chief Judge was insulated from §359 restrictions (E-24-25) although he recused himself (E-127), his reasons are discussed in the petitions of July 13 (E-23) and October 4 (E-47). However, to the discussion of his reason that Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling (E-13), it is pertinent to add the following passage from a Judicial Conference memorandum:

> Although a judge indeed may not be sanctioned out of disagreement with the merits of rulings, a judge certainly may be sanctioned for a consistent pattern of abuse of lawyers appearing before him. The fact that that abuse is largely evidenced by the judge's rulings, statements, and conduct on the bench does not shield the abuse from investigation under the Act. To the contrary, allegations that the judge has been habitually abusive to counsel and others may be proven by evidence of conduct on the bench, including particular orders or rulings, that appears to constitute such abuse.[at 15] …The sanctions are not based upon the legal merits of the judge's orders and rulings on the bench, but on the pattern of conduct that is evidenced by those orders and rulings.…If a judge's behavior on the bench, including directives to counsel and litigants, were wholly beyond the reach of the Act, the Act would be gutted. at 16, *In re: Complaints of Judicial Misconduct or Disability*, No. 98-372-00.

54. Judge Jacobs also wrote that Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…(E-13). Dr. Cordero rebutted that other court officers, trustees, attorneys, and judges that work for or with Judge Ninfo or appear before him in that small federal building in Rochester (E-86:II), and all the more so if they also participate in the bankruptcy fraud scheme, have followed his example of disregard for legality and bias against Dr. Cordero (E-25). The common sense likelihood that others joined in and compounded judicial misconduct is implicit in the following passage from another memorandum of the Judicial Conference:

> While the identity of the complainant will necessarily become known to the judge complained against, a complainant may also fear retaliation from the judge's judicial colleagues, former law clerks, and other associates, as well as other adverse consequences, such as acquiring a reputation as a malcontent; at 8 in No. 94-372-001.

55. Copies of these memoranda had to be obtained from the Administrative Office of the U.S. Courts. The Judicial Conference should know this because, by contrast, the Chief Judge of the Court of Appeals for the Second Circuit impaired Dr. Cordero's preparation of his petition to the Circuit's Judicial Council by making it impossible to consult precedent constituted by orders and supporting memoranda of Second Circuit chief judges and the Judicial Council disposing of other complaints. (E-15, E-19) Although Rule 17(b) of the Circuit's Complaint Rules provides that such materials and dissenting opinions, statements, and the docket-sheet record thereof "will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals" (E-18), the Chief Judge kept them, except those for the last three years, not in the clerk's office, not stored elsewhere in the Court's building, not stored in any annex to the building, not stored in any building in the City of New York, not even stored in the State of New York, or in any other state of the Circuit, but rather shipped them away to the State of Missouri to be kept in the vaults of the National Archives! And there was no docket-sheet record at all. (E-20)
56. Moreover, if while reading the few materials available at the Court you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.
57. One thing is sure: Chief Judge Walker creates an institutional climate of disrespect for the law when he shows contempt for the Misconduct Act and his own Circuit's Rules and 1) fails to make and keep complaint materials publicly available, 2) fails to deal with complaints 'promptly and expeditiously', 3) arbitrarily refuses updates to complaints, 4) fails to investigate complaints, 5) fails to safeguard the "business of the courts" of dispensing justice, 6) fails to discipline biased judges who abuse parties, 7) fails to protect complainants and indifferently lets them continue suffering enormous waste of effort, time, and money (E-90:III) and tremendous emotional distress (E-43) due to his peers' misconduct. Can a complainant be "aggrieved" when he makes the Circuit's Judicial Council aware of this situation, but it takes no action other than to

rubberstamp **DENIED** on his plea for relief? Will the Judicial Conference tolerate self-policing by the judiciary that degenerates into arrogant self-immunity and disregard for duty? (E-128-II)

V. Relief requested

58. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

a) construe 28 U.S.C. §357(a) so as to grant this petition for review;

b) investigate the complained-about judicial misconduct and its link to a bankruptcy fraud scheme;

c) include in the investigation the following cases:

1) Mr. Palmer's *Premier Van Lines*, Chp. 7 bankruptcy case, dkt. no. 01-20692, WBNY;
2) *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, WBNY; adversary proceeding appealed in:
   i. *Cordero v. Gordon*, dkt. no. 03-CV-6021, W***D***NY and
   ii. *Cordero v. Palmer*, dkt. no. 03-MBK-6001, District Judge David Larimer presiding;
3) *Premier Van et al.*, dkt. no. 03-5023, in the Court of Appeals for the Second Circuit; and
4) *In re David and Mary Ann DeLano*, Chp. 11 bankruptcy case, dkt. no. 04-20280, WBNY;

d) appoint investigators from outside the Rochester and Buffalo area, who are unacquainted with those that may be investigated and who can investigate zealously, efficiently, and exhaustively regardless of who is participating in wrongdoing or just looking the other way;

e) make a simultaneous report to the Acting U.S. Attorney General, such as under 18 U.S.C. §3057(a), and request that the Department of Justice join its investigation and also appoint investigators from outside the DoJ and FBI offices in Rochester and Buffalo (E-135-147);

f) take a position on whether:

1) the appearance of impartiality on the part of Judge Ninfo and District Judge Larimer (E-4:D) no longer obtains so that they should be disqualified from the cases in c) above; and
2) the three cases assigned to Judge Ninfo –c)1), 2) and 4) above- and the appeals therefrom assigned to Judge Larimer –c)2)i) and ii)- should be removed in the interest of justice under 28 U.S.C. §1412 to an impartial court for trial by jury, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;

g) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted, under penalty of perjury,

on November 18, 2004

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[1] News Advisory released on May 26, 2004; www.house.gov/judiciary; Contact: Jeff Lungren/Terry Shawn, 202-225-2492.

[2] http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html; For Further Information Contact: Public Information Office of the U.S. Supreme Court at 202-479-3211.

[3] "Our Democratic Constitution", Stephen Breyer, Associate Justice, Supreme Court of the United States, The Fall 2001 James Madison Lecture, New York University Law School, New York, NY, October 22, 2001; http://www.supremecourtus.gov/publicinfo/speeches/sp_10-22-01.html.

[4] Associate Justice Stephen G. Breyer, "Liberty, Security, and the Courts", Association of the Bar of the City of New York, New York, NY, April 14, 2003; http://www.supremecourtus.gov/publicinfo/speeches/sp_04-15-03.html.

[5] "Brown: One Constitution.....One People.....One Nation", Stephen Breyer, Associate Justice, Supreme Court of the United States, 50th Anniversary of Brown v. Board of Education, Topeka, Kansas, May 17, 2004; http://www.supremecourtus.gov/publicinfo/speeches/sp_05-17-04b.html.

[6] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.

[7] Id.

[8] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

Key Documents and Dates in the Procedural History [updated at ToEC:3]

of the judicial misconduct complaints and review petitions filed under 28 U.S.C. §351 et seq. with the CA2 Chief Judge and the Judicial Council of the Second Circuit
dockets no. 03-8547 and no. 04-8510
submitted in support of a petition for review to
the Judicial Conference of the United States
by

Dr. Richard Cordero

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

Judicial misconduct complaint				**Petition for review**					
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Resubmission	Acknow-ledgment	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
-	1	-	10 & 11	-	23	28	29	31	36 &37
page numbers of documents included among the exhibits									

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

Judicial misconduct complaint				**Petition for review**				
Submission	Resubmission	Acknow-ledgment	Dismissal	Submission	Acknow-ledgment	Exhibits to Jud. Council	Rejection of exhibits	Denial
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04	October 20, 04	November 10, 04
39	-	-	44 & 45	47	-	52	53	54 & 55
page numbers of documents included among the exhibits								

TABLE OF EXHIBITS

submitted on November 18, 2004
to the Judicial Conference of the United States
in support of a petition for review of
the denials by the Judicial Council of the Second Circuit of
petitions for review of dismissals of judicial misconduct complaints
no. 03-8547 and no. 04-8510, CA2
by
Dr. Richard Cordero

I. Complaint against WBNY Judge J.C. Ninfo, no. 03-8547, CA2 845

II. Complaint against CA2 Chief Judge J.M. Walker, Jr., no. 04-8510, CA2 847

III. Descriptive and evidentiary documents supporting both complaints and pointing to a judicial misconduct and bankruptcy fraud scheme 848

IV. Basis for requesting that the FBI and DoJ investigators be appointed from outside the Buffalo and Rochester Offices 849

V. The DeLanos' bankruptcy petition 850

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Exhibits=E

I. Complaint against WBNY Judge J.C. Ninfo, no. 03-8547, CA2

1. Dr. Richard **Cordero**'s judicial misconduct **complaint against** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on **August 11**, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit ..... 1 [C:63]

2. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence ..... 7 [C:105]

3. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made ..... 9 [C:109]

4. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** against Judge **Ninfo** ..... 10 [C:144]

5. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** against Judge **Ninfo**, docket no. 03-8547, CA2 ..... 11 [C:145]

6. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review ..... 15 [C:530]

7. **Rule 17(a) and (b)** of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers ..... 16 [C:531]

8. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints ..... 19 [C:533]

9. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando **Galindo**, Chief Deputy of the Clerk of Court, **concerning** the warning to him by **Mrs. Harris**, Head of the In-take Room, that if he nodded a third time in the reading room while reading misconduct orders, she would **call the marshals on him** ..... 21a [C:537]

10. Acting Clerk of Court Fernando **Galindo**'s letter of **July 9**, 2004, **returning** Dr. **Cordero'**s 10-page **petition** for review **of July 8**, 2004, because the Court's "long-standing practice…[is to] establish the definition of brief as applied to the statement of grounds for petition to five pages" ..... 22 [C:621]

11. Dr. **Cordero**'s **petition to** the **Judicial Council** of the Second Circuit of July 8, reformatted and resubmitted **on July 13**, 2004, for review of the dismissal of his **complaint** against Judge **Ninfo**, and addressed to Acting Clerk Galindo **with** a separate **volume of exhibits** after the exhibits attached to the July 8 petition were not accepted ..... 23 [C:623]

12. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **July 16,** 2004, to Dr. Cordero **acknowledging** receipt of his **petition** for review to the Judicial Council, wrongly dating it as of February 13, and **returning** the also unaccepted separate **volume** of exhibits ..... 28 [C:651]

13. Dr. **Cordero**'s letter of **July 30**, 2004, to the **members** of the **Judicial Council** to let them know that neither the **volume** of exhibits nor the **table of exhibits** accompanying the petition for review was accepted but instead were **returned unfiled** and sending each a copy of the table as well as of the 5-page petition ..... 29 [C:652]

14. Clerk **MacKechnie**'s letter by Deputy **Allen** of **August 13**, 2004, accompanying the **return** of Dr. Cordero's copies of July 30, 2004, to Chief Judge **Walker** of the table of exhibits and the 5-page petition..... 30 [C:657]

15. Dr. **Cordero**'s letter of **August 27**, 2004, **to** the Judicial **Council updating** the petition to review with information pointing to **money** generated by fraudulent bankruptcy petitions as the force **driving** the complained-about **judicial misconduct**..... 31 [C:660]

16. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **October 6**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review ..... 36 [C:671]

17. **Judicial Council**'s **order** of **September 30**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his complaint against Judge Ninfo, CA2 docket no. 03-8547..... 37 [C:672]

II. Complaint against CA2 Chief Judge J.M. Walker, Jr., no. 04-8510, CA2

18. Dr. **Cordero**'s judicial misconduct **complaint** of **March 19**, 2004, as reformatted and resubmitted on March 29, **against** the Hon. John M. **Walker**, Jr., Chief Judge of the Court of Appeals for the Second Circuit..... 39 [C:271]

19. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **September 28**, 2004, to Dr. Cordero accompanying the order of **dismissal** of his **complaint against** CA2 Chief Judge **Walker** ..... 44 [C:390]

20. Acting Chief Judge **Jacobs**' **order** of **September 24**, 2004, dismissing Dr. Cordero's misconduct **complaint against** Chief Judge **Walker**, docket no. 04-8510, CA2 ..... 45 [C:391]

21. Dr. **Cordero**'s **petition** of **October 4,** 2004, **to** the **Judicial Council** of the Second Circuit, for **review** of the **dismissal** of his judicial misconduct **complaint** against Chief Judge **Walker**, addressed to Clerk MacKechnie..... 47 [C:711]

22. Dr. **Cordero**'s letter of **October 14**, 2004, **to** the **Judicial Council submitting exhibits** in support of the petition to review the dismissal of the complaint against Chief Judge Walker **and requesting** an **investigation** ..... 52 [C:717]

23. Clerk **MacKechnie**'s **letter** by Deputy **Allen** of **October 20**, 2004, **returning** to Dr. Cordero the **exhibits** submitted on October 14 and stating that complaints cannot be supplemented ..... 53 [C:777]

24. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **November 10**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker** ..... 54 [C:780]

25. **Judicial Council**'s **order** of **November 10**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his **complaint against** Chief Judge **Walker** ..... 55 [C:781]

III. Descriptive and evidentiary documents supporting both complaints and pointing to a judicial misconduct and bankruptcy fraud scheme

26. Dr. **Cordero**'s **Objection** of **March 4**, 2004, to **Confirmation** of the Chapter 13 Plan of Debt Repayment ..... 57 [D:♦63]

27. Trustee **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004 ..... 62 [D:164]

28. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition and containing in the relief the text of a **requested order** ..... 63 [D:193]

29. Att. **Werner**'s **notice** of hearing and order, filed on **July 22**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it ..... 73 [D:218]

30. Dr. **Cordero**'s cover letter of **July 19**, 2004, faxed **to** Judge **Ninfo** and accompanying: ..... 75 [D:207]

    a) Dr. **Cordero**'s **Proposed order** for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004 ..... 76 [D:208]

31. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, objecting to Dr. Cordero's proposed order because it "extends beyond the direction of the Court" ..... 79 [D:211]

♦**D:**=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY. These items as well as the transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005, are in the PDF files in the D Add Pst folder on the accompanying CD.

32. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 ..... 80 [D: 217]

33. Judge **Ninfo**'s **order** of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" ..... 81 [D:220]

34. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WDNY, for docketing and issue of order, removal, referral, examination, and other relief ..... 83 [D:231]

    a) **Proposed Order** For Docketing and Issue of Order, Removal, Referral, and Examination ..... 98 [D:246]

35. Judge **Ninfo**'s **Order** of **August 30**, 2004, to sever a claim from the case on appeal in the Court of Appeals (docket no. 03-5023) for the purpose of trying it in the DeLano case in the Bankruptcy Court (docket no. 04-20280) ..... 101 [D:272]

36. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** Judge **Ninfo's Order** of **August 30**, 2004 ..... 109 [D:440]

37. **Order** of the **Court of Appeals** of **October 13**, 2004, **denying** Dr. Cordero's motion to **quash** Judge **Ninfo's Order** of **August 30**, 2004, and stating that **Chief Judge** Walker **recused himself** from further consideration of the Premier Van Lines case ..... 127 [D:312]

38. Dr. **Cordero**'s **motion** of **November 2**, 2004, in the Court of Appeals to **stay** the **mandate** following denial of the motion for panel rehearing and **pending** the filing of a **petition** for a writ of certiorari in the **Supreme Court** ..... 128 [**C**:395]

IV. Basis for requesting that the investigators be appointed from outside the Buffalo and Rochester Offices

39. Letter of Richard **Resnick**, Esq., Assistant U.S. Attorney, of **August 24**, 2004, stating that the **U.S. Attorney's Office** in Rochester **will not investigate** Dr. Cordero's "allegations of bankruptcy fraud and judicial misconduct" and returning to him all the files ..... 135 [C:1507]

40. Dr. **Cordero**'s cover letter of **September 18**, 2004, to Michael A. **Battle**, Esq., U.S. Attorney for WDNY, accompanying: ..... 136 [C:1513]

    a) Dr. **Cordero**'s **appeal** of **September 18**, 2004, **to** Att. Battle **from** the **decision** taken **by** Att. **Tyler no**t to open an **investigation** into

the complaint about a judicial **misconduct** and bankruptcy fra**ud scheme** and statement of the questionable circumstances under which that decision was made ..... 137 [C:1514]

41. Dr. **Cordero**'s letter of **October 7**, 2004, **to** Jeannie **Bowman**, Executive Assistant to U.S. Att. Battle, accompanying the **resubmission of the appeal** to Att. Battle from the decision of Att. Tyler and stating that the latter was to have forwarded Dr. Cordero's files to Att. Battle and why he should not investigate the case ..... 142 [C:1519]

42. Dr. **Cordero**'s letter of **October 19**, 2004, **to** Mary Pat **Floming**, Esq., Assistant U.S. Attorney at the U.S. Attorney's Office in Buffalo, requesting that she sees to it that the accompanying appeal to Mr. Battle gets to him and requesting her assistance ..... 143 [C:1520]

43. Dr. **Cordero**'s letter of **October 25**, 2004, **to** Att. **Floming** with an update about why Trustee Reiber is refusing to hold an examination of the DeLanos and stating that just as Mr. Tyler cannot investigate Dr. Cordero's appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme, but instead, they should be investigated ..... 144 [C:1521]

44. U.S. Att. **Battle**'s letter of **November 4**, 2004, to Dr. Cordero stating that he **reviewed** the **documentation** and **found no** basis for Dr. Cordero's claim of bankruptcy **fraud** and closing the matter ..... 145 [C:1522]

45. Dr. **Cordero**'s letter of **November 15**, 2004, **to** U.S. Att. Battle showing that as of November 1 Mr. Battle did **not have the documentation** and **could not** have **retrieved it** from the Rochester office **and reviewed** over 315 pages by November 4, and requesting that he obtain the files and assign the case to skilled bankruptcy fraud investigators as he had said on November 1 that he would do ..... 146 [C:1523]

V. The DeLanos' bankruptcy petition

46. **Notice** of the §341 **Meeting of Creditors** for March 8, 2004, in the Chapter 13 case of **DeLanos**, filed on February 6, 2004 ..... 149 [D:23]

47. **Petition for Bankruptcy,** with Schedules, under Chapter 13 of the Bankruptcy Code, 11 U.S.C., filed by David and Mary Ann **DeLano**, on **January 27**, 2004, in the WDNY Bankruptcy Court, docket no. 04-20280 ..... 153 [D:27]

48. The DeLanos' Chapter 13 **Plan of Debt Repayment**, dated January 26, 2004 ..... 185 [D:59]

Dr. Richard Cordero

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[Sample of letters to 26 members of the Jud. Conference] November 20 [and 27], 2004

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

I have submitted to the Judicial Conference a formal petition for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. In addition, I am sending you herewith a copy of my petition so that you take cognizance of the facts and legal issues and move your colleagues on the Conference to consider it and grant my request for relief. The high stakes warrant your attention.

Indeed, the petition concerns the evidence that I submitted of judicial misconduct linked to a bankruptcy fraud scheme. It involves U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY. The evidence thereof has been developing for over two years and keeps mounting since the underlying cases are still pending. I submitted it to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, but he did not conduct even a §352(a) limited inquiry of the complaint, let alone appoint a §353(a) special committee to investigate the evidence. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions by the CA2 Judicial Council.

As a result of taking action without any report of a special committee or conducting any investigation, the Judicial Council both "aggrieved" me under §357(a) and lacked jurisdiction under §354(a)(1). It denied me the legal benefit of protection from judicial misconduct to which I am entitled under §§351 et seq. and its own Complaint Rules. To afford such protection by administering judicial discipline through self-policing was the intent of both Congress and the Council when enacting their respective act and rules. By disregarding its own legal obligations, the Council knowingly left me to suffer further abuse of my legal rights and bias at the hands of Judge Ninfo, who has caused me to spend an enormous amount of effort, time, and money and has inflicted on me tremendous aggravation, for I am a the only pro se party and non-institutional non-local party in two cases before him. Those very concrete and personal consequences of the CA2 Council's disregard for its legal obligations have also "aggrieved" me under §357(a). All this provides the legal basis for the Judicial Conference to take jurisdiction of this petition.

Doing so would allow the Conference to review the systematic denial of petitions by judicial councils, which is so indisputable as to have justified the appointment by Chief Justice Rehnquist of Justice Breyer to head a committee to review it. To its members I am also submitting this matter as a test case because the Council's denials are particularly egregious given the compelling evidence that supports reasonable suspicion of corruption. I trust that you will take your duty to safeguard the integrity of the judiciary seriously enough to review the accompanying documents carefully and move the Conference to consider the petition formally. I also respectfully request that you make a report of this evidence to the Acting U.S. Attorney General under 18 U.S.C. 3057(a). Meantime, I look forward to hearing from you.

Sincerely,

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

December 9, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

> Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

Robert P. Deyling

Robert P. Deyling
Assistant General Counsel

Dr. Richard Cordero

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[Sample letter to the members of the Judicial Conference.]

December 18, 2004

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel. Contemporaneously, I sent you a copy, dated November 20.

I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Yesterday I received a letter (2nd set of Exhibits, page 1, infra=2E-1) from the Assistant General Counsel, Mr. Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States."

Who ever heard that a clerk is allowed to pass judgment on a precise jurisdictional argument made to the court, particularly in the absence of any authority to do so?! Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 – equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing

on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of a judicial body to dispose singlehandedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his actions.

II. Statement of facts showing the Administrative Office's Rule-noncomplying handling of, and negative attitude toward, the petition for review

It is quite strange that Mr. Deyling was in such rush to 'dispose' of my petition although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office

will help you and the Conference put in context Mr. Deyling's boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office's normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks; cf. 2E-3. The acts of disregard have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition and the exhibits (E-page number) accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to do so. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself. Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if even those in its General Counsel's Office

do not even know the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed.

I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel's Office. Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

I was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that it was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on

hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been at 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.

Thus, I respectfully request that you, as a Conference member, and the Conference itself:

1. declare Mr. Deyling's letter to be devoid of any effect as ultra vires and/or have him withdraw it;
2. require the Administrative Office to forward to the Conference the copies of my petition;
3. review my petition based on those copies or the ones that I sent to Conference members;
4. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office's handling of this matter and treating of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
5. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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Brooklyn, NY 11208-1515
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[Sent also to J R Winter, Chair of the Committee to Review Cir Council Conduct & Disability Orders; and W Burchill, Administrative Office Associate Director & General Counsel.]

January 8, 2005

Hon. Judge Carolyn King
Chair of the Executive Committee of the Judicial Conference
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

tel. (202)502-4400

Dear Judge King,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument

on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his actions.

Therefore, I respectfully request that you, as Chair of the Conference's Executive Committee:

1. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
2. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
    a. forwarded to the Conference for review;
    b. otherwise, provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders;
3. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
4. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

II. Accompanying Document and Exhibits

1. Dr. Richard Cordero's Statement of facts of December 18, 2004, and Request for an Investigation into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero 5
2. Dr. Cordero's Petition of November 18, 2004, to the Judicial Conference of the United States for review of the actions of the Judicial Council of the Second Circuit In re: Judicial Misconduct Complaints CA2 docket no. 03-8547 and no. 04-8510, ... E-1
3. Key Documents and Dates in the procedural history of the judicial misconduct complaints filed with the Chief Judge and the Judicial Council of the Second Circuit docket nos. 03-8547 and 04-8510, submitted in support of the petition ..... E-xxiii
4. Table of Exhibits of the Petition ..... E-xxv
5. Letter of December 9, 2004, of Assistant General Counsel Robert P. Deyling at the Office of the General Counsel of the Administrative Office of the U.S. Courts E-31
6. Dr. Cordero's letter of July 29, 2004, to Assistant General Counsel Jeffrey N. Barr at Office of the General Counsel Administrative Office of the U.S. Courts E-33
7. Dr. Cordero's Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero E-35
8. Table of Exhibits of the Complaint ..... E-xlv
9. Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of the Court of Appeals for the Second Circuit intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this court to launch an investigation E-49

Dr. Richard Cordero

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STATEMENT OF FACTS
of December 18, 2004
Accompanying the letter of January 8, 2005, to
The Hon. Judge Carolyn King
Chair of the Executive Committee
of the Judicial Conference of the United States
and
REQUEST FOR AN INVESTIGATION
into both the Administrative Office of the U.S. Courts' Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office's treatment of Petitioner Dr. Richard Cordero

It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to 'dispose' of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling's boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office's normal conduct of business, or pursuant to instructions for this specific case.

Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

> 56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.

My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.

Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.

However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel's Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".

I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that

asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?

In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.

On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it…still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

I called Jeffrey Barr**,** Esq., with whom I had dealt before at the General Counsel's Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.

It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.

But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.

What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single

me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?

I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.

On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).

I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.

Therefore, I respectfully request that you, as the Chair of the Conference's Executive Committee, and the Conference itself:

1. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States…", whether the Administrative Office's handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
2. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),
    a. consider it hereby resubmitted;
    b. and cause its original, which is both bound with a file of supporting documents (cf. E-xlv), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on
January 8, 2005

Dr. Richard Cordero

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
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tel. (718) 827-9521; CorderoRic@yahoo.com

February 7, 2005

William R. Burchill, Jr.
Associate Director and General Counsel
Office of the General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

faxed to (202)

Dear Mr. Burchill,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk in your Office, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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February 7, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Winter,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

Dr. Richard Cordero

Dr Cordero, of 7feb5 to Judge Winter, Chair of the Committee to Review Cir Council Conduct Orders

JC:48

United States Court of Appeals
SECOND CIRCUIT

CHAMBERS OF
RALPH K. WINTER
U.S. CIRCUIT JUDGE
U.S. COURTHOUSE
141 CHURCH STREET
NEW HAVEN, CT 06510

(203) 782-3682

February 15, 2005

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

Dear Dr. Cordero:

Thank you for your two letters, dated January 8 and February 9, 2005, regarding your November 20, 2004 request for review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit. Those orders denied review of the dismissals by the Chief Judge of the Second Circuit of two judicial conduct complaints: your August 11, 2003 complaint against United States Bankruptcy Judge John C. Ninfo, II, and your March 19, 2004 complaint against Chief Judge John W. Walker, Jr.

Please note that I am also aware of your nearly identical letters to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, to Judge Carolyn King, Chair of the Executive Committee of the Judicial Conference, and to members of the Judicial Conference. My response in this letter will eliminate any need for their further responses to your correspondence.

Your January 8th letter requested several actions, and I will address your requests in the order they appear.

First, you suggest that the December 9, 2004 letter you received from Assistant General Counsel Robert P. Deyling should be declared "devoid of any effect as ultra vires" and withdrawn. Having reviewed the material you sent me as well as the December 9th letter, I can confirm for you that Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act ("the Judicial Conference Rules").

As Mr. Deyling's letter correctly noted, the Judicial Conference does not have jurisdiction for further review of your complaint. The process for addressing complaints against judges is specified at 28 U.S.C. §§ 351 - 364. You correctly followed the statutory complaint process to its final conclusion when you obtained the orders from the Judicial Council of the Second Circuit denying your petition to review the dismissal of your complaints. A careful reading of the statute makes this very clear.

Under 28 U.S.C. § 352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed. As permitted by 28 U.S.C. § 352(c), you then petitioned to the judicial council for review of the chief judge's dismissal. The judicial council unequivocally denied your petitions. Those two denials, both taken under § 352(c), are "final and conclusive and shall not be judicially reviewable on appeal or otherwise."

The Judicial Conference review you seek is only available in certain extremely limited circumstances, and your request for review does not meet the statutory standard. Again, a careful reading of the statute leads inexorably to this conclusion, as Mr. Deyling's letter correctly explained. Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by a judicial council under § 354. A judicial council may take action under § 354 only following receipt of the report of a "special investigating committee" convened pursuant to § 353.

The chief judge did not appoint a special investigating committee under § 353 in your case. The judicial council denied your petition for review under § 352, not under § 354. Accordingly, it is clear that the only review available in your case was the review you already obtained from the Judicial Council of the Second Circuit.

This analysis, which confirms the conclusions Mr. Deyling reached in his letter to you, leads me to your second request. You ask me to forward your materials to the Judicial Conference and/or to the Committee to Review Circuit Council Conduct and Disability Orders ("the Committee"). As the Chair of the Committee, I must deny your request. Under the controlling statute, and under the Judicial Conference Rules for processing petitions for review, neither the Committee nor the Judicial Conference has jurisdiction or authority to act upon your request for review.

I also note your various references to the Judicial Conference Rules, and your arguments that the rules provide some independent basis for jurisdiction, or require the Committee or the Judicial Conference itself to take various actions with respect to your request for review. You have misinterpreted the scope and applicability of the Judicial Conference Rules. By their express terms, the rules apply to *"petitions for review submitted to the Conference under 28 U.S.C. § 357 [former 28 U.S.C. § 372(c)(10)], seeking review of circuit council actions taken under 28 U.S.C. § 354 [former 28 U.S.C. § 372(c)(6)] upon complaints of judicial conduct or disability"* (emphasis added). As I explained above, your petition seeks review of a judicial council action taken under 28 U.S.C. § 352(c). The governing statute does not provide you with any entitlement to review, by the Committee or by the Judicial Conference itself, of an action taken under § 352(c).

My answer to your first two requests implicitly addresses your remaining two requests.

Namely, you asked me to "consider and take action on the accompanying Statement of Facts and Request for an Investigation." You appear to request this action under Rule 12 of the Judicial Conference Rules. Again, I emphasize that neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review, because it is not reviewable under the statutory scheme noted above. Accordingly, I cannot take any of the actions you request. For similar reasons, I cannot report the alleged judicial misconduct to the U.S. Attorney General.

I hope that you find this letter helpful to explain why no further action will be taken on your request for review. Thank you.

Sincerely,

Ralph K. Winter
United States Circuit Judge

RKW/mrd

cc: Hon. Pasco M. Bowman II
Hon. Carolyn R. Dimmick
Hon. Barefoot Sanders
Hon. Dolores K. Sloviter
Robert P. Deyling, Assistant General Counsel

Dr. Richard Cordero

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March 7, 2005

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
1 First Street, N.E
Washington, D.C. 20543

Dear Mr. Chief Justice,

Last November 23, I timely filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review of the denials by the Judicial Council of the Second Circuit of two petitions for review under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq. These petitions and their underlying complaints contain evidence of judicial wrongdoing linked to a bankruptcy fraud scheme. Even so, they were disposed of without any investigation, contrary to the requirements of the Act; cf. §§352(a) and 354(a)(1). As such, they constitute evidence confirming the correctness of your appointment on May 25, 2004, of Justice Stephen Breyer to head a Committee to Review Circuit Council Conduct and Disability Orders, precisely because the immense majority of complaints and petitions are routinely disposed of out of hand without being investigated. So few have been allowed to move forward that in the 25-year history of the Act, the Judicial Conference has issued only 15 Memoranda and Orders!

I know that because the Administrative Office sent me copies of them. Hence, I was in a position to make a novel argument that the Judicial Conference has jurisdiction under §357(a) to review my petition since I am "A complainant or judge aggrieved by an action of the judicial council under section 354 [who] may petition the Judicial Conference for review thereof". In turn, under §354(a)(1), the judicial council can only take action "upon receipt of a report filed under section 353(a)". But no such report was ever filed because no investigation was ever conducted. Though lacking jurisdiction, the council dismissed my complaints, whereby it aggrieved me.

As a novel argument and a threshold jurisdictional one at that, it was for the Conference to pass judgment upon it. But the Conference was deprived of the right and duty to do so because a clerk at the Administrative Office, Mr. Robert Deyling, Assistant General Counsel, was bold enough to pass judgment on his own upon that argument, despite having no authority therefor, and refused to pass on my petition to the Conference, whose position he usurped in so doing.

If the appearance, not the reality, of bias or prejudice is enough under 28 U.S.C. §455 to require the recusal of a judge, as the Court reaffirmed in *Microsoft Corp. v. United States, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.)*, how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for any judge to discharge his duty to investigate complaints about it? If, as you stated[1], in the more than 200 years of our federal judiciary, only five federal judges have been convicted of offenses involving financial improprieties and perjury, then impeachment is as ineffective as the Act to discipline judges' conduct. In the absence of any control, has a judgeship become a safe haven for wrongdoing? To answer that due process determinative question, it is necessary that petitions reach the Conference, which they can only do if it interprets its jurisdiction under the Act expansively so that it can read petitions at all. Therefore, I respectfully request that you cause the Conference[2] to pass judgment on the threshold issue of jurisdiction that I am submitting hereby and already submitted in my petition.

sincerely, Dr. Richard Cordero

[1] Remarks of Chief Justice Rehnquist at the Federal Judges Association Board of Directors Meeting, May 5, 2003; at http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html.

[2] Letters sent by Dr. Cordero -but never replied to- in an effort to have Mr. Deyling's letter of December 9, 2004, declared devoid of any effect as ultra vires and withdrawn so as to have his petition unblocked and forwarded by the Administrative Office to the Conference for its review:

a) Dr. Cordero's letter of December 18, 2004, to Chief Justice Rehnquist

b) Dr. Cordero's letter of January 8, 2005, to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the U.S. Courts

c) Dr. Cordero's letter of February 7, 2005, to General Counsel Burchill stating that he has not received any response to his letter of January 8, and requesting that action be taken on that letter and its requests

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of March 7, 2005
from Dr. Richard Cordero

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JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

ADDENDUM to the Petition's section II: The Judicial Conference Has Jurisdiction Over This Appeal Because The Complainant Was "Aggrieved" By The Judicial Council,

to **request** that the Judicial Conference consider the threshold argument for taking jurisdiction over the petition

1. On November 23, 2004, Dr. Richard Cordero timely filed a petition to the Judicial Conference (page 1, infra) for review of two denials by the Judicial Council of the Second Circuit (pgs. E-37; E-55, infra) of his petitions for review (E-23; E-47) of the dismissals (E-11; E-45) of two related judicial misconduct complaints (E-1; E39) that he had filed under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq., with the chief judge of that Circuit's Court of Appeals. As required, Dr. Cordero addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.
2. On December 9, 2004, Dr. Cordero received a letter from Assistant General Counsel Robert P. Deyling (pg. Add.-6, infra), who without even acknowledging, let alone discussing, Dr. Cordero's specific and detailed jurisdictional argument to the Judicial Conference (3§II) and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States" (Add.-7).

A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

3. Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions, which follows from 28 U.S.C. §331, 4th paragraph:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee; (emphasis added).

4. Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. However, these Rules are silent on the issue of the Conference's jurisdiction; and they certainly do not authorize any member of that Office or even of the Administrative Office of which it forms part to pass judgment on whether a petition meets any jurisdictional requirement set forth in §§351-364. What is more, those sections do not even mention the General Counsel's Office. As to the Administrative Office itself, it is only mentioned in §361, which provides for a passive role for its Director, who may receive a recommendation from a judicial council to reimburse the expenses incurred by a judge who has been the subject of a complaint. But even that recommendation can only be made at the end of it all, after "the complaint has been finally dismissed under section 354(a)(1)(B)". Nothing in those sections allows that Director, much less one of its clerks, to determine at the outset

whether the Judicial Conference will even receive and have the opportunity to read a petition for review.

5. Moreover, Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules" (emphasis added), and thus, "appropriate for present disposition" because the petition does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5)…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

6. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). A clerk has no authority to engage in a consideration of the arguments of the petitioner, much less dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own. Rather, that Office "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".
7. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the

complaint", but in addition either "may undertake ***any*** investigation found to be required". Moreover, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information" (emphasis added).

8. This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

9. That "argument", which may bear on jurisdiction, is a legal brief and it is for the Commit-tee to request and consider it without being preempted by a clerk's unauthorized conclusory 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

10. Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

11. Hence, Mr. Deyling, as a clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on

jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived Dr. Cordero of his legal right to have his petition processed according to the procedure set forth in the Rules. If it is true, as Mr. Deyling put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his unauthorized and presumptuous actions.

12. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

    a) declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;

    b) declare that, upon review of this Addendum, §§351 et seq., and the Rules, it has jurisdiction to review Dr. Cordero's petition of November 18, 2004, to the Conference;

    c) review the copy of the petition included herewith (1, infra) or have its original and four copies filed with the Administrative Office on November 23, 2004, and in possession of its General Counsel, forwarded to the Conference for review;

    d) grant the petition and launch an investigation of the judges and court officers complained about and expand such investigation to include similar events of misconduct by them that have taken place since the petition was filed (cf. EE-1, infra); and

    e) make a report of the evidence of a bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Respectfully submitted on March 7, 2005

Dr. Richard Cordero

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Dr. Richard Cordero

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March 24, 2005

Hon. Judge Ralph K. Winter, Jr.
Chair of the Committee to Review
Circuit Council Conduct and Disability Orders
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re petition for review by the Judicial Conference

Dear Judge Winter,

Thank you for your letter of February 15 concerning my letters of last February 7 and January 8, and my petition of November 18, 2004, to the Judicial Conference for review under the Judicial Conduct and Disability Act. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue. I requested that you cause my petition to be forwarded to the Conference for it to determine the issue of jurisdiction and eventually the petition itself.

I have prepared a reply to your letter and for the reasons stated therein, I respectfully request that you formally submit it to the other members of the Committee as well as to the Judicial Conference.

sincerely,

Dr. Richard Cordero

JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

CA2 dockets no. 03-8547
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

REPLY
to the Chairman of the Committee to Review Circuit Council Conduct and Disability Orders on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions for review to the Judicial Conference and on the need for the Conference to decide the issue of jurisdiction

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Dr. Richard Cordero, Pro se Petitioner, affirms under penalty of perjury the following:

1. On November 18, 2004, Dr. Richard Cordero filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §351 et seq., (hereinafter the Act) of two orders of the Judicial Circuit of the Second Circuit denying his petitions for review concerning two judicial misconduct complaints dismissed by the Circuit's chief judge.
2. By letter of December 9, 2004, the Assistant General Counsel of the Administrative Office, Robert P. Deyling, Esq., (Exhibits page 15=E-15, infra) informed Dr. Cordero that "no jurisdiction lies for further review by the Judicial Conference of the United States" and failed to forward the petition to the Conference.
3. Dr. Cordero contends that Mr. Deyling and the Administrative Office only render clerical work for the Conference and have no authority either under the Act or the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (hereinafter the Conference Rules), to pass judgment on any issue, much less on the threshold issue of jurisdiction, and thereby prevent the Conference from even receiving a petition for review, let alone determining by itself the issue of its jurisdiction to entertain the petition.

4. Hence, on January 8 and February 7, 2005, (E-4; E-13) Dr. Cordero wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee for the Review of Circuit Council Conduct and Disability Orders (hereinafter the Committee), to request that he declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it and to have his petition forwarded to the Conference for review. Judge Winter replied by letter dated February 15, 2005 (E-1)

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A. Subsection 352(c) only states the prerequisite of being "aggrieved" for petitioning a council and the effect of a council's denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council's action.....6

B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is "aggrieved".....9

III. Although both the Chief Judge and the Council are required by the Act to handle complaints "expeditiously" and "promptly", they failed so to handle the complaints of Dr. Cordero, whereby they also "aggrieved" him and provided further basis for his petition to the Conference.....10

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I. 28 U.S.C. §331 requires that "*all* petitions for review *shall* be reviewed by that committee [to review circuit orders]", so while its chairman can cause it to review a petition, he cannot prevent it or the Judicial Conference from engaging in such review, which should be undertaken by the Conference given the far reaching impact of a decision on the scope of its jurisdiction

5. In his letter Judge Winter stated that "Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules". However, Judge Winter failed to cite any Conference Rule or provision of law that gives either Mr. Deyling or the Administrative Office authority to pass judgment on any issue, much less on the threshold issue of jurisdiction. Therefore, his conclusory statement is insufficient to dispose of Dr. Cordero's contention that neither Mr. Deyling nor the Office is authorized under the Act or the Rules to do anything other than clerical work, such as receiving a petition and distributing it to the Conference, which is the only entity that can pass judgment on whether it has jurisdiction to review a petition. "A careful reading of the statute makes this very clear."
6. Thus, Conference Rule 9 states the limited scope of clerical work that either can perform:

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

In turn, 28 U.S.C. §331, 4th paragraph, provides as follows:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and ***all*** petitions for review ***shall*** be reviewed by that committee. (emphasis added)

7. This provision is authority for the proposition that the Committee has the legal obligation to act and do so with respect to "all petitions for review", such as Dr. Cordero's and not just such as in the judgment of the Administrative Office or a clerk thereof can be forwarded to the Conference; and *"all"* of them "shall be reviewed by that committee". This means that not even the chairman of that Committee, in this case Judge Winter, has the legal authority to decide in lieu of the whole Committee to deny review.
8. In this case, however, it should be the Judicial Conference itself that undertakes such review. This is so because the issue of jurisdiction goes to the essence of its power to function in the context of the Act and because the argument made in Dr. Cordero's petition in favor of its

jurisdiction is novel. The basis for calling it novel is that in the 25 years since the Act was adopted in 1980, the Conference has only issued 15 orders and Dr. Cordero read all of them after managing to have the Administrative Office send them to him. None of them contains an argument for jurisdiction based on an analysis of the Act. As an issue on first impression that requires the interpretation of the inner workings of the Act's provisions, as shown below, and that will have an impact far beyond this petition by affecting the availability of review under the Act of all other complainants, the scope of the Conference's jurisdiction should be determined by the whole Conference, not the Committee.

9. It is the Conference that has the necessary power to depart, if need be, from a narrow interpretation of its jurisdiction that has rendered the Act a useless mechanism for processing judicial misconduct complaints and eliminating the underlying causes for such complaints. This has frustrated Congress' purpose in enacting it and even led Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair a committee to study its misapplication. Therefore, for the Conference to decide this petition's arguments for its jurisdiction and eventually decide the petition will be a step toward correcting the profound, long-standing problem of the Act's evisceration as well as one consistent with the action taken to that end by the Conference's president and the top officer of the Judicial Branch. Under these circumstances, the Committee should defer to the Conference and the Conference should take the opportunity to deal in depth with the Act through this petition.

II. The petition to the Judicial Conference explicitly seeks review under §357(a), which is not excluded by action allegedly taken under §352(c) by the Council, although it never even pretended to have acted thereunder

10. Judge Winter stated in his letter that "your petition seeks review of a judicial council action taken under 28 U.S.C. §352(c)". That statement is inaccurate both as a matter of fact and in legal terms.
11. To begin with, Dr. Cordero's petition for review to the Conference explicitly states what basis of jurisdiction it invokes. Its first substantive section after the statement of the questions presented for review is this: "II. The Judicial Conference has jurisdiction over this appeal because the complainant was "aggrieved" by the Judicial Council". The term "aggrieved" appears in §357(a), which reads thus:

> **28 U.S.C. §357. Review of orders and actions**
> **(a) Review of action of judicial council.**- A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial

> Conference of the United States for review thereof.

12. It is on the basis of §357(a) that Dr. Cordero invoked the Conference's jurisdiction to review his petition. By its own terms, that section is broad enough to encompass his petition because he was "aggrieved" by the Council when without any investigation it denied his two petitions for review of the dismissals without any investigation either by the acting chief judge of his two complaints, thereby leaving him to continue to suffer the misconduct of the complained-about judges.
13. Moreover and as a matter of fact, the Council did not even pretend to have denied the petition under §352(c). Anybody who is familiar with the way the Council systematically discards petitions for review, knows that it only issues a form that none of its members bothers to sign and that by hand of the circuit executive states that:

> Upon consideration thereof [of the chief judge's order dismissing the complaint and the complainant's petition for review]
>
> ORDERED that the petition for review is DENIED for the reasons stated in the order dated [and the date of the chief judge's order].

14. That is the stated basis on which the Judicial Council of the Second Circuit denied each of Dr. Cordero's two petitions (E-17; E-18) for review of the acting chief judge's orders of dismissal of June 8 and September 24, 2004, respectively. Since the acting chief judge dismissed each of the complaints with disregard for his obligations under §§351-353 with respect to those complaints and as part of a pattern of systematic dismissal of judicial misconduct complaints (see §IV of the petition), the Council only further "aggrieved" Dr. Cordero for having lent its support to such disregard for the Act.
15. By its own words, the Council could not have taken action under §352(c). Its own *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §351 et seq.* (hereinafter JC2nd Rules), do not even mention §352(c). Neither the members of a review panel nor those of a whole council are afforded the opportunity or have the means of expressing whether they are taking action under §352(c), or for that matter any other provision, such as §354. Their options for action are these:

> **JC2nd Rule 8. Review by the Judicial Council of a Chief Judge's Order**
>
> **…**
>
> **(b) Mail ballot.** Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) ***deny*** the petition for review, or (2) ***refer*** the petition to the full membership of the judicial council. The form

> will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition.
>
> Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council ***member voting to place the petition on the agenda*** of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.
>
> The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be **placed on the agenda** of a council meeting upon the **votes** of at least **two members** of the council; **otherwise**, the petition for review will be **denied**. (emphasis added)

16. Panel members have nothing more to do than to put a check mark in a denial or referral box. But if any of them or any other member of the council writes anything else, it is to explain why the council as a whole should consider the petition, rather than why it should deny it. Denial comes by default, due to the failure of any other judge to second a judge's initial vote for consideration. Furthermore, even if the whole council takes a decision, it does not have to state whether it was under §352(c) or §354. As a matter of fact, it does not even have to explain its decision in a memorandum:

> **JC2nd Rule 8. (f) Notice of Council Decision.**
>
> (1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

A. Subsection 352(c) only states the prerequisite of being "aggrieved" for petitioning a council and the effect of a council's denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council's action

17. This is what subsection §352(c) provides:

> **§352(c) Review of orders of chief judge.** –A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

18. The first sentence of this subsection shows that if a complainant can be "aggrieved" by a chief judge's final order, then he can be equally "aggrieved" when a council denies his petition expressly on the basis of that very same order. That reason for being "aggrieved" falls within the very broad scope of the term, which the Act does not limit by reference either to the order's

content or circumstances of issue.

19. No analysis of that sentence or the whole subsection, let alone a gloss over it, can possibly conclude that if a council denies a petition allegedly under §352(c), then the complainant cannot legally be "aggrieved" by its denial or that he cannot be so much so as to qualify within the purview of the very same term "aggrieved" under §357(a). A basic rule of construction provides that a word in a legal instrument has the same meaning everywhere it is used with no differentiating qualifier. Both §352(c) and §357(a) use the term the same way: 'An aggrieved complainant or judge'.
20. Not only that key term links those two provisions, but also the Act's structure and workings link §352(c) to §354. Indeed, the second sentence of §352(c), by its own terms only states the **effect** of a council's denial of a petition for review. It does not state how a council can review a petition, let alone deny it. That cannot mean that §352(c) constitutes an unbounded grant of power to a council to do whatever it wants. It should be axiomatic that in a government subject to the rule of law no entity of any of its branches, such as a council is within the Judicial Branch, can act or refuse to act arbitrarily, just because it feels like it or it suits the interest of the class of persons that compose it, which in this case would be the interest of protecting complained-about peer judges and the public image of the class. Therefore, even a council constrained or permitted to take action must do so within the bounds set down by law or rule.
21. Section 354 is where the Act imposes on a council the duty and grants it the power to act. This is expressed unequivocally by its title:

    §354. Action by judicial council

22. By contrast, §352 provides for a different type of action by a different actor and at an earlier stage, so it is titled thus:

    §352. Review of complaint by chief judge

23. It is not in the latter section dealing with action by a chief judge, let alone in a subsidiary sentence of a subsection therein, where the council would reasonably go to find out what it is that it can do under the Act. Legislative drafting is assumed to be carried out by as reasonable people as the reasonable man and woman who provide the standard of conduct against which the conduct of the addressees of the law is measured. Hence, it is untenable to assume that Congress was so unreasonable as to nest in a sub-sub level of a section concerned with a chief judge a grant to a council of its largest measure of power: to deny a petition for any reason and

no reason without any procedural requirements.

24. Reasoning by opposite also leads to the conclusion that §352(c) is not a stand alone provision that grants a council unbounded power to act and not to act without regard for the rest of the Act: Suppose that instead of denying the petition for review of the chief judge's order, a council were to grant it. Could the mere fact that no special committee was appointed and that the council lacked the information that its report would have contained constitute the grounds for the council to claim authority to take any action whatsoever that it fancied, including any action that the complainant requested as relief in his petition? "*Of course not!",* the complained-about judge would scream and any person of sound judgment would have to agree with him. By the same token, the complainant would argue, the complained-about judge could not, just because of those circumstances, be the one to set bounds on what the council could do. Rather, a conscientious council striving to avoid even the appearance of taking arbitrary and biased action and to demonstrate its respect for the rule of law would have to look to §354 to determine what action it had the duty to take, what powers it had to discharge it, and the bounds for their exercise. It follows that even if a council took action under §352(c), it would still have to look to §354 to determine what actions it had to take to achieve the purpose of the Act and could take to remain within its bounds.

25. Section 354 opens by setting a bound thus:

> **§354. Action by judicial council**
> **(a) Actions upon receipt of report.-**
> **(1) Actions.**- The judicial council of a circuit, upon receipt of a report filed under section 353(c)-…

26. To take action under §354(a), the council must have received a report. The Judicial Council of the Second Circuit could not have remained within that bound when it denied Dr. Cordero's petition for review because the Council could not have received a report since no special committee was ever appointed so that no committee conducted any investigation on which a report could have been submitted.

27. Just because the Council was deprived of the benefit of a special committee report it was not constrained to take action under §352(c) and deny any and all petitions. Section 354(b) empowered it to conduct its own investigation. It provides thus:

> **§354. (b) Referral to Judicial Conference.-**
> **(1) In general.**- In addition to the authority granted under subsection (a), the judicial council may, ***in its discretion***, refer any complaint under section 351,

> together with the record of ***any*** associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States. (emphasis added)

28. This subsection endows a council with discretionary power to forward a complaint on its own to the Conference, and if "any associated proceedings" have taken place, then it must join them to the complaint upon forwarding it to the Conference. The terms "any complaint under section 351" and "any associated proceedings" are sufficiently broad to allow a council 'to conduct any investigation which it considers to be necessary', cf. §354(a)(1)(A), of any complaint regardless of how the chief judge disposed of it. This grant of power encourages referral to the Conference precisely where the chief judge has failed to undertake proceedings that he should have associated to his handling of the complaint, such as 'conducting a limited inquiry' under §352(a) or 'appointing a special committee' under §353.
29. Both the chief judge and the council failed to investigate although they should have done so on the strength of the evidence of judicial misconduct presented in the complaint and of the injury that the misconduct caused to Dr. Cordero in particular and to the administration of justice by the courts for the public benefit in general. Their failure to investigate constituted abuse of discretion. Worse still, their failure was part of their systematic dismissal of complaints and denials of petitions. It constituted dereliction of duty, the intentional disregard of their duty to eliminate judicial misconduct "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)), so as to achieve the purpose of the Act. On both counts the chief judge and the council "aggrieved" Dr. Cordero and afforded him the basis for petitioning the Conference.

B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is "aggrieved"

30. A chief judge cannot insulate himself from review by the Judicial Conference by the simple maneuver of not appointing a special committee to investigate whether a judge's conduct has been "prejudicial to the effective and expeditious administration of the business of the courts" (§351(a)). To do so would only allow the business of the courts to continue being administered ineffectively and sluggishly, thereby defeating the Act's purpose, which is not to protect the chief from embarrassment, but rather to eliminate such prejudice. Hence, such non-appointment

is a particularly perverse maneuver because it covers for the chief judge's interest in not having instances of bad administration exposed during his term in office and associated with him.

31. In the same vein, a council, precisely when it is least informed because it lacks the report of a §353 special committee's investigation, cannot spare itself any investigation under §354(b) of the complaint and, by merely pretending to have denied under §352(c) a petition for review of a chief judge's uninformed and likely self-serving order, insulate itself from review by the Judicial Conference. Such expediency only compounds the prejudice to the Act's purpose and aggravates the deleterious effect of the perverse maneuver on the courts' business.
32. If the chief judge looks after himself, and the council of his peers looks only at his order, and the Conference never even sees a petition, who ever reviews the causes for complaint in the business of the courts? No wonder the Conference has issued only 15 orders in the 25 years since the Act was passed in 1980. Such a self-defeating construction of the Act cannot be the way Congress intended the Act to be read. This is particularly so when there is an alternative and reasonable construction of the second sentence of §352(c): A judicial council's denial of a petition is final unless the complainant or the judge is "aggrieved" under the terms of §357(a) and §354, such as by their failure to investigate a complaint, but if so, an appeal lies only in the Judicial Conference, not in an appeal to the courts.

III. Although both the chief judge and the Council are required by the Act to handle complaints "expeditiously" and "promptly", they failed so to handle the complaints of Dr. Cordero, whereby they also "aggrieved" him and provided further basis for his petition to the Conference

33. Judge Winter also wrote that "Under 28 U.S.C. §352, the chief judge may dismiss a complaint after "expeditious review." This is exactly what occurred with respect to the complaints you filed." This statement is contrary to the facts.
34. Dr. Cordero's complaint against Bankruptcy Judge John C. Ninfo, II, WBNY, dkt. no. 03-8547, was filed on August 11, and reformatted and resubmitted on August 27, 2003. It was dismissed only on June 8, 2004. Under what conceivable notion of "expeditious" is action taken 10 months later "expeditious"!? Ten months despite the evidence that neither Chief Judge John M. Walker, Jr., nor Acting Chief Judge Dennis Jacobs used the time to "conduct a limited inquiry", as required under §352(a), and the fact that neither appointed a special committee. Ten months without taking action while a pro se and non-local litigant was being abused by a biased judge! Ten

months even though on February 2, 2004, Dr. Cordero wrote to the Chief Judge to expressly bring to his attention the requirement that the Act laid upon him to handle a judicial misconduct complaint "promptly" and "expeditiously".

35. Ten months despite the fact that on March 19, 2004, Dr. Cordero filed a complaint against the Chief Judge himself precisely for his failure to act "promptly" and "expeditiously", whereby he was unlawfully and insensitively tolerating further injury to Dr. Cordero at the hands of one of his peers, Judge Ninfo. For its part, that complaint, dkt. no. 04-8510, was not dismissed until September 24, 2004, that is, more than half a year later again without even a limited inquiry or the appointment of a special committee. What is more, it was dismissed on the allegation that it had become moot by the dismissal of the earlier complaint. So why did Acting Chief Judge Jacobs fail to state so "promptly" and "expeditiously" since he was the one who dismissed the earlier complaint rather than inconsiderately make Dr. Cordero wait for months in vain during which he could have engaged the petition process?

36. Consequently, when the Judicial Council of the Second Circuit failed to exercise its discretionary power under §354(b)(1) to conduct the investigation that Chief Judge Walker and Acting Chief Judge Jacobs should have undertaken and that could have allowed them to corroborate Dr. Cordero's contention of judicial misconduct and take corrective action, the Council disregarded the purpose of the Act and its duty thereunder to attain it. By so doing, the Council left undisturbed the complained-about Judge Ninfo and other court officers who have engaged in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the benefit of the local parties and to the detriment of Dr. Cordero, the only non-local and pro se party, as to constitute a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. Through such disregard for legality and bias Judge Ninfo has caused Dr. Cordero since 2002 an enormous waste of effort, time, and money and inflicted upon him tremendous aggravation. By their inaction, the Chief Judge, the Acting Chief Judge, and the Council have condoned Judge Ninfo's misconduct and thus encouraged him to further engage in it, which he has done since Dr. Cordero filed his complaint in 2003, and as recently as March 1, 2005 (E-19). Through dereliction of their duty under the Act, Chief Judge Walker, Acting Chief Judge Jacobs, and the Council of the Second Circuit have insensitively and wrongfully failed to protect a complaint. What is more, they have condoned the denial by Judge Ninfo and thereby engaged themselves in the denial to Dr.

Cordero of due process of law under the Constitution. By so doing, they have "aggrieved" Dr. Cordero. As an "aggrieved" complainant under §357(a), Dr. Cordero now has the right to have his petition reviewed by the Judicial Conference.

IV. The request for a report under18 U.S.C. 3057(a) to the U.S. Attorney General for an investigation into bankruptcy fraud called on the judges to abide by their obligation thereunder and is totally independent from any issue of jurisdiction of the Conference or the Committee under the Act

37. Judge Winter also stated that he "cannot report the alleged judicial misconduct to the U.S. Attorney General [because] neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review".

38. To make that request, Dr. Cordero explicitly invoked 18 U.S.C. 3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…(emphasis added)

39. By its own terms, this provision has absolutely nothing to do with the Conference or the Committee, much less with whether either has jurisdiction under the Act to review a petition. It has to do only with whether a person is a "judge, receiver, or trustee" and has, not even evidence or certainty, but rather just "any reasonable grounds for believing" that any provision of Title 18, Chapter 9 on bankruptcy, has been violated, such as that at §152(6) prohibiting the 'offer or receipt of a benefit for acting or forbearing to act in a bankruptcy case' or at §152 (8) prohibiting 'the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor'. If so, he "***shall*** report to the appropriate United States attorney". This is not an option; it is an obligation to act. That is what the law imposes on such a judge.

40. Hence, when judges shirk that obligation by mixing it with something totally extraneous to it, what confidence do they instill in the public that they in fact abide by their oath of office at 28 U.S.C. §453 to "administer justice without respect to persons", that is, even if for the sake of the integrity of judicial process, the law must be applied to investigate one of their peers? Do judges apply the law because a moral duty compels them to abide by their professional obligation to do so or do they apply it only when it suits them and their peers because, after all, who is there to

complain successfully against them? These are legitimate questions justified by the facts, the same that caused Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair the committee to study the misapplication of the Act.

V. Relief requested

41. Therefore, Dr. Cordero respectfully requests:

a) that Judge Winter reconsider the position that he expressed in his February 15 letter and in light of the statutory requirement of 28 U.S.C. §331, 4th paragraph, that "***all*** petitions for review ***shall*** be reviewed by that committee", not just its chairman, submit to the Committee this statement together with Dr. Cordero's letters of February 7 and January 8, and his petition for review of November 18, 2004, to the Judicial Conference;

b) that Judge Winter cause the Committee to submit to the Judicial Conference Dr. Cordero's petition and arguments for the Conferences' jurisdiction;

c) that the Conference decide that issue of jurisdiction and, if it decides to exercise it, that it determine the petition itself;

d) that the judges in the Committee and the Conference, individually and collectively, make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in Dr. Cordero's petition, subsequent writings, and their exhibits, and request that the ensuing investigation be conducted by U.S. attorneys and FBI agents that are neither acquainted nor friends with any of the court and bankruptcy officers that may be investigated and that to that end neither the DoJ or FBI offices in Rochester or Buffalo, NY, be involved.

Respectfully submitted on March 25, 2005

Dr. Richard Cordero

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[Sample of the letter to the other members of the Committee to Review Cir Council Conduct Orders]

March 26, 2005

Hon. Pasco M. Bowman
Member of the Committee to Review
Circuit Council Conduct and Disability Orders
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
St. Louis, MO 63102

Dear Judge Bowman,

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, infra) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

By letter of December 9, 2004, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised (3§II). As part of my efforts to have the petition submitted to the Conference to let it decide the issue of its jurisdiction, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chair of the Committee to Review Circuit Council Conduct and Disability Orders (43; 51). Judge Winter answered on February 15 (25). I am submitting to you my reply (28; 29) to his letter because under 28 U.S.C. §331 the Committee as a whole must review all petitions.

For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

Dr. Richard Cordero

JC:74

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submitted on March 26, 2005 to the Members of the Committee to Review Circuit Council Conduct and Disability Orders in support of the request that they forward to the Judicial Conference of the United States the petition for review of November 18, 2004 of Dr. Richard Cordero

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March 28, 2005

Mr. Chief Justice William Rehnquist
Member of the Judicial Conference of the United States
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Chief Justice,

As stated in my letters to you of 7 instant and November 20 and December 18, 2004, last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55)[♣] of two petitions for review (E-23; E-47) concerning two related judicial misconduct complaints (E-1; E-39), one about Bankruptcy Judge John C. Ninfo, II, WBNY, and the other about Chief Judge John M. Walker, Jr., CA2.

By letter of December 9, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (page 23, infra), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised in the petition (3§II, infra). As part of my efforts to have the petition submitted to the Conference to let it decide that issue, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders. Judge Winter answered by letter of February 15 (25) where he states that neither he nor the Conference has jurisdiction to act on my petition. I am submitting to you, as the Conference's presiding officer, my reply (28; 29) to his letter. Therein I argue, among other things, that under 28 U.S.C. §331 the Review Committee must review all petitions so that the Committee as a whole, not just he as its chairman, should consider mine; and that since the Review Committee derives its jurisdiction from that of the Conference, it should forward my petition to the latter with the request that it be the one to determine the jurisdictional issue that I raised.

I respectfully request that you have the Conference decide that issue or bring to the attention of Judge Winter and the Review Committee the need to let the Conference decide it. By so doing, the Conference would have the opportunity to consider whether too narrow an interpretation of the jurisdictional provisions of the Judicial Misconduct Act accounts for the fact that since March 2002 not a single petition has been submitted to it. Thus, the Conference has not had occasion to consider petitions and provide guidance to judicial councils and chief judges on the proper application of the Act. As a result, the Act has become as useless as the impeachment process as a mechanism for judicial control and discipline. Instead of it being interpreted to protect individuals who suffer abuse and bias through judicial misconduct (53) or the public at large who must bear the loss of access to justice and the material cost caused by judges involved in wrongdoing (E-83; E-109), the Act has been interpreted as a means for judges to take care of their own and protect their class image. Has the Conference not been aware of this disregard for the Act's purpose for the past 25 years during which it issued only 15 misconduct orders?

sincerely, Dr. Richard Cordero

[♣] These Exhibits were submitted to you and the Conference together with a copy of the petition last November 26. The Exhibits are not reproduced below, but reference to their page numbers is made hereinafter using the format (E-#).